

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

RPFC.No. 456 of 2014 ()

AGAINST THE ORDER IN MC 200/2009 of FAMILY COURT, PALAKKAD
DATED 19-10-2011

REVISION PETITIONER(S):COUNTER PETITIONER

RAMASWAMY
S/O.MUTHU GOUNDER
AGED 41 YEARS, POOSARI THOTTATHIL
NAMAKKAL, PUTHUPPATTI, RAGEEPURAM
TAMILNADU.

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENT(S):PETITIONER

BHARGAVI
D/O.PAZHANIYANDI
THARAYILPURA VEEDU
KOTTEKKAD, PALAKKAD-678001

BY ADV. SRI.JACOB SEBASTIAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 23-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.P(FC).456/14

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A:TRUE COPY OF PASS BOOK FOR DISABLED BY THE GOVT. OF TAMIL
NADU NO.17328.

ANNEXURE B:TRUE COPIES OF PHOTOGRAPHS OF THE HOUSE OF THE
PETITIONER.

RESPONDENT'S EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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R.P.(F.C). No.456 OF 2014

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Dated this the 23rd day of January, 2015

ORDER

This revision petition is directed against order dated 19.10.2011 in M.C.No.200 of 2009 of the Family Court, Palakkad. The revisionist-husband was the respondent in the said M.C filed by the respondent-wife claiming maintenance. The respondent herself got examined as PW1 and the revision petitioner herein was examined as CPW1 in the said proceedings. On the side of the counter petitioner Exts.D1 to D2(c) were marked. On appreciation of evidence, the Family Court found that the petitioner is liable to maintain the respondent herein and taking into account his capacity and ability, the Family directed the revision petitioner to pay maintenance @ ₹1500 from the date of filing of the petition. It is challenging the said order that this revision petition has been filed.

2. I have heard the learned counsel for the revision petitioner and the learned counsel for the respondent. The main contention of the revision petitioner is that he is 70% disabled and therefore, incapable of doing any hard work and he is actually depending upon his mother for livelihood. It is also contended that his mother is a maid servant. To substantiate the contention that he is disabled, the petitioner has produced Annexure A (Ext.D1) which is an attested copy of the national identity card and pass book for disability certificate issued by the Government of Tamil Nadu. It is recorded in the certificate that the revision petitioner is having 70% disability. It is contended that the Family Court had failed to appreciate the evidence adduced by the revision petitioner that he is incapable of doing any hard work. In paragraph 10 of the impugned order, the Family Court had considered the contentions raised by the revision petitioner based on Ext.D1. The revision petitioner herein produced Ext.D2 series of paragraphs to show that he is living in a hut. The Family Court took note of the fact that during cross examination the

revision petitioner admitted that he applied and obtained certificate after the respondent wife filed a case alleging cruelty demanding dowry. It is also to be noted that he himself admitted during cross examination that he is a coolie. Evidently, the Family Court took note of the disability of the revision petitioner and found that owing to his disability on one hand there would be some shortage of his earning capacity. Taking into account all the attending circumstances, the Family Court arrived at the conclusion that the revision petitioner is earning a monthly income of ₹5000. However, it is only apposite to look into the precise case of the revision petitioner in this context. In other words, going by the very case of the revision petitioner, his mother is maintaining herself by working as a maid servant and it was also his case that he is being looked after by his mother. In such circumstances, it cannot be said that as on today he has to maintain his mother from out of his income. Still, it is to be noticed that while fixing the quantum of maintenance, the Family Court held that he has to look after his mother also. After considering all such circumstances

including the ability and capacity of the revision petitioner to earn, the Family Court directed him to pay monthly maintenance of ₹1500 to the respondent. A scanning of the evidence would reveal that he had not disputed the fact that the respondent is his legally wedded wife and also that she is living separately. He himself admitted the fact that she had earlier filed a petition alleging cruelty based on demand of dowry against him. In such circumstances, it could not be said that she is living separately without any valid reason. In such circumstances, I find no reason to interfere with the conclusion arrived at by the Family Court that the revision petitioner is liable to maintain the respondent. As regards the amount fixed towards the maintenance, I have already taken note of the fact that the Family Court fixed that amount after taking into account the physical disability of the petitioner and also the shortage of his earning capacity. The revision petitioner himself admitted the fact that he is a coolie and that he is deriving a daily wage of ₹100 to ₹120. Considering all the said circumstances, I do not find any reason to

hold that the amount fixed by the Family Court towards maintenance is exorbitant warranting interference by this Court exercising revisional jurisdiction. This revision petition is liable to fail. However, the revision petitioner is granted six months time to pay the arrears of maintenance and as such, the execution of the order in the M.C shall be kept in abeyance for a period of six months to enable him to pay the same.

Subject to the above, this revision petition is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

