IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 22ND DAY OF JANUARY 2020 / 2ND MAGHA, 1941

RPFC.No.136 OF 2015

AGAINST THE ORDER/JUDGMENT IN MC 77/2013 DATED 16-07-2014 OF FAMILY COURT, MAVELIKKARA

REVISION PETITIONER/S:

BINEESH
AGED 37 YEARS
S/O.LATE S.KUTTAPPAN, VALELVADAKKETHIL
VEEDU,PUTHUKKUNDAM MURI, KARTHIKAPPALLY TALUK.

BY ADV. SRI.A.SHAFEEK (KAYAMKULAM)

RESPONDENT/S:

1 **SIMI, W/O BINEESH**
AGED 30 YEARS
RESIDING AT KOCHALUMMOOD HOUSE,PUNTHALA MURI,
PURACKKAD VILLAGE.

2 **RESHMA, MINOR**
AGED 9 YEARS, REPRESENTED BY HER MOTHER
SIMI,KOCHALUMMOOD HOUSE, PUNTHALA MURI, PURACKKAD VILLAGE.

R1 BY ADV. SRI.B.RENJITHKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 22-01-2020, THE COURT ON 22-01-2020 PASSED THE FOLLOWING:

ORDER

The revision petitioner is the respondent in M.C No.77/2013 on the file of the Family Court, Mavelikkara. The respondents in this revision petition (RP(FC)) were the petitioners in the Maintenance Case (M.C).

2. The respondents had filed the M.C, inter alia, contending as follows: The first respondent is the wife of the revision petitioner. The second respondent was born on 15.9.2006 in their wedlock. The revision petitioner has willfully refused to maintain them since 19.4.2013 onwards. The first respondent does not have any job or source of income, and she is depending on her parents for the maintenance of herself and the child. The revision petitioner is working in a construction company abroad and is getting a monthly income equivalent to Rs 25,000/-. In addition to the above income, he earns Rs 2,000/-

from his landed property. The respondents sought an amount of Rs 3,000/- and Rs 3,500/-, respectively, as monthly maintenance from the revision petitioner.

3. The revision petitioner resisted the M.C. He filed a counter statement, inter alia, contending as follows: He admitted the marriage as well as the paternity of the second respondent. According to him, he was employed in a company where the father and brother of the first respondent was employed. He was doing scaffolding work in a construction company. He was getting only a meagre salary. He used to sent Rs 6,500/- per month as maintenance to the respondents from abroad. However, his father committed suicide on 19.4.2012. Thereafter, his mother turned sick, and he returned to India. At present, he does not have any employment or source of income and he is unable to maintain the respondents.

4. The revision petitioner further contended that the first respondent's mother had gifted 2.02 ares of property for her. The first respondent had

developed an illicit intimacy with a neighbour, while the revision petitioner was abroad. Due to the relationship, his father committed suicide. The first respondent is getting salary from her employment in a private firm. Therefore, she is not entitled to claim maintenance from him. Hence, the revision petitioner prayed that the M.C be dismissed.

5. The first respondent was examined as PW1. The power of attorney holder of the revision petitioner was examined as RW, and Exts B1 to B7 were marked through her.

6. The Family Court after considering the pleadings and evidence on record, allowed the M.C in part by directing the revision petitioner to pay an amount of Rs 2,000/- to the first respondent and Rs 3,000/- to the second respondent, per month, as monthly maintenance.

7. It is challenging the impugned order that this RP(FC) is filed.

8. Heard Sri.A.Shafeek, the learned counsel for

the revision petitioner and Sri.B.Renjith Kumar, the learned counsel for the respondents.

9. The learned counsel for the revision petitioner argued that the first respondent is presently employed in Gulf and that she does not require any amount as maintenance from the revision petitioner. According to him, she is living with a third person in Gulf. The revision petitioner is willing to maintain the second respondent at the rate ordered by the Family Court.

10. The learned counsel for the respondents, on the other hand, contended that the revision petitioner continues to be employed abroad. The first respondent does not have any income as alleged by the learned counsel for the revision petitioner. The child is now studying in the 8th standard. The amount that was ordered by the Family Court is insufficient to meet the educational expenses of the child. Hence, she prayed that this RP(FC) be dismissed.

11. On going through the pleadings and evidence

on record, it is seen, that the revision petitioner was employed in Gulf at the time the case was disposed of. He let in evidence through his power of attorney holder, RW1. Therefore, it is presumed that the revision petitioner was employed abroad.

12. The revision petitioner does not dispute the marriage as well as the paternity of the child. Thus, the only question to be considered in this RP(FC) is whether the quantum of maintenance awarded by the Family Court is justiciable or not?

13. It is the specific case of the first respondent that the revision petitioner is getting a salary equivalent to Rs 25,000/- per month. In addition to the above income, he is getting Rs 2,000/- per month from his landed property. The revision petitioner had not produced any document to disprove the above assertion. It was his bounden duty to produce his salary certificate before the Family Court, in case he was getting lesser salary. The allegation that his father committed suicide due to the illicit relationship

of the first respondent is unsubstantiated. There is no material to arrive at the above conclusion.

14. After considering the pleadings and evidence on record, particularly considering that the revision petitioner is employed abroad, and that he had not disputed the assertion of the first respondent that he is getting an income of Rs 27,000/- per month , I do not find any illegality, impropriety or irregularity in the order passed by the Family Court, directing the revision petitioner to pay an amount of Rs 2,000/- to the first respondent and Rs 3,000/- to the second respondent as monthly maintenance.

15. The learned counsel for the revision petitioner contended that the revision petitioner can prove his assertion that the first respondent is presently employed abroad. The revision petitioner would be at liberty to move the Family Court under Sec.127 of the Code of Criminal Procedure, in case there is any change of circumstances, to seek for modification of the impugned order. However, it is

made clear that, before any application for modification is considered by the Family Court the entire arrears due to the respondents as per the impugned order shall be paid by the revision petitioner to the respondents.

With the above observations, the RP(FC) is dismissed.

Sd/-

C.S.DIAS

JUDGE

Sks/23.1.2020