

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

RPFC.No. 135 of 2014

**AGAINST THE ORDER IN MC 210/2010 of FAMILY COURT, THIRUVALLA
DATED 27-02-2013**

REVISION PETITIONER/RESPONDENT:-

**ANIL S.PILLAI,
S/O.LATE SREEDHARAN NAIR, RESIDING AT ASOK BHAVAN
VENNIKULAM P.O, PARAMATTOM VILLAGE, MALLAPPALLY TALUK
PATHANAMTHITTA DISTRICT.**

BY ADV. SRI.R.RAJASEKHARAN PILLAI

RESPONDENTS/PETITIONERS:-

- 1. SUDHA S.,
D/O.BHASKARAN NAIR, VRINDAVAN HOUSE, PATHIRIKKAL P.O
PATHRIKKAL VILLAGE, PATHANAPURAM TALUK
KOLLAM - 689 695.**
- 2. GOURI S.NAIR (MINOR),, AGED 12 YEARS
D/O.SUDHA S., -DO- -DO-**
- 3. GOUTHAM KRISHNA (MINOR), AGED 7 YEARS
D/O.SUDHA S.
-DO- -DO- (RESPONDENTS 2 AND 3 REPRESENTED
BY THE MOTHER 1ST RESPONDENT).**

R1 TO R3 BY ADV. SRI.R.GIREESH VARMA

**THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON
20-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURES

- ANNEXURE-1 : COPY OF THE PLAINT IN O.P. NO.946/2010 ON THE FILE OF THE FAMILY COURT KOTTARAKARA FILED BY THE PETITIONER
- ANNEXURE-2 : COPY OF THE PLAINT IN O.P. NO.947/2010 ON THE FILE OF THE FAMILY COURT KOTTARAKARA FILED BY THE PETITIONER
- ANNEXURE-3 : COPY OF THE M.C. NO.210/2010 FILED BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT THIRUVALLA
- ANNEXURE-4 : COPY OF THE CORONARY ANGIOPLASTY REPORT OF THE PETITIONER FROM THE DUBAI HOSPITAL
- ANNEXURE-5 : COPY OF THE CORONARY ANGIOGRAM REPORT ISSUED BY THE BHARAT HOSPITAL KOTTAYAM OF THE PETITIONER
- ANNEXURE-6 : COPY OF THE PETITIONER'S TREATMENT CERTIFICATE ISSUED BY DR. ANILKUMAR

RESPONDENT'S ANNEXURES

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

K.HARILAL, J.

R.P.(FC) No. 135 of 2014

Dated this the 26th day of September, 2014

ORDER

The revision petitioner is the respondent in M.C. No.210/2010 on the files of the Family Court, Thiruvalla. He is the husband of the 1st respondent as well as the father of respondents 2 and 3. The above M.C. was filed under Sec.127 of the Code of Criminal Procedure seeking enhancement of the quantum of maintenance allowance fixed in the earlier M.C. No.74/2009 of the same court. In the above M.C., the revision petitioner was directed to pay monthly allowance of ₹1,250/- to the 1st respondent and ₹1,000/- each to respondents 2 and 3.

2. According to the revision petitioner, after the passing of Ext.A1 order in M.C. No.74/2009, the cost of living has highly increased and a considerable amount is required for meeting the food, clothing and educational expenses of the respondents 2 and 3. Moreover, the 3rd

respondent is a patient and substantial amount is required for purchasing medicine for him. In short, the monthly allowance which is being received by the respondents, at present, is not sufficient to meet the increase in the living expenses; whereas the revision petitioner is working abroad and getting huge amount as salary. So, he is liable to pay enhanced maintenance allowance in proportionate with the increase in the living expenses of the respondents.

3. *Per contra*, the revision petitioner contended that there is no change in the circumstance and the monthly maintenance allowance already awarded as per Ext.A1 Order in M.C. No.74/2009 is sufficient to meet the needs of the respondents. In addition to that, he disputed the paternity of the 3rd respondent. So also, it is contended that he is a heart patient and he has lost his employment abroad and so he has no means to pay the enhanced monthly maintenance allowance claimed by the respondents.

4. The oral evidence given by the 1st respondent and Exhibits A1 to A14 produced by them were considered by the Court below. The revision petitioner was examined as a witness; but no documentary evidence has been adduced. After considering the evidence on record, the court below enhanced the quantum of maintenance allowance fixed earlier and directed the revision petitioner to pay enhanced monthly maintenance allowance of Rs.3,500/- to the 1st petitioner and Rs.2,500/- each to respondents 2 and 3 from the date of Order. The legality and propriety of this Order is under challenge in this revision petition.

5. In the memorandum of revision petition, the revision petitioner contended that the court below has miserably failed to appreciate the facts and evidence in its correct perspective. Though, the petitioner had been gainfully employed in Gulf during the time of marriage in 2003 and later up to 2008, thereafter his life became

miserable, which ultimately culminated in marshaling all his properties and leaving him as an heart patient forever. But, the court below has not considered the above aspects before granting enhancement in the quantum of maintenance allowance. It is also contended that the revision petitioner had provided the respondents with sufficient means by providing 67 cents of rubber plantations from where the respondents are getting sufficient income.

6. *Per contra*, the learned counsel for the respondents contended that enhancement in the quantum of maintenance allowance is justifiable in all respect considering the inflation of money and escalation in the price of essential commodities and the increase in the educational expenses of respondents 2 and 3 after 2009. In the absence of any new source of income of the respondents, the court below can be justified in enhancing the quantum of maintenance allowance. The learned

counsel further drew my attention to Exhibit A14, which shows that the revision petitioner is getting a huge amount per month as salary from a hotel in Dubai.

7. In view of the rival contentions at the Bar, the short question that arises for consideration is whether the court below can be justified in finding that the respondents are entitled to get enhanced maintenance allowance and directing the revision petitioner to pay maintenance allowance at the enhanced rates referred above.

8. Being a petition under section 127 of the Code of Criminal Procedure, the scope of enquiry is confined to the question whether there are any change of circumstances to increase the quantum of maintenance allowance, which was determined under Ext.A1 order in the year 2009. Though, the revision petitioner has disputed the paternity of the 3rd respondent, the said contention is legally unsustainable in a petition under section 127 of the Code of Criminal

Procedure, where the entitlement of maintenance allowance of the 3rd respondent was found by the court below in Ext.A1. Therefore, the argument disputing the paternity of the 3rd respondent is liable to be rejected at this threshold and I do so.

9. Inflation of money value and escalation in the price of essential commodities are universal phenomenon, which cannot be disputed. After 2009 the cost of living has been increased considerably. Going by Exts. A2 to A13 it can be seen that those exhibits are documents evidencing the cost of living which the respondents are meeting after 2009, i.e., Exhibits A2 to A13 are pertaining to the period from 2009 to 2011. Exhibits A2 to A4 show the educational expenses of respondents 2 and 3, Exhibits A5 to A7 receipts show the monthly tuition fee of the 3rd respondent, Exhibits A8 and A9 show the hospital expenses and Exhibits A11 to A13 show the payment of tuition fees for respondents 2 and

3. Exhibit A10 medical certificate issued by the Doctor shows that the 3rd respondent has been suffering from adenoid infection for the last one year and advised medication for a minimum period of two years.

10. On an analysis of the documentary evidence produced by the respondents it can be seen that a substantial amount is required to meet the monthly expenses of the respondents. Though, the revision petitioner had submitted that he was ready to produce his passport to show that he has lost his employment abroad, he failed to produce the same as submitted by him. As rightly held by the court below, an adverse inference can be drawn against the revision petitioner under section 114(g) of the Code of Criminal Procedure to the extent that the revision petitioner is well employed abroad and he is having sufficient means to pay the enhanced maintenance allowance.

11. Having regard to the inflation of money value, increase in the price of essential commodities, the living status of the respondents and the income of the revision petitioner evidence by Ext.A14, I am of the opinion that the enhanced maintenance allowance re-determined by the court below is just and proper and there is no reason to interfere with the quantum of enhanced maintenance allowance determined by the court below.

Hence, this revision petition is devoid of any merit and is dismissed accordingly.

Sd/-
K. HARILAL,
JUDGE

//True Copy//

P.A. to Judge

stu/jjj