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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 5TH DAY OF JUNE 2023 / 15TH JYAISHTA, 1945

RPFC NO. 30 OF 2023

(AGAINST THE ORDER/JUDGMENT in MC 183/2019 OF FAMILY
COURT, ERNAKULAM)

REVISION PETITIONERS/PETITIONERS IN MC:

- 1 DHEERA N.G
AGED 32 YEARS
W/O. SIMEESH S., NIKARTHIL HOUSE, MULAVUKAD, P.O.,
ERNAKULAM, PIN - 682504
- 2 SOORYA NARAYANAN
AGED 10 YEARS
S/O SIMEESH S, NIKARTHIL HOUSE, MULAVUKAD, P.O.,
ERNAKULAM, PIN-682504, REPRESENTED BY MOTHER AND
NATURAL GUARDIAN, DHEERA N.G., AGED 32, W/O. SIMEESH
S., NIKARTHIL HOUSE, MULAVUKAD, P.O., ERNAKULAM,, PIN
- 682504

BY ADVS.
M.SHAJNA
K.M.FIROZ

RESPONDENT/RESPONDENT IN MC:

SIMESH S
AGED 42 YEARS
S/O. C/K/ SOMANATHAN, VELIPARAMBIL HOUSE, NETTOOR
P.O., MARADU (VIA), ERNAKULAM DISTRICT, PIN - 682504

BY ADVS.
T.R.HARI KRISHNAN
S.SREEDEVI (ALP) (S-1532)

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 29.05.2023, ALONG WITH RPFC.71/2023, THE COURT ON
5/6/2023 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 5TH DAY OF JUNE 2023 / 15TH JYAISHTA, 1945

RPFC NO. 71 OF 2023

AGAINST THE ORDER/JUDGMENT IN MC 183/2018 OF FAMILY

COURT, ERNAKULAM

REVISION PETITIONER/RESPONDENT:

SIMEESH.S
AGED 42 YEARS
S/O.LATE C.K.SOMANATHAN, VELIPARAMBIL HOUSE, NETTOOR,
MARADU, ERNAKULAM, PIN - 682040

BY ADVS.
T.R.HARI KRISHNAN
S.SREEDEVI

RESPONDENT/PETITIONER:

1 DHEERAN.G
AGED 32 YEARS
D/O.GOPALAKRISHNAN, NIKARTHILHOUSE, MULAVUKADP.O.
, ERNAKULAM, PIN - 682504

2 SOORYA NARAYANAN.S.
AGED 10 YEARS
S/O.SIMEESH.S NIKARTHIL HOUSE, MULAVUKAD P.O.
EMAKULAM. REP. BY MOTHER AND NATURAL GUARDIAN
DHEERAN.G.AGED 31YRS, D/O.GOPALAKRISHNAN,
NIKARTHILHOUSE, MULAVUKADP. O. , ERNAKULAM, PIN -
682504

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 29.05.2023, ALONG WITH RPFC.30/2023, THE COURT
ON 5/6/2023 DELIVERED THE FOLLOWING:**

V.G. ARUN, J .

R.P.(FC). Nos.30 & 71 of 2023

Dated this the 5th day of June, 2023

ORDER

The revision petitioners in RP(FC) No.30/2023 are the wife and son of the respondent. They had filed MC No.183/2018 before the Family Court, Ernakulam seeking maintenance allowance at the rate of Rs.20,000/- for the first petitioner and Rs.7,500/- for the second petitioner. The Family Court ordered monthly maintenance at the rate of Rs.4,000/- to the first petitioner and Rs.2,000/- to the second petitioner. The revision petitioners are aggrieved by the quantum of monthly maintenance allowance ordered. RP(FC) No.71/2023 is filed by the husband/father, challenging the finding regarding his liability to pay maintenance. The essential facts are as under; The parties are referred as per their status in RP(FC) No. 30/2023.

2. The marriage between the first petitioner and the first respondent was solemnised on 12/9/2010 and the second petitioner was born in that wedlock on 1/9/2011. Immediately, after delivery, the first petitioner had to take up the additional responsibility of looking after her mother-in-law, who was suffering from cancer. While

so, the first petitioner developed constant fever and was taken to her house on 21/10/2012. She was later admitted in the Lakshmi Hospital, Ernakulam and from there, referred to the Amrutha Hospital. At the hospital, the first petitioner was diagnosed with Acute Disseminated Encephalomyelitis (ADEM), which left her paralysed from waist down. The first petitioner was in coma for almost three months and thereafter, on ventilator support for another two months. The hospital bill came to Rs.29 Lakhs, out of which Rs.9 Lakhs was discounted by the hospital administration, considering the first petitioner's plight. As the family did not have funds and the respondent was not providing financial support, the public formed a committee and raised substantial amount through crowdfunding. The hospital bill was thus settled. After discharge, the first petitioner had to continue medicines and undergo physiotherapy for a long time. She could take only liquid food and had to use a bedpan and catheter. Over a period of time, her condition improved slightly and presently, she can pull herself up from the bed.

3. The respondent refuted the allegation that he had not extended support after the first petitioner was hospitalised and submitted that he was kept away by his in-laws, when they started receiving contributions from various quarters. The respondent also contended that his wages are not sufficient for his own sustenance.

Moreover, the respondent filed an original petition seeking divorce on the ground that the first petitioner's illness had rendered her unable to discharge the duties of a wife and, compulsion to continue the marriage amounts to cruelty.

4. By a common judgment, original petition for divorce filed by the husband was dismissed and the M.C. filed by the wife and son allowed ordering maintenance at the rate of Rs.4,000/- and Rs.2000/- respectively.

5. Adv.M.Shajna, learned counsel for the petitioners contended that, considering the medical condition of the first petitioner and the educational as well as other needs of the second petitioner, the amount ordered towards maintenance allowance is thoroughly inadequate. The court below committed gross illegality in fixing the quantum of maintenance as Rs.4,000/- and Rs.2000/-, on the premise that the respondent has no means or income to pay maintenance at the rate claimed by the petitioners. The respondent is working as a head load worker/packer in a private establishment. Even though his net salary is shown as Rs.11,681/-, in cross examination the respondent admitted that he is earning additional income by doing overtime work. This crucial aspect was omitted to be considered.

6. It is contended that the Family Court cannot fix the quantum, oblivious of the objective of Section 125, which is to ameliorate the sufferings of destitute wives and children. To drive home this contention, reference is made to the judgment of the Apex Court in **Chaturbhuj v. Sita Bai [2008 (2) SCC 316]**. It is argued that the plea of no means has no place in maintenance cases, if the husband is an able bodied man. In support of this proposition, reliance is placed on the decision in **Reema Salkan v. Sumer Singh Salkan [2019 (12) SCC 303]**. It is also contended that the expression 'means' occurring in Section 125 does not signify only visible means such as real property or definite employment. Support for this contention is drawn from the decision in **Basanta Kumari Mohanty v Sarat Kumar Mohanty [1982 KHC 702]**. The decision in **Shamima Farooqui v. Shahid Khan [2015 (5) SCC 705]**, is pressed into service to argue that 'sustenance' does not mean mere survival and maintenance and within the parameters of section 125 Cr.P.C, it should be adequate for the wife to live with dignity.

7. Adv.S.Sreedevi, learned Counsel appearing for the respondent, refuted the allegations and submitted that the respondent had looked after the first petitioner while she was in hospital and difference of opinion arose when huge amounts were

received as contribution for the first petitioner's treatment. As the money was being handled by the petitioner's father and brother, they forcefully kept the respondent away from the scene. This ultimately led to the respondent parting company with the petitioners. It is contended that, even after finding that the respondent did not have sufficient means, the Family Court ordered maintenance at the rate of Rs.4,000/- and Rs.2,000/-, thereby requiring the respondent to perform an impossibility.

8. The case projects the plight of a hapless lady, who is almost fully paralysed and driven to vagrancy due to her husband's neglect and refusal to maintain her. The case is also about the pathetic situation in which an innocent boy is placed by reason of his mother's illness and father's refusal to maintain him. The neglect is evident from the testimony of the respondent himself. The respondent admitted that he had no contact with the first petitioner and had seen the second petitioner prior to the filing of the case. The respondent's case is that, as the first petitioner cannot lead a normal martial life, continuance of the marriage amounts to cruelty.

9. While dealing with cases of this nature, the court should be aware that the dominant purpose behind the benevolent provisions contained in Section 125 is to ensure that the neglected wife, child and parents are not left in a helpless state of distress, destitution

and starvation. The court should also be convinced about the existence of the following factors; i) that the respondent has neglected or refused to maintain the claimant. (ii) the claimant do not have the means to maintain herself/himself. (iii) the respondent has sufficient means for maintaining the claimant.

10. As discussed above, the fact that the respondent had neglected and refused to maintain the petitioners is indisputable. The contention that the first petitioner has no means to maintain herself and the child is also uncontravertible. The other question is whether the respondent has sufficient means to maintain the petitioners. In this regard it is essential to note that, in his testimony the respondent has admitted that he is getting Rs.675/- as daily wages and is doing overtime after regular working hours. It has also come out that the respondent is living alone, as his parents are no more. In such circumstances, the respondent's contention that he is not having sufficient means to maintain the petitioners can only be rejected.

11. Having found all three factors in Section 125 exist, the question of maintenance has to be decided. For arriving at such decision, I take guidance from the judgment of the Apex Court in **Reema Salkan's** case (supra). Therein, the husband pleaded that he does not have any source of income and is hence unable to

maintain his wife. The Apex Court rejected the plea and held that, being an able bodied person having good health and physique, the respondent can earn enough to meet the expenses of his wife. As held in **Bhuvan Mohan Singh v. Meena and Others (AIR 2014 SC 2875)**, the plea of the husband that he does not possess any source of income will not absolve him of the moral duty to maintain his wife. In the instant case also the respondent is an able bodied headload worker/packer, aged only 43 years. It is in evidence that the first petitioner is incurring huge expense for medicines, adult diapers, physiotherapy etc. The concept of sustenance does not mean to live the life of an animal, feel like an unperson to be thrown away, and roam for basic maintenance somewhere else. In **Basanta Kumari Mohanty's case**(supra), it is held the word "sufficient means" should not be confined to the actual pecuniary resources, but should have reference to the earning capacity as well. The maintenance allowance should therefore be sufficient to meet the medical and other expenses of the first petitioner and enable her to lead a normal life to the extent possible. The second petitioner, a little boy aged 10 years, is denied the care, love and affection of his father. While considering the maintenance claims of children, denial of love and affection is also a determinative factor, even though the loss cannot be compensated with money. In that view of the matter,

the fact that the child is studying in an aided school and the fees is only a meagre amount cannot be the basis for determining the quantum of maintenance. Taking all these factors into consideration, the monthly maintenance allowance payable to the first petitioner is fixed as Rs.8,000/- and of the second petitioner, as Rs.4,000/-.

Accordingly, RP(FC)No.71/2023 is dismissed and RP(FC) 30/2023 is disposed of by enhancing the monthly maintenance allowance of the first petitioner to Rs.8,000/- and that of the second petitioner to Rs.4,000/-. The respondent is granted two months time for paying the arrears of maintenance at the enhanced rate. If the amount is not paid within the time granted, the petitioners can approach the Family Court for getting the order executed.

Sd/-

V.G.ARUN

Judge

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