

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

FRIDAY, THE 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

Mat.Appeal.No. 216 of 2005 ()

**ARISING FROM JUDGMENT DATED 30-11-2004 IN OP 294/2001 of
FAMILY COURT, KOTTAYAM AT ETTUMANOOR**

APPELLANT/RESPONDENT:

**AJITHKUMAR,
S/O.PRABHAKARA PILLA,
KUZHIVELIL HOUSE, PULIYANNOOR KARA,
MEENACHIL TALUK.**

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENT/PETITIONER:

**BINDHU.J.,
D/O.RAJAN PILLA,
ADIVAKKAL HOUSE,
VELLIYAPPALLIL KARA, MEENACHIL TALUK.**

**BY ADVS. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 24-07-
2015 ALONG WITH CROSS OBJECTION 2/2010, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

AMG

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

**Mat. Appeal No. 216 OF 2005
&
Cross Objection No. 2 OF 2010**

DATED THIS THE 24th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

Respondent in OP 294/2001 on the file of Family Court, Kottayam at Ettumanoor is the appellant herein.

2. The appellant and respondent are man and wife and their marriage was solemnised on 11-04-1996 at Murikumpuzha Devi Vilasam temple as per Hindu rites and ceremonies. They were living together thereafter and during that time, a male child by name, Karthik was born to them on 07-05-1997. According to the respondent, while she was living with him, she was subjected to cruelty. Further at the time of marriage 7½ sovereigns of gold ornaments and Rs.20,000/- were given and after the birth of the child, ½ sovereign of gold ornament was given to the child. These gold ornaments and the amounts given were misused by the respondent in the lower court. Since the matrimonial

cruelty became intolerable, she was compelled to leave the matrimonial home. Thereafter she filed OP (HMA) 225/2000 for divorce and also filed OP 294/2001 against the appellant herein for return of gold ornaments or its value @ Rs.4,000/- per sovereign and return of Rs.20,000/- paid at the time of marriage as patrimony totaling an amount of Rs.52,000/-.

3. The respondent in the lower court who is appellant herein appeared and filed counter admitting the marriage and paternity of the child. But he had denied the giving of gold ornaments or cash and misusing of gold ornaments and cash as claimed in the petition. He had also denied the allegation of cruelty. He prayed for dismissal of the applications.

4. Both these cases were jointly tried by the family court. PWs1 to PW4 were examined from the side of the petitioner in the lower court and no documents were marked on her side and appellant was examined as RW1 and Exts.B1 to B6 and B5 (a) were marked on his side. After considering the evidence on record, the court below

found that there is no cruelty proved so as to grant divorce and dismissed the application for divorce. But the court also found that there is no acceptable evidence on the side of the petitioner to prove that Rs.20,000/- was given towards her share and rejected that claim and also rejected the claim of $\frac{1}{2}$ sovereign of gold ornaments given to the child and alleged to have been misappropriated by the appellant, but allowed the petition in part directing the respondent therein who is the appellant herein to return $7\frac{1}{2}$ sovereigns of gold ornaments or its value @ Rs.4,000/- within one month. Aggrieved by the order directing him to return the gold ornaments, the appellant filed the above appeal. Vis-a-vis the quantum of amount awarded and also rejecting the prayer for an amount of Rs.20,000/- and also $\frac{1}{2}$ sovereign of gold ornaments given to the child, the respondent filed cross objection along with CMA 77/2010 to condone the delay of 1187 days in filing the cross objection.

5. Heard both sides.

6. Considering the delay in filing the cross objection is concerned, the cross objector has no case that she was

not aware of the proceedings. Further she entered appearance in the appeal long ago after getting notice from the court. She had no explanation as to why so much delay had caused in filing the cross objection. It was only mentioned that it was due to inadvertent omission on the part of her counsel that the delay occurred. Considering the fact that she entered appearance in the year 2006 itself, there is no sufficient reasons stated for the delay in filing the cross objection and also considering the nature of the objection raised, this court feels that there is no necessity to condone the inordinate delay in filing the cross objection and so the application to condone the delay is dismissed and consequently the cross objection is also dismissed.

7. As regards the claim of the appellant is concerned PW1 had gone to the witness box and had stated that at the time of marriage 7½ sovereigns of gold ornaments were given. It was also fortified by the evidence of PWs 2 to 4. Further the appellant had no case that no gold ornaments were given. Further it was admitted by RW1 that at the time when they were living together, the gold ornaments were

pledged. According to PW1, the gold ornaments were pledged for the purpose of meeting her treatment expenses and also for household expenses. It is admitted by RW1 that he has no income and the treatment and household expenses were met with the income of the petitioner. This probabilizes the case of the petitioner that the gold ornaments were used to meet expenses of the house. He had no case that those gold ornaments were later redeemed and handed over to the petitioner. In fact while she was residing with the appellant, the appellant has got a responsibility to meet the expenses for delivery and also the treatment expenses. If the articles given at the time of marriage were pledged for that purpose and if it is not redeemed and returned by the appellant, then it can only be presumed that it was appropriated for the purpose of meeting his responsibility to maintain the wife and child which he is liable to return at the time when the marital relationship has been strained, which he had not done. Further there is nothing brought out to discard the evidence of PW1 regarding the quantum of gold ornaments given.

One cannot imagine that 7½ sovereigns of gold ornaments would not have been given at the time of marriage and it cannot be said to be excessive also. Further one can imagine that no marriage at any time had happened without providing sufficient gold ornaments to the bride. So under the circumstances the court below was perfectly justified in coming to the conclusion that the petitioner had proved that 7½ sovereigns of gold ornaments were given at the time of marriage and that was used by the respondent for the family purpose which he had to meet as a husband and that was not returned to the petitioner in the lower court and the court below was perfectly justified in directing the respondent in the lower court either to return the gold ornaments or its value @ Rs.4,000/- claimed by the petitioner in the lower court.

8. As regards the value is concerned, in the decision reported in **2010 (4) KLT 691 (William David V. Linu Mary George)** this court has held that, if the parties have quantified the value of gold ornaments even at the time of filing the petition for return of gold ornaments in the

alternative, then they are entitled to get only that much amount. But if the amount was not quantified, but they wanted only the market value of the gold ornaments at the time of realisation, then they are entitled to get the value of gold ornaments at the time of realisation even at the time of execution. But this was distinguished by a subsequent Bench of this court in **2014 (3) KLT 487 (Thomas M. Vargheese V. Sonia Susan Thomas)**. But in this case the petitioner had already quantified the value of gold ornaments as Rs.4,000/- per sovereign and the total amount claimed is also on that basis and the court below had accepted the same and decreed accordingly. There is no evidence adduced on the side of the respondent to prove that the value of gold ornaments claimed is excessive. So under the circumstances, the court below was perfectly justified in directing the appellant herein either to return 7½ sovereigns of gold ornaments or in the alternative to pay value of 7½ sovereigns of gold ornaments @ Rs.4,000/- per sovereign as quantified in the petition. So the decree passed by the court below to that extent is perfectly

justified and it does not call for any interference. So the appeal lacks merit and the same is liable to be dismissed.

In the result, the appeal as also the cross objection are dismissed. Parties are directed to meet the respective cost in the appeal and cross objection.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge