



2023:KER:82219

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH AGRAHAYANA, 1945

RPFC NO. 382 OF 2023

AGAINST THE JUDGMENT DATED 15.12.2022 IN MC 49/2018 OF FAMILY
COURT, PALA

REVISION PETITIONER/RESPONDENT:

SONY PHILIP ,
AGED 44 YEARS,
S/O PHILLIP, PICHATTU HOUSE,
MANNADISALA P. O, KOLLAMULA VILLAGE,
RANNI TALUK, PATTANAMTHITTA DISTRICT,
PIN - 686511

BY ADVS. KISHOR B.
M.M.LAIJU NISSA

RESPONDENT/PETITIONER:

JAIN MATHEW,
AGED 38 YEARS,
D/O MATHEW, THAZHATHUKUNNEL HOUSE,
EDAMATTOM. P. O, POOVARANY VILLAGE,
MEENACHIL TALUK, 686578.

BY ADVS. THOMAS J ANAKKALLUNKAL .
ANUPA ANNA JOSE KANDOTH(K/427/2007)
JAYARAMAN S.(K/1244/2019)
MELBA MARY SANTHOSH(K/001148/2023)

THIS REV. PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 21.12.2023, ALONG WITH RPFC.509/2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



2023:KER:82219

R.P.(FC)Nos.382 & 509/2023

-:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 21ST DAY OF DECEMBER 2023 / 30TH AGRAHAYANA, 1945

RPFC NO. 509 OF 2023

AGAINST THE JUDGMENT DATED 15.12.2022 IN MC 49/2018 OF FAMILY
COURT, PALA

REVISION PETITIONER/RESPONDENT:

JAIN MATHEW,
AGED 34 YEARS,
D/O. MATHEW, THAZHATHUKUNNEL HOUSE,
EDAMATTOM PO, EDAMATTOM KARA,
POOVARANY VILLAGE, MEENACHIL TALUK,
KOTTAYAM, PIN - 686578

BY ADVS. THOMAS J.ANACKALLUNKAL
JAYARAMAN S.
ANUPA ANNA JOSE KANDOTH

RESPONDENT/PETITIONER:

SONY PHILIP,
AGED 40 YEARS,
S/O. PHILIP, PICHANATTU HOUSE,
MANNADISALA PO, KOLLAMULA VILAGE,
RANNI TALUK, PATHANAMTHITTA,
PIN - 686511

THIS REV. PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 21.12.2023, ALONG WITH RPFC.382/2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



Dated this the 21st day of December, 2023

COMMON ORDER

As these revision petitions are filed challenging the order in M.C.No.49/2018 of the Family Court, Pala, directing the husband to pay the wife monthly maintenance allowance @ Rs.3,500/- from the date of application(06.07.2018), they are being disposed of by this common order. R.P.(FC)No.382/2023 is filed by the husband assailing the impugned order and R.P.(FC)No.509/2023 is filed by the wife, dissatisfied with the quantum of maintenance ordered. For convenience, the parties are referred to as the 'revision petitioner/husband' and 'respondent – wife'.

2. The respondent/wife had filed the application under Section 125 of the Code of Criminal Procedure,1973 (*'Code', for the sake of brevity*), against the revision petitioner/husband, seeking monthly maintenance allowance @ Rs.20,000/-. It was



her case that, she was married to the revision petitioner on 16.05.2013. They are issueless. The revision petitioner treated her with matrimonial cruelty. She has no means to maintain herself. The revision petitioner is a construction contractor and has five acres of agricultural land, and he is earning a monthly income of Rs.80,000/-. The respondent has a right to live in the same status and standard of living as that of the revision petitioner. Hence, the application.

3. The revision petitioner had filed a written objection refuting the allegations in the application. He denied the allegation that he was working as a construction contractor. He contended that he was doing some private work and earning Rs.20,000/- per month. He was living in a rental premises by paying Rs.8,000/- per month as rent. The revision petitioner is ready to resume cohabitation with the respondent.



Hence, the application may be dismissed.

4. The respondent had also filed O.P.Nos.326/2018 & 327/2018 against the revision petitioner, for a decree for divorce and a decree for return of money and gold ornaments, respectively.

5. The Family Court consolidated and jointly tried the three proceedings. The respondent examined herself and two other witnesses as PWs 1 to 3 and marked Exts A1 to A9 in evidence. The revision petitioner got himself examined as RW1 and marked Exts B1 to B27 on his side.

6. The Family Court, after analysing the pleadings and materials on record, by the impugned order, partly allowed the application, by ordering the revision petitioner to pay the respondent monthly maintenance allowance @ Rs.3,500/-.

7. It is assailing the said order, these revision petitions are filed.



8. Heard; Sri. Kishor B, the learned counsel appearing for the revision petitioner/husband and Sri. Thomas J.Anakkallunkal, the learned counsel appearing for the respondent/ wife.

9. Is there any illegality, impropriety or irregularity in the impugned order?

10. The revision petitioner admits his marriage with the respondent. The respondent's case in the application was that, the revision petitioner had treated her with matrimonial cruelty and refused to maintain her, despite having a monthly income of Rs.80,000/-.

11. The revision petitioner's defence was that the respondent was living separately from him without sufficient cause and he was only earning Rs.20,000/- per month from his private work.

12. Even though the revision petitioner contended that the respondent was living separately



from him without any sufficient cause, admittedly, he had not taken any earnest effort to resume cohabitation with the respondent. He also did not file any petition seeking decree for restitution of conjugal rights. Similarly, though the respondent contended that the revision petitioner was earning Rs.80,000/- per month, there is nothing on record to prove the said assertion.

13. The Family Court, taking into account the fact that the revision petitioner was only 39 years at the time of filing the application and was an able bodied person ordered him to pay Rs.3,500/- per month to the respondent.

14. In the celebrated decision in ***Rajnish v. Neha and Anr.*** [2020 (6) KHC 1], the Hon'ble Supreme Court has held that the Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for



their financial support, so as to prevent them from falling into destitution and vagrancy.

15. In ***Captain Ramesh Chander Kaushal v. Veena Kaushal & Ors.*** [(1978) 4 SCC 70], the Hon'ble Supreme Court has declared that the provision of maintenance is a measure of social justice and specially enacted to protect women and children, who fall within the constitutional sweep of Article 15(3) and reinforced by Article 39.

16. In ***Bhuvan Mohan Singh v. Meena & Ors.*** [(2015) 6 SCC 353], the Hon'ble Supreme Court has observed that Section 125 of the Code was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, and the



husband is required to earn money even by physical labour, if he is able bodied and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

17. It is well settled that the Courts are permitted to do some guesswork in arriving at the notional income of the husband/father and fixing the quantum of maintenance.

18. As already observed, the revision petitioner was aged 39 years at the time of filing of the application. There is nothing on record to prove that the revision petitioner was suffering from any bodily ailment or disability. Therefore, I am of the definite view that the revision petitioner is an able bodied person. An able bodied person in the year 2017, by any stretch of imagination, would have earned nothing less than Rs.800/- per day for at least 25 days in a month. Therefore, I fix the notional income of the revision



petitioner @ Rs.20,000/- per month. Taking into account the notional income of the revision petitioner at Rs.20,000/- per month, I find the amount of Rs.3,500/- ordered by the Family Court to be reasonable and justifiable. I do not find any error or impropriety in the quantum of maintenance fixed by the Family Court.

19. On an overall consideration of the pleadings and materials on record, I do not find any illegality or irregularity in the impugned order warranting interference by this Court under Section 19(4) of the Family Courts Act, 1984. The revision petitions are meritless and are only liable to be dismissed.

Resultantly, the revision petitions are dismissed. The revision petitioner is directed to pay the entire arrears of maintenance due to the respondent as per the impugned order in three equated and successive monthly instalments commencing from 21.01.2024. If



2023:KER:82219

R.P.(FC)Nos.382 & 509/2023

-11:-

the revision petitioner fails to pay one of the instalments, the respondent would be at liberty to execute the impugned order in accordance with law.

Sd/-

C.S.DIAS,JUDGE

DST/21.12.23

//True copy//

P.A. To Judge