

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 31ST MARCH 2008 / 11TH CHAITHRA 1930

RPFC.No. 24 of 2008()

MC.316/2007 OF THE FAMILY COURT, MALAPPURAM
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REVISION PETITIONER/PETITIONER

CHERAYI DASAN ,S/O.RAMANKUTTY
KALARIPARAMBIL VEEDU, ANDATHODU P.O.,CHAVAKKAD.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS: RESPONDENTS

1. VALIYAPARAMBIL BEENA,D/O. SANKARAN
BINESH NIVAS, MANHIKULATH PARAMBA,
CALICUT UNIVERSITY P.O., THENHIPALAM.
2. SAI KIRAN, MINOR REPRESENTED BY HIS
GUARDIAN AND MOTHER VALIYAPARAMBIL BEENA,
BINESH NIVAS, MANHIKULATH PARAMBA,
CALICUT UNIVERSITY P.O., THENHIPALAM.

BY ADV. SRI.K.A.SALIL NARAYANAN

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 31/03/2008, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

R.P.F.C. No. 24 of 2008

Dated this the 31st day of March, 2008

ORDER

This revision petition is directed against an order passed under Section 127 Cr.P.C. enhancing the maintenance granted to the claimants – wife and child of the petitioner herein – from Rs.500/- and Rs.450/- fixed respectively in 1997 to Rs.1000/- and Rs.750/- respectively fixed in the year 2007.

2. Marriage is admitted. Paternity is also admitted. The earlier order, though an ex parte order, is also conceded. The wife contended that subsequent to the earlier order, an Original Petition, which was pending, was agreed to be settled by reunion. But she contended that the husband had not returned the articles or the amount nor had he resumed cohabitation. The passage of time of one decade along with the growth of the child and the increase in the earnings of the petitioner were pressed into service to justify the claim for enhancement of maintenance.

3. The husband contended that subsequent to the order passed under Section 127 Cr.P.C. in 1997 there was an agreement to resume the cohabitation and cohabitation was actually resumed. The spouses allegedly lived together from 2000 to 2007. The order of maintenance was never attempted to be executed in the meantime. In 2007 the wife left the petitioner without any satisfactory reasons. Thereafter attempt was made to execute the order for the entire period. Subsequently the present claim petition was also filed seeking enhancement of maintenance. In these circumstances the husband contended that he is not entitled to pay any enhanced maintenance, she having resorted to separate residence in 2007 without any reasons.

4. The counsel for the rival contestants have been heard. Records of the court below have been perused.

5. The learned counsel for the petitioner contends that the learned Judge of the Family Court erred grossly in not considering whether there has been a resumption of cohabitation and whether the wife had left the company of the petitioner in 2007 without any valid reasons. The learned counsel for the petitioner contends that

cohabitation having been resumed in the interregnum period and the wife having not claimed execution of the earlier order for maintenance all along, the learned Judge was obliged to consider this question under Section 127 Cr.P.C.

6. The learned counsel for the respondents/claimants contends that all these questions do not arise for consideration at all. The wife even in the petition under Section 127 Cr.P.C. had made unambiguous averments that though there was an attempt to settle the Original Petition filed in 2000 by resuming cohabitation, cohabitation was not resumed and the parties were residing separately all along. In these circumstances the contention that there was resumption of cohabitation and subsequent separate residence without any valid reasons did not arise for consideration at all. The counsel submits that the oral evidence of PW1 and RW1 must remove the last trace of doubt on this aspect.

7. I have been taken through the evidence of PW1, the claimant and RW1, the petitioner herein. I find the contention of the learned counsel for the respondent to be absolutely justified. There is no

worthwhile attempt either by cross examination of PW1 or by chief examination of RW1 to advance a contention that there was resumption of cohabitation subsequent to the order in the Original Petition. In the light of the categorical assertions made in the petition under Section 127 Cr.P.C. by the claimants and in the light of the total absence of evidence on this aspect and more importantly in the absence of even an attempt to raise this contention before the learned Judge of the Family Court, the learned Judge was eminently justified in not adverting to this unnecessary controversy, though raised in the counter statement which was not sought to be supported by any evidence at all. I do not, in these circumstances, find any merit in the contention that the learned Judge had omitted to consider any relevant aspect.

8. Be that as it may, the counsel for the petitioner contended that the enhancement allowed is excessive. The petitioner is directed to pay an amount of Rs.1000/- p.m. to his wife and Rs.750/- p.m. to the child. After a period of about one decade maintenance for the wife and child has been enhanced from Rs.500/- to Rs.1000/- and from Rs. 450/- to Rs.750/- In any view of the matter, I am satisfied that the quantum of

enhancement granted is absolutely justified and the same does not warrant any interference. No other contentions are raised.

9. I am satisfied that this revision petition only deserves to be dismissed. I do so.

(R. BASANT)
Judge

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