

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

RPFC.No. 45 of 2011 ()

(MC 266/2003 of FAMILY COURT,THRISSUR)

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REVISION PETITIONER(S)/RESPONDENT:

JOY, AGED 44 YEARS,
S/O. OUSEPH, MOORKANADAN HOUSE, CHETTUPUZHA DESOM,
PULLAZHY VILLAGE, THRISSUR TALUK-680027.

BY ADV. SRI.P.K.SAJEEV

RESPONDENT(S)/PETITIONERS:

1. LISSY, AGED 42 YEARS,
D/O. THOMAS, KANJIRAPARAMBIL HOUSE, PAMBOOR DESOM,
KUTTUR VILLAGE, KUTTUR P.O., THRISSUR TALUK-680652.

2. LIYA, AGED 17 YEARS (MINOR),
D/O. LISSY, KANJIRAPARAMBIL HOUSE, PAMBOOR DESOM,
KUTTUR VILLAGE, KUTTUR P.O., THRISSUR TALUK-680652,
REPRESENTED BY IST RESPONDENT.

R1 & R2 BY ADVS. SRI.P.G.SURESH
SRI.C.V.MANUVILSAN
SMT.K.VIDYA

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 12-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.45 of 2011

Dated t his the 12th day of June, 2015.

O R D E R

The revision petitioner is the respondent in M.C.No.266/03 on the files of the Family Court, Thrissur. The above M.C. was filed under Section 125 of the Code of Criminal Procedure by the respondents herein, who are the wife and daughter of the petitioner, claiming enhanced maintenance allowance for the second respondent and maintenance allowance for the first respondent. Earlier, in M.C.No.126/98, the petitioner was directed to pay maintenance allowance @ Rs.250/- to the second respondent. According to the first respondent, the said amount is not sufficient to meet the increase in the cost of living caused by inflation during the past five years. Now the second respondent is aged 10 years and considerable amount is required for her educational expenses. Earlier, the petitioner filed O.P.No.555/97 for restitution of

conjugal rights and a decree was passed in his favour. In compliance with the said decree, the first respondent was willing to reside with the petitioner but he was not prepared to take her back and thereafter he has not paid anything towards her maintenance. First respondent requires Rs.2,000/- and second respondent requires Rs.1,000/-, per month, for their livelihood.

2. The revision petitioner admitted the marital status of the first respondent and paternity of the second respondent. Though he filed a counter statement denying all allegations levelled against him, thereafter he did not pursue the matter and he was later set ex parte. The first respondent filed a proof affidavit in support of the averments in the petition and produced Ext.A2 judgment passed in O.P.No.555/97.

3. Increase in living index consequent on inflation is a universal phenomenon, which does not require proof. There is corresponding increase in the

income of every earning person in accordance with the said inflation. Therefore, the claim for enhanced maintenance allowance put forward by the second respondent is just and reasonable.

4. Coming to the claim for maintenance raised by the first respondent, it is his specific case that after the passing of decree granting restitution of conjugal rights, she was willing to reside along with the revision petitioner. But the revision petitioner was not willing to take her back and he was not desirous of living together. To refute the said contention, there is nothing from the side of the revision petitioner. Under such circumstances, the claim of the first respondent also is justifiable and there is no illegality in granting maintenance allowance to the first respondent.

5. Coming to the correctness of the quantum of maintenance allowance, according to the respondents, the revision petitioner is a painter and his monthly income is Rs.8,000/-. It is also stated that he has

landed property and he is getting Rs.25,000/- per month from that property. He has not adduced any statutory evidence regarding the actual income of the first respondent. But the claim of the respondents stands unchallenged and the court below was liable to be relied on the uncontroverted evidence adduced by the first respondent. On the basis of the evidence available on record, the court below directed the revision petitioner to pay Rs.500/- each to the respondents from the date of petition till August 2009 and Rs.1,000/- each from August 2009 onwards. Though the revision petitioner filed M.P.No.802/2010 in the M.C. to set aside the ex parte order, when the case was taken up for hearing, neither the petitioner nor his counsel was present before the court. In that context, the court below dismissed the said petition. I do not find fault with the court below in dismissing the petition, when there was no representation before the court below. The quantum of maintenance allowance determined by the court below is reasonable, just and

proper and no interference is called for. I do not find any reason to set aside the order passed in M.P.No.802/2010 also.

This R.P(FC) is dismissed.

Sd/–
K. HARILAL, JUDGE

okb.