

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

RPFC.No. 493 of 2014 ()

AGAINST THE ORDER IN MC 93/2010 of FAMILY COURT,THRISSUR
DATED 29-07-2013

PETITIONER(S)/RESPONDENT:

SHANIL KUMAR GOPI, AGED 36 YEARS
S/O LATE GOPI, CHOORAKKOTTAYIL HOUSE, PADAMUKAL P.O
KAKKANAD, ERNAKULAM

BY ADV. SRI.K.S.RAJEEV (ALUVA)

RESPONDENT(S)/PETITIONERS:

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- 1.ABHITHA, AGED 34 YEARS
D/O LATE VIKRAM SINGH, POKKANCHERY HOUSE, NATTIKA PO
THRISSUR
 - 2.MINOR JANITHKUMAR, AGED 7 YEARS
S/O ABHITHA, D/O LATE VIKRAM SINGH, POKKANCHERY HOUSE
NATTIKA P.O, THRISSUR
REPRESENTED BY MOTHER FIRST RESPONDENT ABHITHA

R1-R2 BY ADV. SRI.P.RADHAKRISHNAN

R1-R2 BY ADV. SRI.MADHU RADHAKRISHNAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

RP(FC).493/14

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A:A TRUE COPY OF THE INTERIM MAINTENANCE ORDER IN
MP.NO.1015/10 OF FAMILY COURT, THRISSUR.

ANNEXURE B:A TRUE COPY OF THE COMPROMISE ENTERED BETWEEN THE
PARTIES.

ANNEXURE C:CERTIFIED COPY OF THE ORDER IN M.C.NO.93/10 ON THE FILE OF
FAMILY COURT, THRISSUR.

ANNEXURE D:A TRUE COPY OF THE EXECUTION MP.NO.1514/13 ON THE FILE OF
FAMILY COURT, THRISSUR.

RESPONDENTS' EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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R.P.(FC) No.493 OF 2014

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Dated this the 7th day of April, 2015

ORDER

This revision petition is filed against the order of the Family Court in M.C.No.93 of 2010. The respondents herein/petitioners therein are respectively the wife and minor son of the revision petitioner. They filed the M.C claiming maintenance from the revision petitioner at the rate of ₹8000/- and ₹2000/- respectively. The respondents contended that though the revision petitioner is capable of maintaining them, he is neglecting to maintain them. On due process, the revision petitioner entered appearance and resisted the claim of the petitioners. Annexure-C order appears to have been passed by the Family Court based on an endorsement made by the revision petitioner on the petition revealing his readiness and willingness to pay monthly maintenance at the rate of ₹3000/- each to

the respondents. Respondents 1 and 2/petitioners therein seen to have accepted the said proposal and Annexure-C order was passed in the said circumstances directing the revision petitioner/respondent therein to pay monthly maintenance at the rate of ₹3000/- each to respondents 1 and 2 from the date of the petition.

2. I have heard the learned counsel for the revision petitioner and the learned counsel for the respondents. The learned counsel for the revision petitioner submitted that the reason assigned by the Family Court for passing the impugned order viz., the revision petitioner/respondent therein had made an endorsement on the reverse side of the petition revealing his readiness and willingness to pay ₹3000/- each to the respondents herein, is not true to facts. According to him, he was prepared to pay altogether an amount of ₹3,000/- to the respondents and he had only revealed such readiness. In such circumstances, it is apposite to refer to ground (D) raised by the petitioner in the revision petition. It reads thus:-

“D. The findings of the court below that the revision petitioner made endorsement admitting to pay Rs.3000/- each is not correct. He put signature on the reverse of the MC admitting to pay Rs.3,000/- together to the petitioners in the M.C. That was admitted only because of the compromise entered between the parties. There is glaring injustice in the order of the Family Court.”

The learned counsel further submitted that such ground was taken based on the instruction from the revision petitioner and in fact, no endorsement whatsoever was made by the revision petitioner on the reverse side of the M.C. On the contrary, the learned counsel for the respondents submitted that in truth, such an endorsement as stated in the order was made by the revision petitioner and it is taking into account the same that the Family Court passed the impugned order. This being a disputed fact, I am of the view that it is only proper for this Court to remit the matter for fresh consideration after setting aside the impugned order to enable the Family Court to consider such contentions and also to pass an order taking into account the provisions under section 125 Cr.P.C and 354 (6) Cr.P.C. In the light of

the decision of the Hon'ble Apex court in **Jaiminiben Hirenghai v. Hirenghai Rameshchandra Vyas [2015 (1) KLT SN 19 (C.No.25) SC]**, the learned counsel for the revision petitioner submitted that every final order in a claim for maintenance under section 125 Cr.P.C must contain points for determination, decisions thereon and the reason for such decisions. I may hasten to add that a judgment in tune with the provisions under section 125 Cr.P.C and 354(6) Cr.P.C contain points for determination, decisions thereon and the reason for such decisions are required only if there is a dispute between the parties. There can be no doubt with respect to the position that if a settlement had been arrived at between the parties, there will not be any point of conflict for decision and in such eventuality, it will be unnecessary to formulate any particular point for decision. In such circumstances, merely because the impugned order does not satisfy the provisions under section 354 Cr.P.C, it calls for no interference. However, in this case, in view of the submissions noted hereinbefore, evidently, there is dispute regarding the endorsement. While the

petitioner now contends that no endorsement was made by him on the reverse side of the petition, learned counsel for the respondents submits that such an endorsement was made by the revision petitioner/respondent therein. The impugned order would reveal that the Family Court also found that an endorsement was made by the revision petitioner on the reverse side of the petition. What exactly is the actual position? Even if there is any endorsement under what circumstances it was made? If this alone is the centre of controversy I would have called for the records to verify the verity of the contention of the revision petitioner. But, conflict lies on another aspect as well. The learned counsel for the petitioner submitted that in M.C.93 of 2010 and O.P.Nos.76/2011 and 1192/10 then pending before the family court, a joint statement has been filed by the revision petitioner and the first respondent. The learned counsel for the respondents submitted that if such a statement was already filed there would not have been any necessity to make an endorsement on the reverse side of the petition in MC.93/2010. The facts expatiated above would thus

reveal that certain factual disputes have to be resolved in this case. Whether the petitioner has made any endorsement and if at all there is any endorsement whether it is one revealing his readiness and willingness to pay an amount of ₹3000/- each to the respondents herein. It is also taken into account whether any joint statement has been filed in the above M.C and O.P.Nos.76/2011 and 1192/2010. If at all there is an endorsement, in the light of the decision the question to be decided is whether such a settlement can defeat the right to claim maintenance by the second respondent herein, the child born in the wedlock of the revision petitioner with the first respondent. To enable the Family court to consider all those aspects in accordance with law and in the light of the decision in **Hirenbhai's** case(supra), the impugned order is set aside and the matter is remitted to the Family Court for fresh consideration. It is made clear that the parties are left at liberty to rely on all factual contentions if already brought on record, in accordance with law. In other words, this opportunity shall not be construed as one granted to raise new contentions. Till a fresh

decision is taken, the respondents shall be paid an interim maintenance of Rs.2000 each in tune with the directions in Annexure-A viz., the order passed by the Family Court in M.P.No.1015 of 2010 in M.C.93 of 2010.

This revision petition is disposed of accordingly.

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

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

