

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

RPFC.No. 206 of 2015

AGAINST THE ORDER IN MC 9/2014 of FAMILY COURT,
THIRUVALLA, DATED 06-04-2015.

REVISION PETITIONER(S)/RESPONDENT:

ANILKUMAR. K.K., AGED 51 YEARS,
S/O. KARUNAKARA KURUP,
LAKSHMI NIVAS, VALLAMKULAM MURI,
ERAVIPEROOR VILLAGE, THIRUVALLA,
PATHANAMTHITTA DISTRICT-689 612.

BY ADVS.SRI.C.ANILKUMAR (KALLESSERIL)
SRI.C.Y.VINOD KUMAR

RESPONDENT(S)/PETITIONERS:

1. SANUSHA ANILKUMAR, AGED 42 YEARS,
D/O. RAMACHANDRAN NAIR,
SANUSHALAYAM, NALUKODI MURI,
PAIPPAD VILLAGE, CHANGANACHERRY,
KOTTAYAM DISTRICT-686 548.
2. ANANTHU (MINOR, REPRESENTED BY MOTHER AND GUARDIAN,
SANUSHA ANILKUMAR, SANUSHALAYAM, NALUKODI MURI,
PAIPPAD VILLAGE, CHANGANACHERRY,
KOTTAYAM DISTRICT-686 548.
3. ARJUN (MINOR, REPRESENTED BY MOTHER AND GUARDIAN,
SANUSHA ANILKUMAR, SANUSHALAYAM, NALUKODI MURI,
PAIPPAD VILLAGE, CHANGANACHERRY,
KOTTAYAM DISTRICT-686 548.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 18-06-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No. 206 of 2015

Dated this the 18th day of June, 2015

ORDER

The revision petitioner is the respondent in M.C. No.9 of 2014 on the files of the Family Court, Thiruvalla, which was filed by the respondents herein, who are the wife and children of the revision petitioner, claiming enhancement of the maintenance allowance under Sec.127 of the Code of Criminal Procedure. In the earlier M.C. No.261 of 2009, the revision petitioner agreed to pay monthly maintenance allowance at the rate of ₹2,000/-, apart from the interest on the Fixed Deposit in the Post Office Savings Bank Account which would come to ₹2,200/- per month and accordingly, the court below, as per the order

dated 20/7/2010, directed the revision petitioner to pay a total monthly maintenance allowance of ₹2,500/-, apart from the interest on the Fixed Deposit in the Post Office Savings Bank Account. Now, the grievance of the respondents was that, after the order referred above in M.C. No.261 of 2009, the cost of living is highly increased and a substantial amount is required for meeting the day-to-day requirements and educational expenses of the respondents 2 and 3. Now the minor 2nd respondent is studying in 11th Standard at Perunna N.S.S. School and the minor 3rd respondent is studying in 7th Standard in ICSE syllabus at Seventh Day Adventist School. Thus, the meagre total monthly maintenance allowance of ₹4,700/- is not sufficient to meet the bare needs of the respondents. In short, the circumstances have been considerably changed after the passing of the earlier order in the year 2009. They claimed enhanced monthly maintenance allowance at the rate of 7,500/-

to the 1st respondent, ₹4,000/- to the 2nd respondent and ₹3,000/- to the 3rd respondent. It is also contended that the petitioner is working abroad and his income has been increased substantially. The revision petitioner resisted the claim of enhancement of maintenance allowance contending that at the time of disposal of M.C. No.261 of 2009, he was working in Saudi Arabia and thereafter, he became ill and now employment in abroad is lost and now he is in his native place. According to him, he is suffering from rheumatic arthritis and he lost the function of his right hand. Now he is unable to do work. The amount claimed in the petition is highly excessive also.

2. After considering the rival pleas and the evidence let in by both parties, the court below directed the revision petitioner to pay enhanced maintenance allowance at the rate of ₹5,000/- to the 1st respondent and ₹3,000/- each for the minor 2nd and 3rd respondents. The correctness of the enhanced

maintenance allowance is under challenge in this revision petition.

3. It is the case of the respondents that the maintenance allowance, which is being received by them, pursuant to the order dated 20/7/2010 in M.C. No.261 of 2009, is not sufficient to meet the increase in the living cost. So also, the 2nd respondent is studying in 11th Standard and the 3rd respondent is studying in 7th Standard in ICSE syllabus in private schools. So, a substantial amount is required to meet their educational expenses. Cost of living has been increased during the last four years. The increase in the living cost, caused by inflation, is a universal phenomena which does not require evidence. There is a corresponding increase in the income of every earning person also in accordance with the inflation.

4. Though it was contended that the petitioner has lost his job abroad and has returned to his native place, the learned counsel for the petitioner admitted

that he had went back abroad again seeking employment there. I am unable to believe that he is unemployed abroad as claimed by the petitioner. It is contended that he has been suffering from Rheumatic Arthritis and he lost the function of his right hand and now he is unable to do any work. Needless to say, no reliance can be placed on the above contention unless it is proved by production of medical evidence that he has completely lost his earning capacity due to Arthritis. But no such document has been produced in evidence. Merely on the reason that a person is undergoing treatment for Rheumatic Arthritis he cannot be presumed to be having lost his earning capacity. Therefore, those contentions raised before the trial court cannot be taken as a ground to exempt the petitioner from the liability to pay maintenance allowance or exempt him from not paying enhanced maintenance allowance.

5. As rightly observed by the court below, the

respondents have specifically contended that the petitioner is working abroad and he is getting a monthly salary of Rs.1,60,000/-, the burden is heavy on the respondents to prove his actual salary as the same is a matter within his exclusive knowledge, which cannot be proved by the respondents. 'Maintenance' includes provision for food, clothing, shelter, medical attendance and educational expenses. The husband is liable to pay maintenance allowance in accordance with the standard of life, living status and day-to-day needs of his wife and children. In this analysis, I find that the quantum of enhanced maintenance allowance determined by the court below is reasonable, just and proper and no interference is called for under revisional jurisdiction.

This R.P(FC) is dismissed.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge