IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

THURSDAY, THE 18TH DAY OF JANUARY 2024 / 28TH POUSHA, 1945

OP (FC) NO.570 OF 2023

AGAINST THE ORDER/JUDGMENT MC 202/2022 OF FAMILY COURT, VADAKARA

PETITIONER :-

BIJU MICHAEL, AGED 47 YEARS
S/O.MICHAEL, PANANTHANATH HOUSE, KOORACHUND P.O,
KOZHIKODE – 673 527 REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER JOHNY, AGED 59 YEARS,
SON OF JOSEPH, KOLLAMKUNNEL, ERAPAMTHODU, KOORACHUNDU,
KOZHIKODE DISTRICT, PIN – 673 527

BY ADVS.
PRAVEEN.H.
G.HARIHARAN
K.S.SMITHA
T.T.SHANIBA
AMAL DEV D
SNEHA M.S.
ABHIJITH E.R.

RESPONDENTS :-

1 BINDU AJ, AGED 43 YEARS,
W/O.BIJU MICHAEL, PANANTHANATH HOUSE,
KOORACHUND P.O, KOZHIKODE, PIN – 673 527

2 FELIPS, AGED 16 YEARS,
S/O.BIJU MICHAEL, PANANTHANATH HOUSE,
KOORACHUND P.O, KOZHIKODE, PIN – 673 527

3 FIANNA, AGED 5 YEARS,
S/O.BIJU MICHAEL, PANANTHANATH HOUSE,
KOORACHUND P.O, KOZHIKODE, PIN – 673 527

BY ADVS.
FIROZ K.M.
M.SHAJNA(K/1017/2006)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 18.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 18th day of January, 2024

Anu Sivaraman, J.

Heard the learned counsel appearing on either side.

2. This OP(FC) is filed challenging the order of the Family Court, Vatakara allowing the interim maintenance to be paid to the wife and two children at the rate of Rs.6,000/- to the wife and Rs.5,000/- each to the children.

3. The learned counsel for the petitioner submits that the petitioner does not have the income projected in the CMP and that he has only a left over income of Rs.10,000/- after his expenses and deductions. The Family Court did not accept this contention and had come to the conclusion that even a manual labourer in Doha would earn Rs.30,000 – 40,000/- per month. The contention of the petitioner is that the assumption is unsupported by evidence.

4. Having considered the contentions advanced, we notice that the claim raised by the petitioner in the MC was for a total amount of Rs.37,000/- as maintenance. It is specifically stated therein that one child is suffering from developmental issues and that treatment is also necessary for the child. In case the petitioner herein really had a case that he did not have the income projected,

it was open to him to have adduced evidence to that effect before the Family Court. In the absence of the same, we are not inclined to interfere with the order of interim maintenance granted by the Family Court.

The O.P(FC) is, therefore, dismissed. The petitioner shall pay the amount of interim maintenance prospectively from this month onwards, as directed by the Family Court.

Sd/-
ANU SIVARAMAN
JUDGE

Sd/-
C. PRATHEEP KUMAR
JUDGE

Jvt/25.1.2024

APPENDIX OF OP(FC) 570/2023

PETITIONER EXHIBITS :-

Exhibit P1	A TRUE COPY OF THE ORDER PASSED IN CMP NO. 160/23 (MC NO.202/2022) PASSED BY THE FAMILY COURT, VATAKARA, DATED 06/07/2023
Exhibit P2	A TRUE COPY OF THE ORIGINAL PETITION FILED BY THE 1ST RESPONDENT IN MC NO. 202/2022 UNDER SECTION 125(1) OF THE CODE OF CRIMINAL PROCEDURE, 1973 BEFORE THE FAMILY COURT, VATAKARA DATED 27/08/2022
Exhibit P3	A TRUE COPY OF THE INTERIM PETITION FILED BY THE 1ST RESPONDENT IN MC NO. 202/2023 UNDER SECTION 125 (D) OF THE CODE OF CRIMINAL PROCEDURE DATED 27/03/2023
Exhibit P4	A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN CMP NO. 160/2023 (MC NO. 202/2019) DATED 26/06/2023
Exhibit P5	A TRUE COPY OF THE ED PATIENT SUMMARY ISSUED BY THE HAMAD MEDICAL CORPORATION, DOHA DATED 13/12/2017
Exhibit P6	A TRUE COPY OF THE INPATIENT CLINICAL SUMMARY ISSUED BY THE HAMAD MEDICAL CORPORATION, DOHA DATED 05/01/2018
Exhibit P7	A TRUE COPY OF THE CARDIOLOGY FISCHARGE SUMMARY ISSUED BY THE HAMAD MEDICAL CORPORATION, DOHA DATED 16/12/2017
Exhibit P8	A TRUE COPY OF THE CHRONIC DISEASE CERTIFICATE ISSUED BY THE HAMAD MEDICAL CORPORATION, DOHA DATED 02/09/2020
Exhibit P9	THE CHRONIC DISEASE CERTIFICATE V2 ISSUED BY THE HAMAD MEDICAL CORPORATION, DOHA DATED 15/01/2021
Exhibit P10	A TRUE COPY OF THE POWER OF ATTORNEY FOR REPRESENTING ON BEHALF OF THE PETITIONER DATED 05/06/2023