

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Mat.Appeal.No. 35 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OP 1506/2011 of FAMILY COURT,
NEDUMANGAD

APPELLANT/PETITIONER:-:

SHEENA BEEGAM,
SHEENA MANZIL, EX-SERVICE MEN COLONY, KULATHUPUZHA
KOTTARAKARA TALUK.

BY ADV. SRI.M.R.SASITH

RESPONDENT(S)/RESPONDENTS:-:

1. S.SHAMMAD,
NOUSHAD MANZIL, VENKOLLA CHITHARA VILLAGE
KOTTARAKKARA TALUK - 690 001.

2. ABOOBACKER KUNJU,
VENKOLLA CHITHARA VILLAGE, KOTTARAKKARA - 690 001.

3. JAMEELA BEEVI,
VENKOLLA CHITHARA VILLAGE, KOTTARAKKARA - 690 001.

4. NOUSHAD,
VENKOLLA CHITHARA VILLAGE, KOTTARAKKARA - 690 001.

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K.MOHANAN & P.D.RAJAN, JJ

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MAT.APPEAL No.35 of 2015
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Dated 13th January, 2015

JUDGMENT

P.D.RAJAN, J

Appellant is the wife of the first respondent in this appeal, who filed O.P.No.1506 of 2011 before Family Court, Nedumangad for recovery of money and gold ornaments. Appellant contended that first respondent deserted her and is living with another lady and therefore, she claimed to return the gold ornaments and money given by her parents to the first respondent. The first respondent remained absent in the Family Court and was set exparte. Petitioner in the trial court filed proof affidavit and the documents were marked as Exts.A1 to A4. An exparte decree was passed and a sum of Rs.14,50,000/- was allowed to be realised from the first respondent and his assets, for that execution petition is pending.

2. In the meantime, the first respondent, husband approached the Family Court, Nedumangad with I.A.No.624 of 2014 to set aside the exparte order. In that case, appellant, wife remained absent. First respondent in the Family Court submitted that there was sufficient reason for non-appearance

during trial. He contended that due to his ailment he could not appear before trial court in time which was stated in the affidavit and was approved by the Family court. The wife was absent when the above I.A.624 of 2014 was taken up by the Family Court. In the circumstance, the above I.A was allowed on the following terms:-

- “(a) Petitioner in this I.A shall pay or deposit Rs.2,000/- as cost to the opposite party.
- (b) Petitioner shall deposit Rs.1,000/- before the Taluk Legal Services Authority, Nedumangad.
- c) The amount shall be paid or deposited on or before 26-11-2014 failing which, this application shall stand dismissed”.

The case was posted to 01.12.2014. Aggrieved by that order, the wife approached this court with this appeal.

3. Learned counsel for the appellant contended that no medical documents have been produced before the Family Court to condone the delay of 476 days. It is also submitted that actually, the first respondent has already appeared before executing court at the time of pendency of this matter before the Family Court and the reason stated by the Family Court is not sufficient to condone the delay. Hence it is to be set aside. We heard the learned counsel appearing for the respondent

also.

4. We have considered the arguments advanced by learned counsel appearing for the appellant. It is found that appellant was absent when I.A.No. 624 of 2014 was taken up by the Family Court, Nedumangad. The exparte order was also set aside on the ground of illness, on proper reason. No circumstances are brought before us to interfere with the order passed by the learned Judge of Family Court, Nedumangad. Now the case is posted for trial on merits. Considering the facts of this case, we are of the view that trial court already disposed I.A.624 of 2014, in accordance with law. Therefore, no interference is necessary at this stage. We find no merit in this appeal and it is accordingly dismissed.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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