IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

RPFC.No. 44 of 2015

AGAINST THE JUDGMENT IN MC 334/2013 of FAMILY COURT, KANNUR DATED 12-11-2014

REVISION PETITIONER(S)/PETITIONER:-

DILEEP KUMAR K.G., AGED 36 YEARS,
S/O.GOPALAKRISHNAN NAIR, KUMBIL VELLAPPALLIL HOUSE
PALAVAYAL P.O., KASARAGOD DISTRICT, PIN - 670 511.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENT(S)/RESPONDENTS:-

1. SHEEJA C.C., AGED 35 YEAR
D/O.CHANDRAN, CHEKKURA KUTTIAT HOUSE, VILAKKANNUR
NADUVIL P.O., TALIPARAMBA TALU
KANNUR DISTRICT - 670 582.

2. ANUSREE, AGED 13 YEAR, (MINOR)
REPRESENTED BY GUARDIAN AND MOTHER THE
1ST RESPONDENT SHEEJA C.C.,
CHEKKURA KUTTIAT HOUSE, VILAKKANNUR, NADUVIL P.O.,
TALIPARAMBA TALUK, KANNUR DISTRICT - 670 582.

BY ADV. SRI.M.SASINDRAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.44 of 2015

Dated this the 25th day of June, 2015

ORDER

The revision petitioner is the respondent in M.C. No.334 of 2013 on the files of the Family Court, Kannur, filed by the respondents herein, who are the divorced wife and daughter of the revision petitioner, claiming enhanced maintenance allowance for the 2nd respondent under Sec.127 of the Code of Criminal Procedure. The above M.C. was filed stating that, in the earlier M.C.No.43 of 2006, the revision petitioner was directed to pay ₹800/- per month to the 1st respondent and ₹400/- per month to the 2nd respondent, as maintenance allowance. Thereafter, the matter was settled between the revision petitioner and the 1st respondent and their marriage was dissolved and the revision petitioner has paid an amount of ₹1,50,000/- towards the past, future and arrear of monthly maintenance pertaining to the 1st respondent. He has also agreed to pay ₹200/- per month to the 2nd respondent as monthly maintenance and in view of the above settlement, M.C. No.320 of 2008 was filed by the respondents under Sec.127 of the Cr.P.C. and got the order passed in favour of the 1st respondent cancelled and modified the quantum of maintenance allowance in respect of the 2nd respondent as monthly maintenance allowance at the rate of ₹200/-. At the time of filing the earlier petition, the 2nd respondent was studying in the 2nd Standard. Now she is studying in the 5th Standard at Naduvil School. According to the 2nd respondent, the amount, which is being received as monthly maintenance, is inadequate and insufficient to meet the present requirements of the 2nd respondent and the same is disproportionate with the increase in the income of the revision petitioner. The revision petitioner is a rubber tapper and he is getting ₹1,000/- per day as income from his employment. In addition to that, he has rubber, coconut and arecanut plantations and deriving an annual income of ₹3,00,000/- from the landed properties. Hence the respondents claimed maintenance allowance at the rate of ₹3,000/- per month.

2. The revision petitioner resisted the claim of enhancement and contended that in view of Ext.B1 settlement, the 2nd respondent is not entitled to claim enhanced maintenance allowance. He denied the allegation that he is getting ₹1,000/- per day and the averments that he has coconut, rubber and arecanut plantations are also false and baseless. According to him, he is a chronic patient suffering from back pain and, at present, he is not in a position to do any work.

That apart, he is having wife and two children, who are solely relying upon his income. After considering the rival pleas and evidence adduced by both parties, the court below directed the revision petitioner to pay enhanced maintenance allowance at the rate of ₹2,000/- per month to the 2nd respondent. The correctness of the enhanced quantum of maintenance allowance is under challenge in this revision petition.

3. The learned counsel for the revision petitioner advanced arguments assailing the findings, whereby the quantum of maintenance allowance has been increased to ₹2,000/- per month which is about 10 times of the quantum of amount which is being received by the 2nd respondent. It is also submitted that the quantum of enhanced maintenance allowance is disproportionate with the increase in the income of the revision petitioner also. That apart, the revision petitioner is suffering from back pain and that affected his earning capacity also. But, the court below failed

to consider the above aspect in its correct perspective.

4. Per contra, the learned counsel for the 2nd respondent advanced arguments to justify the findings, whereby the court below enhanced the quantum of maintenance allowance.

5. Heard both sides.

6. The short question that arises for consideration in this revision petition is, whether the enhancement in the quantum of maintenance allowance is justifiable and proportionate with the increase in the income of the revision petitioner. In the earlier M.C., the revision petitioner was directed to pay monthly maintenance allowance at the rate of ₹400/- to the 2nd respondent and subsequently, it was modified to ₹200/- per month in M.C.No.320 of 2008 on the basis of the agreement entered into between the 1st respondent and the revision petitioner. It is pertinent to note that such an agreement was entered when the 2nd respondent was

a minor, and I find that an agreement entered into between the 1st respondent and the revision petitioner, when the 2nd respondent was a minor, reducing the quantum of maintenance of the 2nd respondent to a meagre amount of ₹200/-, is illegal void ab initio. The above view is supported by the decision of this Court in Rajesh R. Nair v. Meera Babu [2014 (1) KHC 83]. In short, Ext.B1 is of no consequence at all and the same cannot be taken as a basis for the enhancement.

7. Then the point to be considered is, whether the enhanced maintenance allowance at the rate of ₹2,000/- is excessive or disproportionate with the income of the revision petitioner. In the earlier M.C., when the revision petitioner was directed to pay ₹400/- per month to the 2nd respondent, the 2nd respondent was aged only 6 years and she was studying in the 2nd Standard. Now she is studying in the 5th Standard in Naduvil School. Increase in the

cost of living, caused by inflation, is a universal phenomena which does not require specific proof. Needless to say, there is a corresponding increase in the income of every earning person. Therefore, if the revision petitioner is not physically disabled person and incapacitated to do work, certainly, there must have an increase in the income of the revision petitioner also.

8. Though the revision petitioner has raised a contention that he is suffering from back pain, no medical evidence has been adduced to show that his earning capacity has been reduced considerably consequent on the back pain. According to him, he is not a rubber tapper and he is a worker in a hotel. In Ajithkumar v. Shaima [2009 (3) KLT 452], this Court held that the word 'means' signify not only movable or immovable property in the shape of income, revenue or salary; but also includes the capacity of an earning man. Unless the petitioner is a physically disabled

person, it could reasonably be presumed that he is working as a hotel employee as claimed by him and he has sufficient income to pay maintenance allowance to his own daughter aged 11 years. 'Maintenance' contemplated under Sec.125 of the Cr.P.C. obviously includes provision for food, clothing, residence, educational attendance etc. The father is liable to pay maintenance allowance to his wife and children in accordance with their living status, standard of life and day-to-day requirements and the educational expenses. In this analysis, I find that the quantum of enhanced maintenance allowance determined at the rate of ₹2,000/- per month is just and reasonable and no interference is called for under the revisional jurisdiction.

9. Considering the facts and circumstances of this case, the revision petitioner is given six months time to pay the arrear amount, provided that 1/3rd of the entire arrear shall be remitted within two months

from today and the next 1/3rd shall be remitted within the next two months and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment, this instalment facility will stand automatically vacated and the respondents will be at liberty to realise the entire arrear in lump sum, in accordance with law.

This RP(FC) is disposed of accordingly.

Sd/-
(K. HARILAL, JUDGE)

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P.S. to Judge