

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

WP(C).No. 19689 of 2015 (I)

PETITIONER(S) :

**WILLIAM JOHN, AGED 54 YEARS,
S/O.LATE JOHN, JOHNS, URUVACHAL,
P.O.CHOVVA, KANNUR DISTRICT.**

**BY ADVS.SRI.V.R.KESAVA KAIMAL
SMT.C.DEVIKA RANI KAIMAL**

RESPONDENT(S) :

**1. THE SUB COLLECTOR,
SUB COLLECTORS OFFICE, THALASSERY-670 101.**

**2. MARY JOHN,
W/O.LATE JOHN, JOHNS, URUVACHAL,
P.O.CHOVVA, KANNUR DISTRICT-670 006.**

**R1 BY GOVERNMENT PLEADER SRI.MANOJ KUNJACHAN
R2 BY ADVS. SRI.M.V.AMARESAN
SRI.V.N.RAMESAN NAMBISAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1 :** TRUE COPY OF THE COMPLAINT SUBMITTED BY THE SECOND RESPONDENT.
- EXT.P2 :** TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER TO EXT.P1.
- EXT.P3 :** TRUE COPY OF THE INTERIM ORDER DATED 12-02-2015 PASSED BY THE FIRST RESPONDENT.
- EXT.P4 :** TRUE COPY OF THE ORDER DATED 05-05-2015 PASSED BY THE FIRST RESPONDENT.
- EXT.P5 :** TRUE COPY OF THE ORDER DATED 19-06-2015 ISSUED BY THE DISTRICT COLLECTOR, KANNUR.
- EXT.P6 :** TRUE COPY OF THE PRESCRIPTION DATED 09-04-2015 ISSUED BY THE DISTRICT HOSPITAL, KANNUR.
- EXT.P6(A):** TRUE COPY OF THE PRESCRIPTION DATED 12-04-2015 ISSUED BY THE DISTRICT HOSPITAL, KANNUR.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No. 19689 of 2015

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Dated this the 5th day of October, 2015

J U D G M E N T

The petitioner is the son of the 2nd respondent. The petitioner approached this Court aggrieved by an order of maintenance passed by the Maintenance Tribunal produced as Ext.P4.

2. The Maintenance Tribunal by invoking the powers under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ordered the petitioner shall pay Rs.10,000/- per month.

3. The tribunal relied on deposition of the 2nd respondent to determine the income of the petitioner. The 2nd respondent deposed that the petitioner is getting Rs.1500/- per day and also the petitioner has leased out a residential building for 11 months for 8 lakhs.

4. The learned counsel for the petitioner assails the order contending that the tribunal passed order without any reliable evidence. It is a case of the petitioner that he is sick and he has no regular income. It is further submitted that he has availed bank

loan for the purpose of education of his children.

5. Sec.9(2) enables the Maintenance Tribunal to award maintenance. Sec.9(2) is as follows:

“The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government which shall not exceed ten thousand rupees per month.”

6. The maximum amount of award can be granted by the Maintenance Tribunal is 10,000/- per month. Sec.10 also provides alteration of the order of allowance on finding that order of maintenance was awarded on proof of misrepresentation or mistake of fact or a change in the circumstance.

7. As seen from the impugned order, except the testimony of the 2nd respondent, nothing has been found that the petitioner has sufficient income to pay the maintenance of Rs.10,000/-. No doubt this Court is of the view that order of maintenance need not be interfered except to the limit extent of fixation of the quantum. The ability of the petitioner to pay the maintenance should be borne in mind while ordering maintenance. While balancing the right of the aged parents to claim for maintenance, with the ability of relative the Tribunal should borne in mind that the parties are also free to agitate the issue before the the claim of maintenance by

adducing u/s 125 of the Cr.P.C. The proceedings under the Act 2007 provides immediate remedy to the aged parents. While taking such decision certainly the ability of the relatives also should be taken note of.

This Court is of the view that the matter requires reconsideration by the Tribunal to fix the quantum after adverting to the income of the petitioner. Therefore the impugned order is set aside only to the limited extent to reconsider the quantum of maintenance. Both the parties are free to adduce evidence. The Revenue Divisional Officer shall make necessary enquiry through Tahasildar or authority as regards the income of the petitioner and pass appropriate orders. Till a decision is taken by the Maintenance Tribunal, the petitioner shall remit the maintenance @ Rs. 5,000/- as ordered by this Court on 1.7.2015. The petitioner is also liable to pay the entire arrears at the above rate, if there are any dues based on the above order. The petitioner and the 2nd respondent shall appear before the Maintenance Tribunal on 27.10.2015.

The writ petition is disposed of, as above.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE