

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

RPFC.No. 299 of 2015

AGAINST THE ORDER IN CMP NO.314/14 IN M.V.NO.295/11 ON
THE FILE OF THE FAMILY COURT, KOZHIKODE, DATED 11/5/2015.

REVISION PETITIONER/RESPONDENT:

C.V.HARRIS MUHAMMAD NAKEER, AGED 34 YEARS,
S/O.CHEKRAYIL VALAPPIL HAMEED,
'BIDULHAFFSA', KALLAI P O, KOZHIKODE 673003.

BY ADVS.SRI.A.RANJITH NARAYANAN
SMT.A.SIMI
SRI.S.K.SAJU

RESPONDENTS/PETITIONERS:

1. SHAFEELA, AGED 26 YEARS,
D/O.AVARANKOYA, ODEPC HOUSING COLONY,
SALMATH MANSIL,
KOLATHARA, KOZHIKODE 673655.

2. YOONUS ALI (MINOR), AGED 10 YEARS,
S/O.HARRIS MUHAMMED NAKEER,
REPRESENTED BY MOTHER IST RESPONDENT, SHAFEELA,
D/O.AVARANKOYA, ODEPC HOUSING COLONY,
SALMATH MANSIL,
KOLATHARA, KOZHIKODE 673655.

3. THALHATH YASIN (MINOR), AGED 9 YEARS,
S/O.HARRIS MUHAMMED NAKEER,
REPRESENTED BY MOTHER IST RESPONDENT, SHAFEELA,
D/O.AVARANKOYA, ODEPC HOUSING COLONY,
SALMATH MANSIL,
KOLATHARA, KOZHIKODE 673655.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP
FOR ADMISSION ON 19-08-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P. (FC) No.299 of 2015

Dated this the 19th day of August, 2015

ORDER

The revision petitioner is the respondent in C.M.P.No.314 of 2014 in M.C.No.295 of 2011 of the Family Court, Kozhikode, filed by the respondents herein, who are the wife and children of the petitioner, claiming enhanced maintenance under Section 127 of the Cr.P.C. In M.C.No.295/11 the petitioner was ordered to pay maintenance allowance @ Rs.2,000/- each to the respondents 2 and 3 from 14.3.2012 onwards, the date of the said order. But, according to the respondents, the amount ordered is now insufficient to meet the steep hike in the living expenses as well as educational and medical

expenses. The petitioner is having the business of scrap and exporting of scrap to other states and he is earning more than Rs.80,000/- per month from his business. In addition to that, he is getting Rs.10,000/- per month from his landed properties. He has his own vehicles and is living in a two-storied building. But the 1st respondent has no job or any source of income and she is depending upon her aged sick parents. Hence they claim enhanced maintenance allowance from Rs.2,000/- to Rs.5,000/- each per month.

2. The petitioner resisted the claim for enhancement contending that he is not earning Rs.80,000/- per month as alleged by the respondents. According to him, he is an employee in the scrap business conducted by his father and getting Rs.500/- per day as wages and that is available only on working days. He has no landed property at all. It is also contended that at the time of dissolution of marriage with the 1st respondent, she was given Rs.5 lakhs. Therefore, the respondents have no right to claim enhanced maintenance allowance.

3. Admittedly, in M.C.No.295 of 2011, the petitioner was ordered to pay maintenance allowance at the rate of ₹2,000/- each per month to the respondents 2 and 3 from 14/2/2012, the date of the said order. Thus, at the time of passing the impugned order, more than two years have been elapsed after the date of an earlier order. Steep hike in the living cost caused by inflation is a universal phenomenon 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 or incapacitated to do work, certainly, there must have an increase in the income of the revision petitioner also. The case of the respondent that the amount, which is being received by them, is not sufficient to meet the present cost of living and the educational expenses is justifiable and as the father of the respondents 2 and 3, the petitioner is liable to pay maintenance allowance in accordance with the living status and day-to-day requirements of his children.

4. It is the case of the respondents that the petitioner is conducting the business of scrap and exporting scrap to other States. It has come out in evidence that he owns a Hyundai car and a bike and Ext.A1 photograph shows that he is residing in a beautiful two storied RCC building. Thus, the evidence available on record shows that the revision petitioner is a man living in luxury and he has sufficient means to pay maintenance allowance to his children in accordance with their requirements. The petitioner has no case that he is physically disabled and incapacitated to do his business or after the passing of the earlier order, his earning capacity has been reduced. The case of the petitioner that he is only a worker who is getting ₹500/- per day in his father's business concern is unbelievable, in the absence of any evidence.

5. I am of the opinion that Ext.B1 agreement has no relevancy at all as the same is an invalid agreement as regards the respondents 2 and 3 are concerned. According to the decision in Rajesh R.

Nair v. Meera Babu [2014 (1) KHC 83], an agreement entered into between the father and mother surrendering or waiving the statutory right of the minor children to claim maintenance allowance is invalid as the same stands against the public policy and such agreements are void under law. Therefore, the claim of the petitioner that as per Ext.B1 agreement, the respondents 2 and 3 are not entitled to get maintenance allowance is liable to be rejected in view of the above decision and I do so.

6. On an analysis of the total evidence on record, I find that the quantum of maintenance allowance determined by the court below is not excessive and no interference is called for under the revisional jurisdiction.

7. The learned counsel for the revision petitioner sought for some time to pay the arrear. Having regard to the facts and circumstances of this case, the revision petitioner is given four months time to pay the arrear, provided that half of the entire arrear shall be paid within two 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, this instalment facility will stand automatically vacated and the first respondent is 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)

Okb/Nan

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P.S. to Judge