

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 8TH DAY OF DECEMBER 2022/17TH AGRAHAYANA,

1944

RPFC NO.571 OF 2018

AGAINST THE ORDER/JUDGMENT DATED 11.09.2018 IN MC
120/2017 OF FAMILY COURT, CHAVARA

REVISION PETITIONER/COUNTER PETITIONER:

ARUN, AGED 33 YEARS, S/O.SADANANDAN,
ARUN BHAVANAM, KUNNATHOOR EAST .P.O,
KUNNATHOOR, KOLLAM,
REPRESENTED BY HIS POWER OF ATTORNEY,
SADANANDAN, AGED 75 YEARS, S/O GOVINDAN,
ARUN BHAVANAM, KUNNATHOOR EAST.P.O,
KUNNATHOOR, KOLLAM.

BY ADV. SRI.M.R.SARIN

RESPONDENT/PETITIONER:

RESHMA, AGED 29 YEARS,
D/O.RAMESAN, KOLOOR, PADINJATTATHIL (CHAITHRAM),
EDAKKAD, PORUVAZHY, KOLLAM.

BY ADV. SMT.BHADRA KUMARI K.V.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 08.12.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

O R D E R

Dated, this the 7th December, 2022

In this revision petition filed under Section 19(4) of the Family Courts Act, 1984, the revision petitioner, who is the respondent in M.C.No.120/2017 on the files of the Family Court, Chavara, impugns order in the above M.C. dated 11.09.2018.

2. The respondent herein is the sole petitioner in the above M.C.

3. Heard the learned counsel for the revision petitioner as well as the learned counsel appearing for the respondent.

4. In this matter, the respondent herein, who admittedly the wife of the revision petitioner, at the time of institution of the M.C., claimed allowance of maintenance under Section 125(1) of Code of Criminal Procedure, at the rate of

Rs.10,000/- from the respondent, on the assertion that she did not have means of maintenance and the revision petitioner/respondent had been earning Rs.50,000/- per month, by working as store keeper in Saudi Arabia.

5. The revision petitioner/respondent filed objection admitting the marital status, while disputing the entitlement of maintenance as well as the quantum thereof, on the specific allegation that, the respondent herein deserted the company of the revision petitioner voluntarily and without any justified reasons. Therefore, the revision petitioner had no liability to pay maintenance.

6. The Family Court adjudicated the matter. PW1, the respondent herein got examined and marked Ext.P1. Similarly, DW1 and DW2 were examined and marked Exts.D1 to

D6, on the side of the revision petitioner.

7. Thereafter, on hearing both sides and on appreciating the evidences, the Family Court granted Rs.4,000/- as maintenance to the respondent.

8. While challenging the order, the learned counsel for the revision petitioner submitted that the respondent left the company of the revision petitioner without any justification and on such finding Ext.D2 case filed by the respondent on the ground of cruelty ended in acquittal. He also read out Ext.D4, the copy of deposition of the respondent herein given in Ext.D2 case to contend that the respondent given evidence that she had no intention to rejoin and reside with the revision petitioner. The point that has been canvassed by the learned counsel for the revision petitioner is that the respondent is not legally entitled to get

maintenance, since she has been residing separately on her will.

9. It is argued by the learned counsel for the revision petitioner further that if at all this Court finds entitlement, then the quantum shall be reduced, taking note of the fact that the income of the respondent is not established at all.

10. Controverting this contention, the learned counsel for the respondent would submit that the learned Family Court Judge considered the impact of Ext.D2. In paragraph No.9 of the impugned order, it was observed that though Ext.D2 case was dismissed holding that the respondent herein failed to prove cruelty levelled against the revision petitioner, the said finding would not, in any way, debar PW1 from getting maintenance.

11. Further, it is submitted by the learned counsel for the respondent that the

contention raised by the revision petitioner to the effect that the respondent left the matrimonial home voluntarily, also cannot be swallowed with a pinch of salt. It was for these reasons, the Family Court found that the respondent is entitled to get maintenance. Further, the quantum also is reasonable.

12. In this context, it is relevant to note that when a party seeks divorce on the ground of cruelty, there shall be sufficient pleadings alleging cruelty, and evidence to prove the cruelty, to succeed in the divorce petition. But difference of opinion otherwise, in view of the particular circumstances at the matrimonial home, whereby the wife could not lead a peaceful life time, shall not, always be 'cruelty', but these are also reasonable grounds to deny joint residence. In such cases, it could not

be held that there was willful discretion to deny payment of maintenance.

13. In the case on hand, the evidence available to that of PW1 and DW1 read along with Exts.D2 and D4 also would suggest the wife left the matrimonial home since she could not reside there due to the particular circumstances prevailing. In view of the above, there is no reason to hold that the respondent is not entitled to get maintenance. Therefore, the entitlement of maintenance found by the Family Court can only be confirmed.

14. Both sides submit that now the respondent got re-married on 30.09.2022, and, therefore, the entitlement of maintenance as far as the respondent is concerned, shall stand ceased from the date of re-marriage. However, the revision petitioner is bound to clear the maintenance till this date.

15. In this matter, the Family Court granted Rs.4,000/- as maintenance to the respondent. Admittedly, the revision petitioner had been employed abroad. However, the actual income of the revision petitioner is not fully established. It could not be held that employment in Saudi Arabia is one of permanent nature so as to conclusively found that the income is static, always.

16. In view of the above facts discussed herein above, I am inclined to modify the maintenance at the rate of Rs.3,500/- per month and the impugned order stands modified as above.

17. Accordingly, the revision petition allowed in part as indicated above. Therefore, the revision petitioner is directed to clear the entire arrears at the rate of Rs.3,500/- per month, starting from the date of petition till the date of

remarriage, within a period of thirty days and on failure to do so, the respondents are at liberty to execute the modified order, in accordance with law.

Registry is directed to forward a copy of this judgment to the Family Court, Chavara, for information and compliance.

Sd/-

A. BADHARUDEEN, JUDGE.

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APPENDIX OF RPFC 571/2018

PETITIONERS' ANNEXURES:

ANNEXURE A1 THE TRUE COPY OF RECEIPT ISSUED BY
SHERISTADAR FAMILY COURT CHAVARA ON
8.5.19.

ANNEXURE A2 THE TRUE COPY OF RECEIPT ISSUED BY
SHERISTADAR FAMILY COURT CHAVARA ON
14.5.19.

ANNEXURE A3 THE TRUE COPY OF RECEIPT ISSUED BY
SHERISTADAR FAMILY COURT CHAVARA ON
15.5.19.

ANNEXURE A4 THE TRUE COPY OF RECEIPT ISSUED BY
SHERISTADAR FAMILY COURT CHAVARA ON
16.5.19.

ANNEXURE A5 THE TRUE COPY OF RECEIPT ISSUED BY
SHERISTADAR FAMILY COURT CHAVARA ON
25.11.2020.