

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

RPFC.No. 50 of 2015 ()

AGAINST THE COMMON JUDGMENT IN M.C.NO. 398/2012 of FAMILY COURT,
KANNUR DATED 06-02-2014

REVISION PETITIONER(S)/RESPONDENT:

E.NARAYANAN MARAR, AGED 82 YEARS
S/O.NARAYANAN NAMBOODIRI, RETIRED TEACHER
TRICHAMBRAM U.P.SCHOOL, TALIPARAMBA P.O.
KANNUR DISTRICT, RESIDING AT HAPPY HOME, KAVALAKULAM
NEYATTINKARA, THIRUVANANTHAPURAM.

BY ADVS.SRI.ABRAHAM K.JOHN
SRI.BABY ANTONY
SRI.V.K.PRATHAPACHANDRAN
SMT.C.G.ARUNDHATHI

RESPONDENT(S)/PETITIONER:

MEENAKSHI K.V., AGED 68 YEARS
W/O.E.NARAYANAN MARAR, SOMAPURAM, TRICHAMBRAM
TALIPARAMBA P.O., KANNUR DISTRICT, PIN - 670 141.

R1 BY ADVS. SRI.K.M.FIROZ
SMT.M.SHAJNA

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 23-02-2015, ALONG WITH R.P(F.C). 51/2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

RPFC.No. 50 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A1: CERTIFIED COPY OF THE ORDER DATED 06.02.2014 IN
M.C.NO.398/2012 OF THE FAMILY COURT, KANNUR
- ANNEXURE A2: PHOTOSTAT COPY OF THE CERTIFICATE DATED 30.11.2014
ISSUED FROM THE ELDERS WELFARE ASSOCIATION,
THIRUVANANTHAPURAM.
- ANNEXURE A3: PHOTOSTAT COPY OF THE CERTIFICATE DATED 28.11.2014
ISSUED FROM NOORUL ISLAM INSTITUTE OF MEDICAL
SCIENCE & RESEARCH FOUNDATION, NEYYATTINKARA
- ANNEXURE A4: TRUE COPY OF THE ORDER DATED, 05.08.2008 IN
M.C.NO.234/2008 OF THE FAMILY COURT, KANNUR

RESPONDENT'S ANNEXURES: NIL

//TRUE COPY//

P.A. TP JUDGE.

dlk

C.T.RAVIKUMAR, J

R.P(F.C) Nos. 50 & 51 of 2015

Dated this the 23rd day of February, 2015

ORDER

The parties to both these revision petitions are the same and the issues involved are also inter connected and intertwined. Hence, these matters are taken up for joint consideration and disposal. The former revision petition is filed against the order in M.C.No. 398/2012 whereby and whereunder the amount of monthly maintenance ordered earlier as per order in M.C.No.234/2008 of the Family Court, Kannur dated 5.8.2008, was enhanced from ₹2,000/- to ₹3,000/- at the instance of the respondent herein. The latter revision petition has been filed against the order dated 6.12.2014 in M.C.No.264/2012 of the same Family Court moved by the revision petitioner herein for cancellation of the order in M.C.No.234/2008. In otherwords, in the said petition the revision petitioner had sought for cancellation of the order for maintenance. The above said miscellaneous cases were considered and disposed of by a common order. As per the same the family court allowed M.C.No.398/2012 and enhanced the

amount of monthly maintenance and at the same time, dismissed the M.C.No.264/2012 filed by the revision petitioner.

2. The revision petitioner and the respondent are aged persons and in fact, the revision petitioner is aged 82 years and the respondent is aged about 73 years. The contention of the petitioner in both these revision petitions would undoubtedly reveal the marital status of the respondent is not at all disputed by the revision petitioner and in otherwords, he would admit the fact that the respondent is his divorced wife. Earlier, the respondent approached the family court by filing M.C.No.234/2008 and Ext.P4 in the latter revision petition would reveal that the said matter was settled and accordingly, it was allowed on 5.8.2008 with a direction to the revision petitioner to pay a monthly maintenance of Rs.2,000/- to the respondent. The petitioner admittedly did not challenge the said order quite long time and has been paying the amount of monthly maintenance in terms of and in compliance with Ext.P4 order. Subsequently, the respondent-wife filed M.C.No.398/2012 under section 127 of the Code of Criminal Procedure for enhancement of the monthly

maintenance ordered in M.C.No.234/2008. In fact, immediately prior to that, in the year 2012 itself, the revision petitioner filed M.C.No.264/2012 seeking cancellation of the order in M.C.No.234/2008, under section 127 Cr.P.C. Evidently, both the matters have been taken up for joint trial and it was after taking evidence in a joint trial that the impugned common order was passed.

3. I have heard the learned counsel for the petitioner and also the learned counsel for the respondent.

4. As noticed hereinbefore, the order in M.C.No.234/2008 was passed as early as on 5.8.2008 and for about 4 years the revision petitioner did not take up any challenge against the said order and at the same time, he was effecting payment in tune with and in compliance with the directions thereunder. There cannot be any doubt with respect to the position that even in such circumstances, a petition to alter the order could be filed under section 127 Cr.P.C. However, such a petition could be legally moved only in changed circumstances. A perusal of the impugned order would reveal that the revision

petitioner has failed to establish before the family court that there occurred a change in circumstances making the order in M.C.No.234/2008 liable to be annulled. The learned counsel for the petitioner could not bring to my attention any evidence which escaped the attention of the family court which would suggest the existence of such a changed circumstance warranting cancellation of the order passed by the family court in M.C.No.234/2008 as early as on 5.8.2008. In other words, the revision petitioner has failed to establish that there occurred a change in circumstances warranting interference with the order dated 5.8.2008 in M.C.No.234/2008 and to hold the order declining such a prayer in M.C.No.264/2012 as bad in law and warranting interference in exercise of revisional jurisdiction. In the said circumstances, I do not find any merit in R.P.(F.C.) No.51/2015. Accordingly, it is dismissed.

5. As noticed hereinbefore, the Family Court passed an order in M.C.No.398/2012 on the application filed by the respondents for enhancing the order of maintenance passed in M.C.No. 234/2008. The order in M.C.No.234/2008 was passed as

early as on 5.8.2008 and as per the same the revision petitioner was directed to pay an amount of Rs.2,000/- per month to the respondent. Evidently, the respondent is getting an amount of about 15,000/- per month as pension. The respondent is his divorced wife and now, she is aged 73 years. Taking into account the fact that the amount was fixed at Rs.2,000/- as early as on 5.8.2008 and in view of the hike in the cost of living and also taking into account the expenses which is to be incurred at the age of 73 years for meeting the day today expenses and also the capacity and ability of the revision petitioner the family court found that a slight enhancement in the rate of monthly maintenance is called for. In such circumstances, the amount was enhanced by Rs.1,000/- and consequently, it has been fixed as ₹3,000/-. The said fixation of the monthly maintenance cannot be said to be exorbitant or unreasonable having regard to the capacity and ability of the petitioner as noticed hereinbefore. Admittedly, he is getting Rs.15,000/- as pension. In the said circumstances, I do not find any reason to interfere with the order passed by the family court in invocation of the power under

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section 127 Cr.P.C in M.C.No.398/2012 enhancing the amount of monthly maintenance as per order in M.C.No.398/2012. In the result R.P.(F.C) No. 50/2015 is also liable to fail and accordingly it is dismissed.

Sd/-

C.T.RAVIKUMAR,JUDGE.

dlk