IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

RPFC.No. 346 of 2014 ()

AGAINST THE ORDER IN MC 99/2007 of FAMILY COURT, VATAKARA
DATED 09-04-2013

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REVISION PETITIONERS/PETITIONERS:

1. SIMI, AGED 40 YEARS,
D/O.LATE RAJAN, MEETHALE VELAPPIL HOUSE,
'SHIJIL NIVAS', POST MADAPPALLI COLLEGE, VATAKARA TALUK

2. AGNAY, AGED 17 YEARS,
S/O.SIMI, MINOR,
(REPRESENTED BY 1ST PETITIONER AS A GUARDIAN/MOTHER)

BY ADVS.SMT.K.DEEPA (PAYYANUR)
SRI.V.R.NASAR

RESPONDENT(S)/RESPONDENT:

LATHEESH.C.P, AGED 45 YEARS,
S/O.SIVADASAN, CHEENAMPALLI PARAMBIL HOUSE,
'SREESAILAM',PATHANALAYANI AMSOM, KOVILKANDY DESOM
KOYILANDY, REP. BY POWER OF ATTORNEY HOLDER
SRI.SIVADASAN,AGED 52 YEARS, S/O. KARUAKARAN,
CHEENAMPALLI PARAMBIL HOUSE, SREESAILAM,
KOYILANDY BAZAR, KOYILANDY TALUK.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
BY ADV. SRI.ARJUN SREEDHAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 09-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.346 of 2014

Dated this the 9th day of October, 2015.

O R D E R

The petitioners are the petitioners in CMP No.541/12 in M.C.No.99/07 on the files of the Family Court, Vatakara. The above CMP was filed under Section 127 of the Code of Criminal Procedure seeking enhancement of the quantum of maintenance allowance determined in the above M.C. As per the order in M.C., the respondent, who is the father of the 2nd petitioner as well as the husband of the 1st petitioner, was ordered to pay monthly maintenance @ Rs.4,000/- to the 2nd petitioner and Rs.2,000/- to the 1st petitioner. The said order was passed on 5.1.2009. According to the petitioners, the amount which is being received from 2009 onwards is not sufficient to meet their present needs. The 2nd petitioner is congenitally a mentally retarded child. He has 80% disability. He is not in a position to speak or walk without the help of another person. So also, he is suffering from convulsion. Thus he is in need of proper care, surveillance and continuous treatment. Similarly, the 1st petitioner has no job or any source of income and the quantum of amount which is being received by her is not sufficient to meet her day-to-day requirement. Due to escalation in price of essential commodities, a considerable amount is required to meet the day-to-day requirements. It is also contended that the 2nd petitioner is studying in a special school and a considerable amount is required for his education; whereas, the respondent is employed in Amra Trading Company, Philippine Morally Watches, Dubai and is earning a monthly income of Rs.75,000/-. Besides, he has landed properties yielding Rs.10,000/- per month. He has a car also which yields Rs.20,000/- as rent. Thus the respondent is capable enough to pay the enhanced monthly maintenance allowance to meet the present requirement of the petitioners. They claimed enhancement at the rates of Rs.7,000/- to the 2nd petitioner and Rs.3,000/- to the 1st petitioner, per month.

2. Per contra, the respondent contended that the 1st petitioner is running a ration shop and she is doing tailoring works and getting Rs.15,000/- per month. According to him, it is not correct to say that he is getting Rs.75,000/- per month as salary, because after deducting his expenses he gets Rs.12,000/- only as his monthly salary. He denied the allegations that he is having a car and he is getting Rs.20,000/- as rent.

3. On the above pleadings, the 1st petitioner was examined as P.W.1 and Exts.A1 to A13 were marked. Ext.B1 was marked on the side of the respondent and no oral evidence was adduced by him. After considering the evidence on record, the court below directed the respondent to pay enhanced maintenance allowance at the rates of Rs.3,000/- to the 1st petitioner and Rs.7,000/- to the minor 2nd petitioner. The correctness of the quantum of enhanced maintenance allowance determined by the court below is under challenge in this revision petition.

4. Heard the learned counsel for the revision

petitioners and the learned counsel appearing for the respondent. The learned counsel on both the sides advanced arguments in support of their contentions in the CMP.

5. Admittedly, in the earlier order in M.C. No.99/07 the order dated 5.1.2009 was passed directing the respondent to pay monthly maintenance allowance at the rates of Rs.2,000/- to the 1^{st} petitioner and Rs.4,000/- to the 2^{nd} petitioner. According to the petitioners, the said amount is not sufficient to meet their present day-to-day living expenses, considering the escalation in the price of essential commodities and the treatment expenses of the 2^{nd} petitioner, who is congenitally a mentally retarded child. The order in the M.C. was passed in the year 2009. Since more than five years have been elapsed after passing the earlier order, I find merit in the contention of the petitioners that the quantum of amount fixed by the court below in the year 2009 is not sufficient to meet their present living expenses. The steep hike in the living index consequent on inflation is a universal

phenomenon, which does not require proof. There is an increase in the income of every earning person also corresponding to the said inflation. Therefore, the husband is liable to pay maintenance allowance to his wife and children in accordance with the increase in their living expenses. That apart, the wife and children have the right to live with the standard of life on a par with that of the husband and the husband is liable to pay maintenance allowance accordingly. In the instant case, it has come out in evidence adduced by the 1st petitioner that the 2nd petitioner is congenitally a mentally retarded child and the same is not disputed by the respondent. Exts.A1 to A13 would show that a substantial amount is required to meet the expenses of the 2nd petitioner. As referred above, after the passing of the earlier order in the year 2009 there is a steep increase in the cost of medicines and treatment expense. Though the respondent has contended that the 1st petitioner is working as a tailor and she has her own sources of income, no evidence has been adduced to substantiate the said contention. It is the specific case of the 1st petitioner that the respondent is employed abroad and getting Rs.75,000/- as monthly salary. But, the respondent has denied the said claim. According to him, he is getting Rs.12,000/- only after deducting his expenses. But, no evidence has been adduced to substantiate the said claim. Income is a fact, which is exclusively within the knowledge of the person who gets it. Therefore, the burden is heavy on the respondent to prove his exact income. Here, the respondent has not mounted the witness box so as to speak about his exact income. He could have produced sufficient documentary evidence to prove his exact income. But, nothing was brought out in evidence. Therefore, an adverse inference can be drawn against the respondent. As rightly observed by the court below, nobody would toil in an oil rich country for an amount of Rs.12,000/- per month, particularly, when in Kerala a general coolie worker is getting Rs.650- 750 per day. The huge amount which is required to meet the treatment expense of the 2nd petitioner stands proved by Exts.A1 to A13.

6. In view of the above analysis, I find that the enhanced quantum of maintenance allowance determined by the court below is not sufficient or proportionate with the present requirements of the petitioners and the same will stand enhanced to Rs.6,000/- to the 1st petitioner and Rs.10,000/- to the 2nd petitioner. The respondent is directed to pay the enhanced maintenance allowance accordingly.

This R.P(FC) is disposed of.

Sd/-
K. HARILAL, JUDGE

okb.