

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

RPFC.No. 492 of 2014 ()

AGAINST THE ORDER IN M.C. NO.9/2006 of FAMILY COURT, KASARAGOD DATED
26-07-2006

PETITIONER/RESPONDENT:

P. HASSAN KUNHI, AGED 40 YEARS,
S/O.P.ISMAIL, THEKKEPURAM,
AJANUR VILLAGE, MANIKOTH P.O.

BY ADV. SRI.SUBHASH SYRIAC

RESPONDENT(S)/PETITIONER(S):

1. SEENATH.C.H., AGED 27 YEARS,
D/O.ABDULLA, THEKKEPPURAM,
AJANUR VILLAGE, MANIKOTH P.O.
2. ISMAIL.P., AGED 12 YEARS , -DO- -DO-
3. IRFANA.C.H., AGED 8 YEARS, MINOR'

BY ADV. PUBLIC PROSECUTOR SRI.N.SURESH

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

R.P(F.C) No.492 of 2014

Dated this the 14th day of January, 2015

ORDER

This revision petition is filed against the order dated 26.7.2006 in M.C.No.9/2006 of the Family Court, Kasargod. The petitioner herein was the respondent and the respondents herein was the petitioners in the said case. The first respondent herein is the wife of the petitioner herein and respondents 2 and 3 are the children born in their wedlock. M.C.No.9/2006 is the petition filed by the respondents herein under section 125 of the Code of Criminal procedure seeking an order for maintenance. At the time of passing of the said order the second and third petitioners were studying respectively in Standard VI and III. The petitioner was then doing business in gulf countries. Though the petitioner was served with notice in the proceedings he has not chosen to contest the matter and consequently, the petitioner herein was set ex-parte. After considering the evidence tendered by the petitioners therein (the respondents herein) the impugned order was passed. The first respondent stated that she was divorced by the petitioner by pronouncing 'talaq' and taking into all relevant aspects the family

court directed the revision petitioner to provide maintenance to respondents 3 and 4 herein/ the petitioners 2 and 3 therein at the rate of 1,500/- and 1000 from 31.1.2006 onwards and the first petitioner therein/the first respondent herein was authorised to collect the maintenance amount on behalf of the second and third respondent. It is challenging the said order that the captioned revision petition has been filed. This revision petition has been filed as early as on 30.10.2006. However, the petitioner has brought up the revision petition for admission after curing the defects only in 2007 and notice was ordered as early as on 7.3.2007. The petitioner did not take steps for serving notice on respondents and consequent to his failure to pay the process it remained defective in the section. Notice was served on the respondents only in the year 2014. The contention of the petitioner is that since he was set ex-parte he could not produce Annexure-I agreement entered into between himself and the first respondent before the Family Court. Taking note of the long lapse of time I have considered the question whether any fruitful purpose could be served if the case is remanded back for fresh disposal. I have carefully gone through the said

document which is described by the petitioner as a settlement agreement. A bare perusal of Annexure-I would reveal that in page No.3 of the said document two thumb impressions are affixed however, the name and address of parties who affixed the same are conspicuously absent there. Even if it is taken that it is an agreement entered into between the petitioner and the first respondent it is to be noted that no order of maintenance has been granted in favour of the first respondent. How it can deprive the right of the second and third respondents to get maintenance from their father, the revision petitioner. The rate of monthly maintenance ordered in their favour cannot be said to be exorbitant calling interference by the revisional court. That apart, it is evident that the petitioner had never approached the Family court for setting aside the ex-parte order. At this distance of time, I think it would be against the interest of justice to interfere with the order solely for the purpose of permitting the petitioner to produce the said document and to contest the matter. Evidently, the petitioner was not diligent enough to pursue with the matter. Though he was set ex-parte before the family court he did not file any petition to set

aside the same and even after filing the revision petition the petitioner was not properly prosecuting the same. In such circumstances, any interference in the matter would result in miscarriage of justice and above all no illegality or impropriety or error in law, could be brought out by the petitioner warranting exercise of revisional jurisdiction. For all these reasons this revision petition is liable to fail and accordingly it is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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