

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

RPFC.No. 419 of 2014 ()

MC 269/2010 of FAMILY COURT, THIRUVALLA

.....

REVISION PETITIONER(S)/RESPONDENT:

SURESH.R., AGED 44 YEARS,
S/O.RAVEENDRANATH, SREEVALSAM HOUSE, MANIKANDAPURAM,
VAKATHANAM P.O, KOTTAYAM 686 001.

BY ADVS.SRI.BIMAL K.NATH
SRI.SREEVALSAN.V
SMT.M.K.SHIMI
SRI.D.SREENATH

RESPONDENT(S)/PETITIONERS:

1. G.GEETHA, AGED 37 YEARS,
D/O.GOPALAN, ABHIRAM BHAVAN, ERAVIPEROOR VILLAGE,
THIRUVALLA TALUK, PATHANAMTHITTA DISTRICT 689 645.

2. ABHIRAM, AGED 13 YEARS (MINOR) ,
S/O.SURESH, ABHIRAM BHAVAN,
ERAVIPEROOR VILLAGE, THIRUVALLA TALUK,
PATHANAMTHITTA DISTRICT-689645,
REPRESENTED BY MOTHER G.GEETHA.

R1-R2 BY ADV. SMT.G.KRISHNAKUMARI

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 11-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.419 of 2014

Dated this the 11th day of June, 2015.

O R D E R

Revision petitioner is the respondent in M.C.No.269/10 on the files of Family Court, Thiruvalla. The above M.C. was filed under Section 127 of the Code of Criminal Procedure, claiming enhanced maintenance allowance. According to the respondents, earlier in M.C.No.398/03 the revision petitioner was directed to pay maintenance allowance @ Rs.1,000/- to the 1st respondent and Rs.700/- to the 2nd respondent. According to the respondents, the said amount is not sufficient to meet the steep hike in the living cost. It is averred that living cost had been increased considerably due to inflation. Petitioner is employed in Quatar and he is getting a monthly income of Rs.1,25,000/-. According to the respondents, there is a steep increase in the salary of the petitioner and, they are entitled to get enhanced maintenance

allowance at the rate of Rs.2,000/- to the 1st respondent and Rs.20,000/- to the 2nd respondent.

2. The revision petitioner resisted the said claim contending that the 1st respondent is able enough to meet the increase in the living cost as she is employed. It is also contended that her claim for maintenance was settled by Ext.B1 agreement. Therefore, they are not entitled to get enhanced maintenance more than what was fixed in Ext.B1 agreement. After considering the rival contentions, and the evidence adduced by both parties, the court below directed the revision petitioner to pay maintenance allowance at the rate of Rs.3,000/- each to the respondents. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

3. Heard both sides. Both counsel appearing for respective parties advanced arguments in support or their contentions in the M.C.

4. In the earlier M.C., the revision petitioner was directed to pay maintenance allowance to the respondents at the rate of Rs.1,000/- and Rs.700/- respectively. Steep hike in the living cost caused by inflation is a universal phenomenon, which does not require proof. There is a corresponding increase in the income of every earning person also. Needless to say, the quantum of maintenance allowance determined in the year 2005 in M.C.No.398/03 is inadequate to meet the increased cost of living. It is to be borne in mind that one decade has been elapsed after the passing of the earlier order. Though the petitioner had contended that the 1st respondent is also employed, no evidence had been adduced to substantiate the said contention. The only contention raised in the M.C. is that in view of Ext.B1 agreement the respondents are not entitled to claim enhanced maintenance allowance. The court below has liberally considered the scope and extent of Ext.B1 agreement and rightly found that the statutory right under Section 125(1) of the Cr.P.C.

cannot be curtailed by the agreement entered into between the parties. More over, the earlier order in M.C.No.398/03 was passed after the execution of Ext.B1 agreement. If that be so, Ext.B1 agreement cannot be taken into account for considering the right of enhancement. Though the petitioner has contended that he is getting Rs.10,000/- only as monthly income, no evidence had been adduced to substantiate the said contention. He has not even cared to enter the box and depose regarding the contention.

5. Income is a fact within the knowledge of the person who gets it and it is for the petitioner to prove his exact income. Though the petitioner contended that he has lost his job abroad and now he is working in a private company in his native place, no evidence had been adduced to substantiate the said contention also. In the absence of evidence, an adverse inference can be drawn against him under Section 114(g) of the Indian Evidence Act. The husband is liable to pay maintenance allowance to his wife and children in accordance with

the increase in the living cost and their day-to-day needs. In this analysis, I find that the enhanced maintenance allowance determined by the court below is just and proper and no interference is called for.

In the result, this R.P(FC) is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.