

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

RPFC.No. 473 of 2014 ()

AGAINST THE ORDER IN MC 76/2013 of FAMILY COURT, TIRUR
DATED 29-03-2014

REVISION PETITIONER(S)/RESPONDENT:

ALI AKBAR, AGED 40 YEARS
S/O.MUHAMMED, PATTASSERI HOUSE, PATHARANGADI
TIRURANGADI, MALAPPURAM

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.SAJU.S.A
SMT.MEENA.A.
SRI.K.C.KIRAN
SRI.M.DEVESH

RESPONDENT(S)/PETITIONERS:

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1. RASHEEDA, AGED 30 YEARS
D/O.MOIDEEN, VETTUTHOTTUNGAL, CHERUR
VENGARA, MALAPPURAM, PIN-670306
 2. MUHAMMED SHANUMON, AGED 11 YEARS
S/O.ALI AKBAR, VETTUTHOTTUNGAL, CHERUR
VENGARA, MALAPPURAM, PIN-670306
 3. MUHAMMED SHALUMON
S/O.ALI AKBAR, VETTUTHOTTUNGAL, CHERUR
VENGARA, MALAPPURAM, PIN-670306
(RESPONDENTS 2 AND 3 ARE REPRESENTED BY
THEIR GUARDIAN MOTHER IST RESPONDENT)

R1 -R 3 BY ADV. SRI.BABU S. NAIR
R1 -R 3 BY ADV. SRI.K.RAKESH

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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R.P.(FC). No.473 OF 2014

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Dated this the 15th day of January, 2015

ORDER

The revisionist was the respondent in M.C.No.76 of 2013 on the files of the Family Court, Tirur. The said M.C. was filed by the respondents herein who are respectively the wife and children of the petitioner seeking maintenance under section 125 of the Code of Criminal Procedure. The marriage with the first respondent as also the paternity of respondents 2 and 3 were not disputed by the revision petitioner. The contention of the revision petitioner is that he is a salesman in a textile shop and he is getting only ₹3000 per month towards salary. That apart, it is contended that the first respondent is capable of maintaining herself and that she is a tailor by profession and she is getting ₹1000 per day. It is further contended that the first respondent parted with his company without any reason at all. At the

same time, it is his contention that she was petulant in nature. The petitioner contended before the Family Court that the third petitioner is living with him and in such circumstances, the first respondent-wife cannot claim maintenance for the third respondent from him. On the side of the revision petitioner, he got himself examined as RW1 and Exts.R1 to R3 were marked. To prove claim for maintenance the first respondent herein was examined as PW1. After considering the evidence on record, the Family Court found that the petitioner herein is liable to maintain respondents 1 and 2. Accordingly, the petitioner was directed to pay a monthly maintenance @ ₹3000 and ₹1500 respectively to respondents 1 and 2 herein. The first respondent herein was authorised to receive maintenance on behalf of the second respondent. This revision petition is filed against the said order.

2. I have heard the learned counsel for the revision petitioner and the learned counsel for the respondents. As noticed hereinbefore,

the factum of marriage with the first respondent and paternity of respondents 1 and 2 were not at all disputed by the revision petitioner. Taking note of the fact that the third respondent herein is residing with the revision petitioner, the Family Court did not award maintenance in favour of the third respondent. Though the revision petitioner contended that the first respondent is a tailor and she is getting a daily income of ₹1000, he could not establish the same. In fact, no evidence was let in to prove the same. Admittedly, the second respondent herein is a school going child. Respondents 1 and 2 are residing separately from the revision petitioner. The contention of the first respondent is that the first respondent is staying away from the revision petitioner on account of his cruelty and at the same time, the contention of the revision petitioner is that she used to threaten him. Certainly that will not be a material aspect in the facts and circumstances of the case on hand as from the evidence of the revision petitioner itself it is evident that he contracted a second marriage and

got a child in the said relationship. When once the marriage is admitted and when it is evident that the wife is residing separately in such circumstances and when the husband had failed to establish that she is refusing to stay with him without any valid reason, there is no reason to decline a claim for maintenance by the wife. Admittedly, the second respondent born in the wedlock is residing with the first respondent. In such circumstances, I do not find any illegality or impropriety in the order passed by the Family Court. Admittedly, the the Family Court directed the revision petitioner to pay monthly maintenance @ ₹3000 to the first respondent and ₹1500 to the second respondent. Taking into account the cost of living, it cannot be said that the amount fixed by the Family Court towards maintenance in favour of respondents 1 and 2 herein is exorbitant. The order is also not suffering from any infirmity. In such circumstances, there is absolutely no reason to interfere with the order dated 29.3.2014 passed by the Family Court in M.C.No. 76 of 2013 in exercise of

revisional jurisdiction. Therefore, this revision petition is liable to fail and accordingly, it is dismissed.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

