

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 23RD DAY OF NOVEMBER 2022 / 2ND AGRAHAYANA, 1944

RPFC NO. 307 OF 2019

AGAINST THE ORDER IN MC.NO.356/2016 OF FAMILY COURT, KOTTARAKKARA

REVISION PETITIONERS/PETITIONERS:

- 1 SREEJA T.,
AGED 40 YEARS
W/O.RAJAPRABHA, SREERAGAM, CHILLINGPLANT JUNCTION,
ALANCHERRY, YEROOR P.O., YEROOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT, PIN - 691 312.
- 2 JOYAL,
AGED 20 YEARS
S/O.RAJAPRABHA, SREERAGAM, CHILLINGPLANT JUNCTION,
ALANCHERRY, YEROOR P.O., YEROOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT, PIN - 691 312.
- 3 NAKSHATHRA S.R.,
AGED 6 1/2 YEARS
D/O.RAJAPRABHA, SREERAGAM, CHILLINGPLANT JUNCTION,
ALANCHERRY, YEROOR P.O., YEROOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT, PIN - 691 312, (MINOR
REPRESENTED BY HER MOTHER SREEJA T., 1ST PETITIONER).
BY ADVS.
K.SIJU
SMT.ANJANA KANNATH

RESPONDENT/RESPONDENT :

RAJAPRABHA,
AGED 46 YEARS
S/O.VASUDEVAN, SREERAGAM, CHILLINGPLANT JUNCTION,
ALANCHERRY, YEROOR P.O., YEROOR VILLAGE, PATHANAPURAM
TALUK, KOLLAM DISTRICT, PIN - 691 312.
BY ADVS.
SMT.T.S.MAYA (THIYADIL)
SMT.C.VIJAYAKUMARI

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 23.11.2022 ALONG WITH RPFC NO.468 OF 2019, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 23RD DAY OF NOVEMBER 2022 / 2ND AGRAHAYANA,

1944

RPFC NO. 468 OF 2019

AGAINST THE JUDGMENT IN MC.NO.356/2016 OF FAMILY COURT,

KOTTARAKKARA

REVISION PETITIONER/RESPONDENT:

RAJAPRABHA
AGED 43 YEARS
S/O.VASUDEVAN, SREERAGAM, CHILLINGPLANT JN.,
ALANCHERRY, YEROOR (PO), YEROOR VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.

BY ADVS.

T.S.MAYA (THIYADIL)

SMT.C.VIJAYAKUMARI

SMT.C.ANCHALA

RESPONDENT/RESPONDENT:

- 1 SREEJA.T
AGED 37 YEARS
W/O.RAJAPRABHA SREERAGAM, CHILLINGPLANT JN.,
ALANCHERRY, YEROOR (PO), YEROOR VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT-689695.
- 2 JOYAL R.,
AGED 17 YEARS
S/O.RAJAPRABHA SREERAGAM, CHILLINGPLANT JN.,
ALANCHERRY, YEROOR (PO), YEROOR VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT, PIN -689695
REPRESENTED BY HIS MOTHER SREEJA T
- 3 NAKSHATHRA S.R.,
D/O.RAJAPRABHA, SREERAGAM, CHILLINGPLANT JN.,
ALANCHERRY, YEROOR (PO), YEROOR VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT, PIN-689695.
REPRESENTED BY HER MOTHER SREEJA T
BY ADVS.
K.SIJU
SMT.S.SEETHA

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 23.11.2022 ALONG WITH RPFC NO. 307 OF 2019, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR

ORDER

R.P.(FC)No.468/2019 is at the instance of the respondent in M.C.No.356/2016 on the file of the Family Court, Kottarakkara and he impugns order in the above M.C., dated 4.6.2019.

2. Whereas, R.P.(FC).No.307/2019 has been filed by the petitioners 1 to 3, challenging the same order, on the ground of inadequacy on the quantum of maintenance.

3. Heard the learned counsel for the parties.

4. I shall refer the parties in this petition as to their status before the Family Court, for easy discussion.

5. In this matter, the petitioners, who are alleged to be wife and children of respondent, filed petition under Section 125 of the Code of Criminal Procedure, before the Family Court and thereby, claimed Rs.8,000/- to the first petitioner, Rs.7,000/- to the second petitioner and Rs.5,000/- to the third petitioner. The specific contention raised by the petitioners before the Family Court was that the petitioners had no means

of maintenance and the respondent had been working abroad and he was earning Rs.90,000/- per month.

6. The respondent filed objection, alleging adulterous life on the part of the first petitioner and also denying paternity of the third minor petitioner. In the objection, nothing stated denying the job or income, as alleged by the petitioners.

7. The court below ventured the matter. The evidence consists of PW1, first the petitioner and Exts.P1 to P8(h).

8. Though chief affidavit is filed by the respondent, he was not cross examined and according to the learned counsel for the respondent, cross examination was stalled due to dilatory tactics played by the petitioners. She also would submit that, even though the income of the respondent was not denied in the objection, in the chief affidavit filed by the respondent, the income as asserted by the petitioners was denied with a specific assertion that the respondent had been getting an income of Rs.35,000/- alone.

9. In this matter, as per order in CrI.M.P.No.220/2018 filed by the respondent to conduct DNA test to ensure the paternity of the third

petitioner, the Family Court ordered conduct of DNA test and finally, the DNA test result issued from Rajiv Gandhi National Centre for Biotechnology, Thiruvananthapuram, was obtained, finding that the respondent is the biological father of the third petitioner and the first petitioner as the biological mother of the third petitioner. In view of the said report, the said contention was found against him. Now, the said finding is not in dispute.

10. On a perusal of the evidence discussed by the learned Family Court Judge, it could be noticed that nothing substantiated to hold that the first petitioner is capable of maintaining herself, similar is the position as far as the other petitioners are concerned. It is true that the petition was filed on 21.12.2016 and the second minor petitioner attained majority on 23.7.2017. Noting this fact, the learned Family Court Judge denied maintenance to the second petitioner.

11. In this matter, the petitioners put up a consistent case through out the proceedings that the respondent had been working abroad and had been earning Rs.90,000/- per month. Though there is no specific denial in the objection filed by the respondent in the chief affidavit, which, in fact,

could not be acted upon, for want of cross examination, he had denied his income as Rs.90,000/- and admitted the same to the tune of Rs.35,000/-.

12. The Family Court discussed the rival contentions, justifying grant of maintenance at the rate of Rs.5,000/- to the first petitioner and Rs.3,500/- to the third petitioner from the date of order, ie., from 4.6.2019, as per the narration in Paragraph No.10 of the order impugned. The same is extracted hereunder for clarity:

10. According to the petitioners they had no sufficient means to maintain themselves and the respondent who is the husband of the 1st petitioner and the father of the other petitioners have means to pay maintenance to them and he is willfully neglecting to maintain them. The respondent denied the entitlement of the petitioners to get maintenance from him on the allegation that the 1st petitioner is living separately from him along with other petitioners without any sufficient cause and the 1st petitioner has the means to maintain herself and the other petitioners as she is getting a monthly income of more than Rs.10,000/- from her tailoring work and she is also getting monthly income of Rs.5,000/- from the 13 cents of property wherein she is living. The 1st petitioner as PW1 denied that any income is getting from the property. Though the respondent has contended that the 1st petitioner is getting a monthly income of Rs.10,000/- from tailoring work, nothing was asked to PW1 in the cross-examination regarding her alleged tailoring work and the income from that source. Thus there is absolutely no evidence in the case to show that the 1st petitioner is

doing tailoring work and she is getting any income from the same. Hence from the evidence available in the case I consider that the petitioners have succeeded in showing that they have no independent income or means of income for their livelihood and the respondent has failed to contradict the said evidence.

13. Now, the questions arise for consideration are, 1) Whether the Family Court is justified in granting maintenance at the rate of Rs.5,000/- to the first petitioner and Rs.3,500/- to the third petitioner? 2) Whether Family Court justified in denying maintenance to the second petitioner starting from the date of petition till the date of him attaining majority? and 3) Whether the Family Court is justified in granting maintenance from the date of order i.e., w.e.f. 4.6.2019?

14. In this matter, the admitted income of the respondent would come to Rs.35,000/-, as per the affidavit filed by him in lieu of chief examination as against the allegation of the petitioners that he would get Rs.90,000/- though the respondent was not cross-examined, to ascertain the truth of the said affirmation. Even though, the respondent alleged adultery on the part of the first petitioner to deny maintenance to her, nothing in evidence to prove the adulterous life of the first petitioner.

Therefore, the first petitioner is entitled for maintenance. Similarly, though the respondent denied the paternity of the third minor petitioner with intention to bastardize him, the said attempt miserably failed. Hence, the respondent is bound to pay maintenance to the third minor child.

15. In R.P.(FC) No.307/2019, the petitioners challenged the order, on the ground of insufficiency, non grant of maintenance to the second petitioner from the date of petition till the date of his majority, also grant of maintenance only with effect from the date of order.

16. Insofar as the challenge raised by the respondents in R.P. (FC)No.468/2019 is concerned, nothing could be gathered to hold that the finding of the court below in the matter of grant of maintenance and entitlement thereof by the first and third petitioner is either erroneous or illegal.

17. Coming to R.P.(FC).No.307/2019, taking note of the fact that the respondent not specifically denied the income asserted by the petitioners in the petition and for the other reasons discussed hereinabove, I am of the view that the order requires modification.

(i) As far as the third minor petitioner is concerned, the maintenance shall

be at the rate of Rs.5,000/- from the date of petition. Similarly, the second petitioner also is entitled to get maintenance at the rate of Rs.5,000/- from the date of the petition till 22.7.2017, since the second petitioner attained majority on 23.7.2017.

(ii). As regards the first petitioner is concerned, grant of maintenance at the rate of Rs.5,000/- would not be held as on higher side, going by the facts of this case. Therefore, I am not inclined to interfere with the said fact.

18. Coming to grant of maintenance from the date of order, it is shocking to note that the Family Court Judge ordered maintenance with effect from the date of order, i.e., from 4.6.2019 and no reasons stated by the learned Family Court Judge for passing such an order, thereby, denying the allowance of maintenance to the petitioners from the date of petition which they are legally entitled.

19. In this connection, the learned counsel for the respondent would urge that during cross examination, PW1 admitted payment of maintenance during the relevant period. But, the evidence did not suggest so and the evidence is to the effect that, earlier, the respondent used to send Rs.10,000/- and Rs.15,000/- and the said payment was also not

regular. Therefore, the said aspect also requires interference.

20. In this connection, it is pertinent to refer the illegality of the order passed by the Family Court Court Judge. That is to say, when a party claims allowance of maintenance by filing a petition, the party must get the maintenance from the date of the petition onwards and the same is the sanction of law. No doubt, deviation therefrom can be had for specified reasons to be recorded in writing and not otherwise. In the order impugned, the learned Family Court Judge not stated any reasons to deny maintenance from the date of petition and to grant the same from the date of order. Before this Court also nothing available to disallow maintenance from the date of the petition. In fact, there is no justifiable reason to uphold the said finding. To the contrary, it is held that the denial of maintenance allowance from the date of the petition without recording specific reasons is not the sanction of law and therefore, the said order is liable to be set aside and I set aside the same.

Accordingly, it is ordered as under:

R.P(FC).No.468/2019 found to be meritless and is accordingly dismissed.

R.P.(FC).No.307/2019 stands allowed and the order of maintenance passed by the Family Court is modified. Thus, it is ordered that the respondent shall pay Rs.5,000/- each to the first petitioner and the third petitioner from the date of the petition and he also shall pay Rs.5,000/- to the second petitioner from the date of petition till 22.7.2017 and not thereafter. The respondent is directed to deposit the entire arrears of maintenance, within a period of 30 days from today, after adjusting amount, if any, paid or deposited already.

On failure to do so, the petitioners are at liberty to enforce the order in accordance with law.

**Sd/-
A. BADHARUDEEN
JUDGE**

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PA TO JUDGE