

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

Mat.Appeal.No. 191 of 2015 ()

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AGAINST THE ORDER/JUDGMENT IN OP 1282/2012 of
FAMILY COURT, ALAPPUZHA DATED 18-06-2014**

APPELLANT/RESPONDENT:

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SANTHINI
W/O. VIJAYA VENKITESH 408-11 STREET, NYN NAGAR
THIRUMANGALAM, ANNA NAGAR WEST CHENNAI 40**

**BY ADVS.SRI.SHABU SREEDHARAN
SRI.S.VIJAYAN
SRI.N.MUHAMMAD SAJU
SRI.C.PAULOSE
SRI.SREEDHARAN KARATTA
SMT.RESHMA ABDUL RASHEED**

RESPONDENT/PETITIONER:

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VIJAYA VENKITESH
S/O.VENKITESWARA SHENOY,
KULANGARA VEEDU, A.N.PURAM
ALAPPUZHA 688011**

**BY ADVS. SMT.S.L.SYLAJA
SRI.R.RAJENDRA PRASAD**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 23-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

MA No.191/2015

APPENDIX

APPELLANT'S ANNEXURES

- | | |
|--------------|---|
| ANNEXURE-A1- | TRUE COPY OF THE AFFIDAVIT WITH THE PETITION IN
CMP No.5605/2011 IN MC No.165/2011 BEFORE THE JFCM-II,
KOLLAM DATED 22-09-2011. |
| ANNEXURE-A2- | TRUE COPY OF THE ORDER IN CMP No.5605/2011 IN MC
No.165/2011 PASSED BY JFCM-II, KOLLAM DATED 10-10-2011 |
| ANNEXURE-A3- | TRUE COPY OF THE OBJECTION IN CMP No.5605/2011 IN MC
No.165/2011 BEFORE THE JFCM-II, KOLLAM DATED 21-10-2011. |
| ANNEXURE-A4- | TRUE COPY OF THE NOTICE IN EP No.3/2015 IN OP
No.1282/2012 DATED NIL. |

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.

Mat. Appeal No. 191 OF 2015

DATED THIS THE 23rd DAY OF NOVEMBER, 2015

J U D G M E N T

C.K. Abdul Rehimi, J.:

Challenge in this appeal is against the ex-parte judgment and decree of the Family Court in OP No.1282/2012, through which the original petition filed by the respondent herein seeking custody of the minor child is allowed. Contention of the appellant is that in view of Annexure-A2 order passed by the Judicial First Class Magistrate's Court under the Protection from Domestic Violence Act, the court should not have passed the impugned judgment.

2. We notice that, the appellant had appeared before the Family Court, but subsequently remained absent. Hence the appellant was set ex-parte. The respondent had filed proof affidavit and marked the documents Ext.A1 to A7. The court below had considered the uncontroverted contentions

of the respondent and the judgment was passed after considering the documents produced along with the affidavit. We do not find any illegality or irregularity committed by the court below in warranting interference of this court under the appellate jurisdiction.

3. Having confronted with the above position, learned counsel for the appellant submitted that, the appellant has already approached the Family Court by filing IA Nos.1200/2015 and 1195/2015, seeking to set aside the ex-parte judgment along with application seeking for condonation of delay. In view of pendency of those interim applications, learned counsel for the appellant seeks permission to withdraw this appeal, without prejudice to his right to pursue the matter before the Family Court.

4. Under the above mentioned circumstances the appeal is permitted to be withdrawn, and it will stand dismissed as withdrawn, subject to liberty of the appellant to pursue remedy before the Family Court to set aside ex-parte judgment.

5. Since it is pointed out that interim applications were already filed before the Family Court, the Family Court is directed to consider those applications and to pass appropriate orders, at the earliest possible. Learned counsel for the appellant made an appeal to this court to extend the interim stay granted against the execution of the impugned decree, till the disposal of the interim applications. It is made clear that, if any coercive steps are being pursued in execution proceedings it will be left open to the appellant to file application before the Family Court seeking for stay, till the disposal of the above said interim applications. Needless to observe that if any such application is filed, the Family Court shall take note of such application and shall pass appropriate orders in accordance with law.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge