

**Ummer Vs. Ramlath Rep.by Her Guardian Mother Suhara**

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**Court :** Kerala

**Decided On :** Sep-30-2013

**Judge :** Honourable Mr.Justice K.Harilal

**Appellant :** Ummer

**Respondent :** Ramlath Rep.by Her Guardian Mother Suhara

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL MONDAY, THE 30<sup>H</sup> DAY OF SEPTEMBER 2013 8<sup>TH</sup> ASWINA, 1935 RPF.No. 241 of 2013 () ----- MC2252011 of FAMILY COURT, THRISSUR REVISION PETITIONER/RESPONDENT: ----- UMMER, AGED 42 YEARS, S/O.MUHAMMED, CHULLIPEEDIKAYIL HOUSE, KANJIRASSERY MULLOORAKARA P.O. & VILLAGE, THALAPPILLY TALUK THRISSUR DISTRICT. BY ADVS.SRI.THIYYANNOOR RAMAKRISHNAN SRI.ARUN KUMAR.P SMT.AMBIKA RADHAKRISHNAN RESPONDENT/PETITIONER: ----- RAMLATH, AGED 12 YEARS, D/O.SUHARA REPRESENTED BY HER MOTHER AND GUARDIAN SUHARA RESIDING AT CHULLIPEEDIKAYIL HOUSE, KANJIRASSERY MULLOORAKARA P.O. & VILLAGE, THALAPPILLY TALUK THRISSUR DISTRICT, PIN-680583. BY ADV. SRI.SANTHEEP ANKARATH THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 30/09-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: OKB. K.HARILAL, J.

----- Dated this the 30th day of September, 2013

**ORDER**

The revision petitioner is the respondent in M.C. No.225/11 on the files of the Family Court, Thrissur. He is the father of the respondent. The above M.C. was filed under Section 125(1) of the Cr.P.C. seeking maintenance allowance from the revision petitioner. The parties belong to Muslim community. The revision petitioner had married the mother of the respondent and the respondent is the daughter born in that wed-lock. Thereafter, the revision petitioner had pronounced talak on the mother of the respondent on 1.12.2009. The mother of the respondent had filed an MC.No.29/2009 before the Judicial First Class Magistrate's Court, Wadakkanchery under the provisions of the Domestic Violence Act. The said case was compromised and, thereafter, the respondent and her R.P.(FC).241/13 :2: mother are living separately. The revision petitioner has not paid any maintenance allowance to the respondent since 9.4.2009. Now, the respondent is studying in 9th standard in ASN NSS Govt. School, Mulloorkkara. The respondent and her mother are eking out their livelihood with meagre income derived from the coolie work of the mother of the respondent. The mother of the respondent is borrowing money from her close relatives to meet the educational expenses of the respondent. She needs money to meet her living expenses and educational expenses in addition to food, shelter and clothing, etc. The respondent claimed Rs.3,000/- per mensem as her monthly maintenance allowance. According to the respondent, the revision petitioner is a head load worker and deriving a monthly income of Rs.10,000/- per month. The learned Family Court Judge directed the revision petitioner to pay maintenance allowance at the rate of Rs.2,000/- per month.

2. The revision petitioner admitted the paternity of the respondent, but, inter alia, contended that he is unable R.P.(FC).241/13 :3: to pay maintenance allowance as claimed by the respondent. The mother of the respondent is getting Rs.200/- per day from coolie work. The revision petitioner is not a head load worker as alleged by the respondent. He is not getting a monthly income of Rs.15,000/-. He was

subjected to a surgery on his right shoulder. Thereafter, he is not in a position to do any hard work taking heavy objects and he is also suffering from various other diseases. Now he is depending upon his aged father to meet his treatment expenses. According to him, the respondent is not entitled to get maintenance allowance. It is also contended that the father of the revision petitioner had constructed a house in the property having an extent of 5 cents, which was purchased in the joint names of the husband and wife. The father of the revision petitioner expended a sum of Rs.1 lakh for the construction of the house therein. According to him, he is entitled to get half share in the said property with mesne profits. Hence he filed a counter claim and prayed for partitioning of the R.P.(FC).241/13 :4: counter claim schedule property also.

3. In view of the rival contentions, the question to be considered is whether the court below can be justified in determining Rs.2,000/- per month as the quantum of maintenance allowance per month? 4. The paternity of the respondent is admitted. The main contention raised in the counter statement is that the revision petitioner is physically disabled due to the surgery, which he had undergone, and, thereafter, his earning capacity has been reduced considerably. But, the allegation of the respondent is that the revision petitioner is a head load worker. It is pertinent to note that the revision petitioner has not specifically denied the allegation that he is a head load worker. But, his contention is that after the surgery he is disabled and his earning capacity has been reduced considerably. To substantiate the above contention, he has produced Ext.B2 Medical Certificate, Ext.B3 letter dtd.24.7.2011 and Ext.B4 Discharge card. Going by these documents, it could be seen that these R.P.(FC).241/13 :5: documents do not indicate reduction of ability. Had it been true, as claimed by the respondent, he could have produced a disability certificate stating that his percentage of disability caused by surgery. Therefore, I am also of the opinion that, even if those documents are admitted at its entirety, Exts.B1 to B4 are not sufficient to arrive at a conclusion that he is physically disabled or incapacitated to do a head load work so as to eke out his livelihood. Even if it is true, he could have resorted to any other kind of work, so as to earn his livelihood. These documents are not sufficient to arrive at a conclusion that he is unhealthy or physically disabled or incapacitated to do work. Though he contended that he is depending upon his aged father for his treatment expenses,

no evidence had been adduced to substantiate the said contention. That apart, though he contended that the mother of the respondent is also a coolie worker and thereby she will get daily wage of Rs.200/-, no evidence had been adduced to show that she is doing any kind of work or she has any source of income R.P.(FC).241/13 :6: except her statement brought out in cross examination that she occasionally gets coolie work and she will get a daily wage of Rs.150/-. I am of the opinion that the court below has taken the meagre income of the mother of the respondent also into account, as the quantum of amount directed to be paid is not sufficient to meet the daily expenses and educational expenses of the child.

5. Having regard to the standard of life of a girl aged 12 years, who is studying at school level in 9th standard, the quantum of amount determined by the Family court is just and proper and does not call for any interference under the revisional jurisdiction of this Court. There is no illegality or impropriety in the impugned order.

6. The learned counsel for the revision petitioner submits that now the revision petitioner is suffering from financial difficulties and he wants some time to pay arrear. Having regard to the above submission, the revision petitioner is given four months time to pay the arrear provided that half of the entire arrear shall be deposited R.P.(FC).241/13 :7: within two months and the balance shall be deposited within the next two months. In the event of failure to pay the first instalment within the time, the Family Court will be free to proceed with realisation of the entire amount in lump sum. The Revision Petition is disposed of accordingly. Sd/- (K.HARILAL, JUDGE) okb.

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