

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

RPFC.No. 260 of 2015

MC 107/2012 of FAMILY COURT, MALAPPURAM

REVISION PETITIONER / PETITIONER:

**RAFEEKH, AGED 44 YEARS
S/O.HAMZA, NALAKATH HOUSE, PATTAPARAMBU
CHEMMANKADAVU, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.P.SAMSUDIN
SRI.K.C.ANTONY MATHEW
SRI.JITHIN LUKOSE**

RESPONDENT(S)/RESPONDENTS :

- 1. K. ASHIDA, AGED 33 YEARS
D/O.AZEEZ, KAVUNGAL HOUSE, MANKADA ROAD
MAKKARAPARAMBU P.O., 676507, MALAPPURAM DISTRICT.**
- 2. HIBA (MINOR), AGED 9 YEARS
REPRESENTED BY GUARDIAN MOTHER K.ASHIDA
(KOLATHUR POLICE STATION LIMITS).**

**THIS REV.PETITION (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
29-07-2015 ALONG WITH RPFC 261/2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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K.HARILAL, J.

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R.P (FC) Nos.260 & 261 of 2015

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Dated this the 29th day of July, 2015

ORDER

These revision petitions are filed challenging the common order passed in M.C.Nos.107/2012 and 727/2013 on the files of the Family Court, Malappuram. M.C.No.107/2012 was filed by the revision petitioner in R.P (FC) No.260/2015 seeking cancellation of the order passed in M.C.No.250/10 and M.C.No.727/2013 was filed by his wife and daughter seeking enhancement of the maintenance allowance in the above M.C. After considering both M.Cs together, the Family Court dismissed M.C.No.107/2012 and allowed M.C.No.727/2013 granting enhancement at the rate of ₹400/- per month to both respondents. This common order is under challenge in this revision petition. The parties are referred to as in M.C.No.107/2012.

2. The petitioner is the husband of the 1st respondent

as well as the father of the 2nd respondent, who is a minor, aged 7 years. The marital status of the 1st respondent and the paternity of the 2nd respondent are not disputed and the fact that in M.C.No.250/2010, the petitioner was directed to pay maintenance allowance at the rate of ₹3,100/- to the 1st respondent and ₹1,500/- to the 2nd respondent. The petitioner filed M.C.No.107/2012 on the ground that, at the time when the earlier order was passed, he was working abroad and now he returned to India and is working as a salesman in a shop. Thus, there is a considerable reduction in his income. That apart, subsequently, he married another woman who had to undergo an expensive heart surgery and a child is born to him in that wedlock. So, he has to look after his second wife and child. Thirdly, the 1st respondent is in possession of 7 lakhs given by the petitioner and thus there is no circumstance to enhance the quantum of maintenance allowance. But, there are reasonable circumstances to cancel the maintenance

allowance earlier ordered in M.C.No.250/10.

3. In M.C.No.727/13, the contention raised by the respondents are that the quantum of maintenance allowance determined in the year 2010 in M.C.No.250/10 is not sufficient to meet the steep hike in the cost of living and the educational expenses of the 2nd respondent. According to them, there is a considerable increase in the income of the petitioner also. Therefore, he is liable to pay enhanced maintenance allowance at the rate of ₹10,000/- to the 1st respondent and ₹6,000/- to the 2nd respondent. As a counter to the averments in M.C.No.107/2012, they contended that ₹7 lakhs was given to them as a value of gold ornaments, which was taken away by the petitioner and also the return of dowry, which was received from the 1st respondent at the time of marriage. Both parties adduced evidence. After considering the evidence let in by both parties consists of the oral evidence of PWs.1 and 2 and Exts.A1 to A6, RW1 and Ext.B1 produced by the

petitioner, the court below dismissed M.C No.107/2012 and allowed M.C No.727/2013 granting enhancement @ ₹400/- per month to both respondents. The legality of the dismissal of M.C.No.107/12 and the correctness of the enhancement made in M.C.No.727/2013 are challenged in this revision petition.

4. Heard the learned counsel for the petitioner.

5. The learned counsel for the petitioner advanced arguments assailing the findings whereby the court below dismissed M.C.No.107/12 and the findings whereby the court below determined the enhancement @ ₹400/- per month to both respondents.

6. Going by the impugned order, it is seen that M.C.No.107/2012 was dismissed on the reason that, "Section 127 of the Cr.P.C is intended only for alteration in the allowance on proof of change in the circumstances and the said provision does not contemplate cancellation of an order of maintenance passed under Section 125 of the

Cr.P.C. The above reasoning is supported by the decision reported in **Joy Varghese v. Leelamma & Another** [2007 (2) KHC 884]. Having regard to the statutory mandate under Section 127 of the Cr.P.C and the decision referred above, I do not find any reason to interfere with the said finding. Thus, the court below is justified in dismissing M.C.No.107/2012, which was filed seeking cancellation of the maintenance order granted under Section 125 of the Cr.P.C.

7. Then the question to be considered is, whether the enhancement made in M.C.No.727/13 is justifiable? Going by the impugned order, it is seen that the petitioner has no case that he is physically disabled or incapacitated to do work. The settled legal position is that, means signify not only movable or immovable property in the shape of salary, rent or agricultural income but also the earning capacity of a physically able bodied man. It is the case of the petitioner that he has to maintain his second wife and child. I am of

the opinion that the said contention cannot be taken as a ground to deny enhancement of maintenance allowance. It is true that the personal law of the petitioner permits him to marry more than once up to four. But the personal law itself insists that he has to maintain all the wives equally and do justice to all. If that be so, the liability to maintain the second wife cannot be taken as a ground to deny the enhancement of maintenance allowance claimed by the first wife. At the time of contracting the second marriage, he was fully confident of the liability to give maintenance allowance to his both wives in accordance with their requirements, living status and standard of life. Therefore, in the above view of the matter, the court below is justified in rejecting the said contention.

8. Similarly, even though he has paid ₹7 lakhs to the 1st respondent, the same was given as value of her ornaments and dowry which was given to the petitioner at the time of marriage. This explanation given by the 1st

respondent was not disputed in cross examination and no evidence has been adduced to prove otherwise. Therefore, the court below is justified in rejecting the said contention also. There is no evidence to show that, after the pronouncement of the earlier order, the 1st respondent got any permanent employment or any permanent sources of income. Steep hike in the living cost, caused by inflation is a fact which does not require any evidence as the same is a universal phenomena. The earlier order was passed in the year 2010. Indisputably, the living cost of a person is much higher than that of the year 2010 and four years have been elapsed after the passing of the earlier order. In that view of the matter, I find that the enhancement @ ₹400/- per month to both respondents is not excessive.

9. The learned counsel for the petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of the case, the revision petitioner is given five months' time to pay the arrear, provided that, the

revision petitioner shall pay half of the entire arrear within a period of three months from today and the remaining balance shall be paid within the next two months. In the event of failure to pay the first instalment within the specified time, this instalment facility will stand cancelled automatically and the Family Court will be free to enforce the realisation of entire arrear in lump sum.

In the result, these revision petitions will stand dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge