

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

RPFC.No. 442 of 2014 ()

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AGAINST THE ORDER/JUDGMENT IN MC 19/2014 of FAMILY COURT, OTTAPPALAM  
DATED 25-06-2014

REVISION PETITIONER/RESPONDENT:

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T. GOPALAKRISHNAN, AGED 66 YEARS  
S/O.KESHAVAN NAIR, RESIDING AT MUTHIYIL VEEDU  
KALLEKULANGARA POST, PALAKKAD DISTRICT-678003.

BY ADVS.SRI.K.SHRIHARI RAO  
SMT.N.SHOBHA  
SRI.A.S.SREEKANTH

RESPONDENT/PETITIONER:

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SHYAMALA, AGED 60 YEARS  
W/O.T.GOPALAKRISHNAN, RESIDING AT KRISHNA NIVAS  
MANGALAM P.O., LAKKIDI, OTTAPALAM TALUK  
PALAKKAD DISTRICT-678706.

BY ADV. SRI.VINOD KUMAR.C

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON  
09-02-2015, ALONG WITH RPFC. 459/2014, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:

**C.T.RAVIKUMAR, J.**

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R.P.(F.C.)Nos.442 & 459 of 2014  
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Dated 9<sup>th</sup> February, 2015

**ORDER**

These revision petitions have matrix from the order dated 26.5.2014 passed by the Family Court, Ottappalam in M.C.No.19 of 2014 (old No.345/2010). The former revision petition has been filed by the husband against the said order dated 26.5.2014 aggrieved by the direction to pay an amount of ₹ 1,500/- per month to the respondent-wife from 18.10.2010. The latter revision petition has been filed by the wife against the very same order, to the extent it fixed the monthly maintenance only at the rate of ₹ 1,500/- and seeking enhancement of the rate of monthly maintenance. For the sake of convenience the parties are referred to hereafter in accordance with their status in the former revision petition wherein the husband is the petitioner and the wife is the respondent. The marriage with the respondent is not at all disputed by the petitioner. At the same time, it is common case that from 31.8.2001 onwards they have been living separately. The respondent filed M.C.No.345 of 2010 before Family Court, Palakkad and on its transfer to Family Court, Ottappalam it was renumbered as M.C.No.19 of 2014. It was filed seeking maintenance from the

petitioner under Section 125 of the Code of Criminal Procedure. The evidence of the respondent-wife consisted of her oral and documentary evidence in Exts.P1 to P3. The petitioner husband got examined as RW1 and got marked Exts.D1 to D3(e). Upon careful evaluation of the evidence the Family Court found that the petitioner is liable to maintain the respondent and based on such finding and taking into account the capacity and ability of the petitioner the Family Court fixed ₹ 1,500/- as the monthly maintenance payable to the respondent. While the petitioner raises grievances by filing the former revision petition against the fixation of the said amount as the monthly maintenance the respondent seeks enhancement of the amount thus fixed.

2. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

3. Both the petitioner and the respondent are sexagenarians. Their marriage was solemnized as early as on 4.6.1968. The marital disharmony made them live separately from 2001 onwards. The petitioner is a retiree from the Kerala State Road Transport Corporation and he is getting ₹ 6,000/- towards pension. The contention of the

respondent is that he was neglecting to maintain her and it was in the said circumstances that she filed the aforesaid maintenance case. The revision petitioner contended that presently, the respondent is living with the son born in their wedlock and therefore, she need not claim maintenance from the petitioner. That apart, it is contended that he is incapacitated to maintain the respondent as he is getting only ₹ 6,000/- as pension. It is also his contention that he is afflicted with various ailments such as blood pressure, diabetes etc. and therefore, the said amount is insufficient to meet his treatment expenses. As noticed hereinbefore, the fact that the marriage between the revision petitioner and the respondent had taken place on 4.6.1968 and that they are residing separately owing to discordancy are not in dispute. The contention of the petitioner that he is afflicted with blood pressure, diabetes etc. is not at all a reason to hold that he is incapable of maintaining the respondent. When once the marriage is admitted the petitioner can wriggle out of the liability to maintain the respondent-wife only if he succeeds in establishing that she had incurred disability to claim maintenance by virtue of the provisions under Section 125(4) Cr.P.C.. The revision petitioner did not have any such case. As noticed hereinbefore, the petitioner did not dispute the fact that he is a

retiree from the service of the Kerala State Road Transport Corporation and he is getting ₹ 6,000/- as the pension. The fact that the respondent is now living with the child born in her wedlock with the petitioner by itself is not a reason disentitling her from claiming maintenance from the petitioner. The petitioner did not have a case that the respondent is able to maintain herself. In the said circumstances, I do not find any reason to hold that the Family Court went wrong in finding that the petitioner is capable of maintaining the respondent and that he is liable to maintain her. When once it is so found the Family Court was to fix the amount of monthly maintenance. Needless to say that such fixation has to be made taking into account the ability and capacity of the husband. In this case, there is no dispute with respect to the fact that he is a retiree from the Kerala State Road Transport Corporation and he is getting pension. Taking into account all such relevant aspects the Family Court fixed only an amount of ₹ 1,500/- as monthly maintenance. In such circumstances, I cannot hold that the amount thus fixed by the Family Court is exorbitant warranting interference by this Court in exercise of revisional jurisdiction. When once a reasonable amount is fixed by the Family Court and the order is not suffering from any legal infirmity or illegality it calls for no interference in exercise of revisional jurisdiction. With respect to

the prayer for enhancement it is to be noted that the revision petitioner is a pensioner and he is getting only ₹ 6,000/- as pension. That apart the revision petitioner who is a sexagenarian suffers from various ailments. The respondent is now living with the son born in her wedlock with the revision petitioner. The respondent could not establish that the revision petitioner is having other source/sources of income. It was taking into account the capacity and ability of the revision petitioner, discussed in detail, that the Family Court fixed ₹ 1,500/- as monthly maintenance. I find no reason to interfere with such fixation.

4. In the result, the former revision petition carrying challenge against the order fixing the monthly maintenance at ₹ 1,500/- ordered as per MC.No.19 of 2014 is liable to be dismissed. In the light of the finding as aforesaid, the claim for enhancement of maintenance made by the respondent through the latter revision petition has also to fail and accordingly, the same is also liable to be dismissed.

5. The learned counsel for the respondent submitted that under the impugned order the respondent is entitled to get an amount of ₹ 75,000/- as arrears and in the said circumstances, she has filed C.M.P.No.369 of 2014 in M.C.No.19 of 2014 before the Family Court. The

learned counsel appearing for the petitioner submitted that taking note of the fact that mediation was going on, the execution of the order in M.C.No.19 of 2014 was kept in abeyance. The learned counsel also submits that in view of this order the respondent may take steps for proceeding with the execution petition and in the said circumstances, the petitioner may be granted some reasonable time to pay the amount and an order may be issued to keep in abeyance all the further proceedings in the said C.M.P. during such period. After hearing the learned counsel for the parties I am inclined to direct the Family Court to keep in abeyance all further proceedings in the matter for a period of one month to enable the petitioner to pay one third of the amount fell in arrears and in case the petitioner pays the said amount within the above stipulated time he shall be given two months' period more to pay the balance amount claimed in C.M.P.No.369/2014.

Subject to the above the captioned revision petitions are dismissed.

Sd/-  
C.T.RAVIKUMAR  
Judge

TKS