

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Mat.Appeal.No. 710 of 2015 ()

APPELLANT(S)/PETITIONER/COUNTER PETITIONER:

JORIN JOHN
S/O.JOHN, DELSA COTTAGE, KOTTAPPURAM.P.O.
VIZHINJAM, THIRUVANANTHAPURAM-695 521.

BY ADVS.M/S.SHABU SREEDHARAN,S.VIJAYAN,
K.P.UNNIKRISHNAN (ELOOR),T.S.PRASANNAKUMAR'
K.V.PREMSANKAR & RESHMA ABDUL RASHEED

RESPONDENT(S)/COUNTER PETITIONER/1ST PETITIONER:

RUSY JOY
D/O.STELLA, JRQ VILLA, KOTTAPPURAM.P.O.
VIZHINJAM, THIRUVANANTHAPURAM-695 521.

BY ADV. SRI.P.ANOOP (MULAVANA)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 28-
10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.Abdul Rehim & Mary Joseph, JJ.

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Mat.A.No.710 of 2015

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Dated this the 28th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. The appellant herein is the respondent in O.P.No.275 of 2011 on the files of the Family Court, Thiruvananthapuram, which is instituted by the respondent herein along with her minor son seeking declaration of title over on immovable property, upon which the appellant and the respondent have got joint title, and for realisation of gold ornaments, money, past and future maintenance etc. The original petition was decreed ex-parte on 30.11.2013. The appellant filed I.A.No.3389 of 2014 seeking to set aside the ex-parte decree, along with I.A.No.3388 of 2014 seeking condonation of delay of 323 days in filing the

application for setting aside the ex-parte decree. The Family Court through a common order dated 3.7.2015 had dismissed both the interim applications, finding that the application for setting aside the ex-parte decree was filed much belatedly, even after he had received notice in E.P.No.44 of 2014 filed by the respondent seeking execution of the ex-parte decree. It was also observed that the appellant had entered appearance in the original petition on 17.6.2011 and he had participated in the counselling. But thereafter he had failed to file written statement, despite several adjournments granted, and therefore he was declared ex-parte on 24.7.2012. The court below found that the ex-parte decree was passed only on 30.11.2013. In the meanwhile the appellant had filed I.A.No.222 of 2013 seeking to set aside the ex-parte order passed against him, after condoning delay of 182 days. The said applications were allowed subject to condition of the appellant paying a sum of ₹1,000/- as cost to the

respondent, within a period of 10 days. But the appellant failed to pay the cost as ordered, and hence the said application was dismissed on 24.10.2013. Thereafter only the original petition was decreed ex-parte. Under such circumstances it is found by the Family Court that the appellant was totally negligent in prosecuting his case. It is categorically found that, the contention that he was unaware about the ex-parte decree for a pretty long period of 323 days, is unbelievable. Hence it is found that the applications are devoid of any merit. It is aggrieved by the ex-parte decree as well as by the common order passed by the Family Court, Thiruvananthapuram in I.A.No.3388 of 2014 and I.A.No.3389 of 2014, this appeal is filed.

2. Heard both sides. This court is of the considered opinion that there is no ground existing for interference in the ex-parte judgment passed in O.P.No.257 of 2011. However, we are inclined to consider sustainability of the common order passed

by the Family Court, Thiruvananthapuram in I.A.No.3388 of 2014 and I.A.No.3389 of 2014. On an appreciation of the findings of the Family Court, we are fully convinced that the court below was fully justified in dismissing the application for setting aside the ex-parte decree and the application for condonation of delay. As observed, there was callous negligence on the part of the appellant in prosecuting the matter. It is to be taken note of the fact that he had failed to pay the cost ordered when the court below had shown leniency in setting aside the ex-parte order, after condoning delay of 182 days. Therefore, the appellant deserves no further leniency in the matter.

3. However, taking note of the larger interest involved, that the decree was passed on an ex-parte basis and that the appellant could not dispute the claims, we are inclined to consider the question of setting aside the ex-parte decree, however, subject to imposition of stringent conditions. This court takes note of the

settled legal principle that, causes should be decided on merits, as far as possible, rather than dismissing them on technicalities.

4. Therefore the above appeal is hereby allowed, to the extent of quashing the common order passed by the Family Court, Thiruvananthapuram in I.A.No.3388 of 2014 and I.A.No.3389 of 2014 in O.P.275 of 2011. The said interim applications will stand allowed and the ex-parte judgment and decree passed in O.P.No.275 of 2011 dated 30.11.2013 will stand set aside, subject to condition of the appellant herein provisionally depositing a sum of ₹2,00,000/- towards the claim of maintenance raised by the respondent herein and the 2nd petitioner before the court below, within a period of one month from today. The deposit if any made as above shall be permitted to be withdrawn by the respondent herein, subject to her filing an undertaking before the court that in case the original petition is ultimately dismissed, the amount will be refunded. If the

appellant fails to make the deposit as above, the ex-parte judgment can be executed.

5. If the conditions stipulated above is complied with and if the ex-parte judgment is set aside, the Family Court shall take all earnest endeavour to dispose of the case afresh, at the earliest possible, at any rate, within a period of 4 months from the date of such deposit.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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