

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

RPFC.No. 392 of 2014

MC 35/2009 of FAMILY COURT, ERNAKULAM

REVISION PETITIONER/RESPONDENT:-:

P.RAMA KRISHNAN, AGED 44 YEARS
S/O.LATE VENKITAN EMBRANTHIRI, PUTHUMANA MADOM
PUZHAKKATTIRI POST, KOCUVAD DESOM, PERUNTALMANNA.

BY ADV. SMT.R.PADMAKUMARI

RESPONDENTS/PETITIONERS:-:

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1. T.N.JALAJA, AGED 37 YEARS
D/O.NARAYANAN EMBRANTHIRI, THEKKUMKARA MADOM
PANGODE POST, VADAVUCODE, ERNAKULAM - 682 035.
 2. ASHWIN, AGED 8 YEARS
S/O.P.RAMA KRISHNAN, RESIDING AT THEKKUMKARA MADOM
PANGODE POST, VADAVUCODE
ERNAKULAM 682 035(RESPONDENT NO.2 IS MINOR REPRESENTED
BY HIS MOTHER 1ST RESPONDENT).
 3. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 & R2 BY ADV. SRI.BINU MATHEW
R3 BY PUBLIC PROSECUTOR, SHRI.R.GITHESH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
08-09-2015, ALONG WITH RPFC.444/2014, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

R.P.(F.C.) Nos. 392 and 444 of 2014

Dated this the 8th day of September 2015

ORDER

The revision petitioner in R.P.(F.C)No.392 of 2014 is the respondent and the revision petitioners in R.P.(F.C) No.444 of 2014 are the petitioners in M.C. No.35 of 2009 on the files of the Family Court, Ernakulam. As per the order impugned, the court below granted maintenance of Rs.4,000/- per month to the 2nd petitioner in the M.C. However, the court declined to grant maintenance to the first petitioner in the M.C. Aggrieved by the order of the

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court below declining to grant maintenance to the first petitioner in the M.C., and also for enhancement of maintenance to the 2nd petitioner, the petitioners before the court below filed R.P.(F.C) No.444 of 2014. Aggrieved by the quantum of maintenance awarded by the court below, the respondent before the court below filed R.P.(F.C) No. 392 of 2014.

2. Heard both sides.

3. It is not disputed that the first petitioner before the court below is the wife and the 2nd petitioner before the court below is the son of the respondent therein. The petitioners before the court below would contend that the first petitioner was subjected to cruelty by the respondent therein and hence, she was forced to leave the company of

the respondent. The first petitioner before the court below would further contend that the respondent therein was a skilled watch repairer earning a monthly income of Rs.15,000/- from the said job. He is also earning an amount of Rs.8,000/- from landed properties. The respondent therein refuted the contentions of the petitioners and contended that the respondent is not a watch repairer and that he is earning his livelihood from the job of a 'poojari' in temples, from which he is getting only a meager income in every month. It is further contended by the respondent before the court below that the first petitioner had deserted the respondent without any reasonable cause and in the said circumstances, the respondent is not bound to maintain her.

4. Before the court below, the first petitioner was examined as PW1 and Exts.A1 to A4 were marked for the petitioners. RW1 and RW2 were examined and Exts.B1 to B9 were marked for the respondent. The court below evaluated the oral and documentary evidence adduced by both sides and came to the conclusion that the first petitioner left the company of the respondent before the court below without any sufficient cause. The court below has convincingly stated the reason in the order impugned which impelled the court below to come to the conclusion that the first petitioner left the company of the respondent without any sufficient cause.

5. The learned counsel for the respondent before the court below, relying on the order in O.P. No.7 of 2007 of

the court below, argued that there is a finding in the said order that the 1st petitioner before the court below left the company of the respondent without any sufficient cause and hence, the first petitioner is not entitled to get maintenance from the respondent. Having gone through the order in O.P. No.7 of 2007, it appears that the said O.P. was dismissed by the Family Court on the reason that the respondent therein was not prepared to provide separate accommodation for the first petitioner and her child. There is no finding in the said order to the effect that the first petitioner left the company of the respondent before the court below due to the cruelty meted out by him. However, having gone through the order impugned, in the light of the evidence of PW1 and RW1, I am satisfied that the court

below correctly appreciated the evidence and came to the conclusion that the materials available on record would lead to the only inference that the first petitioner left the company of the respondent on her own volition and not due to the cruelty meted out by the respondent. In the said circumstances, the court below was right in declining to grant maintenance to the first petitioner before the court below.

6. The court below awarded maintenance of Rs.4,000/- to the second petitioner, who is the child of the respondent before the court below. Even though the respondent stated that he is getting only a meager income from his job as a poojari, no specific contention has been taken by him regarding the quantum of income he gets

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every month from his job. PW1 stated that the respondent is also doing watch repairing work. He is also getting income from the landed property. In Ext.A2 marriage advertisement, the respondent stated that he was getting Rs.6,000/- from his business and Rs.2,000/- from his poojari work. The said advertisement was made in April 2003, which would show that the respondent was getting Rs.8,000/- during the period of his marriage. Considering the oral and documentary evidence adduced by the parties including Ext.A2, the court below correctly came to the conclusion that the respondent would be getting at least an amount of Rs.10,000/- per month as income. The said finding of the court below cannot be said to be perverse. The respondent before the court below being the father, he

is bound to maintain his son. Considering the entire facts and circumstance of the case, the court below fixed the quantum of maintenance to the second petitioner before the court below at Rs.4,000/- per month. The said amount was awarded by the court below taking into consideration of the age and also his educational expenses. Having gone through the relevant inputs, I do not find any reason warranting interference with the said finding of the court below. I am satisfied from the evidence that the court below correctly came to the conclusion that the first petitioner before the court below is not entitled to maintenance from the respondent before the court below. The court below also correctly entered into a finding that the 2nd petitioner before the court below is entitled to an

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amount of Rs.4,000/- per month towards maintenance from the respondent. No circumstance has been brought to my notice to indicate that the finding of the court below is perverse, incorrect, illegal or improper. In the said circumstances, I do not find any reason to interfere with the order impugned.

In the result, R.P. (F. C.) No.392 of 2014 and R.P. (F. C.) No.444 of 2014 stand dismissed.

It has been submitted by the revision petitioners in R.P.(F.C.) No.444 of 2014 that no maintenance has been so far given by the respondent. Needless to state that if the revision petitioner in R.P.(F.C.) No.392 of 2014 fails to make payment of the entire arrears of maintenance within one month, as agreed to by the learned counsel for the

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respondent in R.P.(F.C.) No.392 of 2014, the court below shall be at liberty to initiate cohesive steps to recover the amount.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

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