

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 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Mat.Appeal.No. 831 of 2015

IA.1227/2014 & IA.1228/2014 IN OP.1027/2013 OF FAMILY COURT, MAVELIKKARA

APPELLANT(S)/COUNTER PETITIONERS:

1. SURESH KUMAR, AGED 32 YEARS,
S/O. RAJAN, NALANCHIRA P.O., C 47,
BSNL QUARTERS, THIRUVANANTHAPURAM, FROM CHANDRA BHAVAN,
T.C 26/1352, PANAVIDA ROAD, THIRUVANANTHAPURAM,
JUNIOR HEALTH INSPECTOR, T.B. CENTRE,
THIRUVANANTHAPURAM.
2. S. RAJAN,
NALANCHIRA P.O., C 47, BSNL QUARTERS,
THIRUVANANTHAPURAM, FROM CHANDRA BHAVAN, T.C 26/1352,
PANAVIDA ROAD, THIRUVANANTHAPURAM.
3. AMMINIYAMMA, AGED 49 YEARS,
NALANCHIRA P.O., C 47, BSNL QUARTERS,
THIRUVANANTHAPURAM, FROM CHANDRA BHAVAN, T.C 26/1352,
PANAVIDA ROAD, THIRUVANANTHAPURAM.
4. SUMA ANIL @ MAYA,
D/O.AMMINIYAMMA, NALANCHIRA P.O., C 47
BSNL QUARTERS, THIRUVANANTHAPURAM, FROM CHANDRA BHAVAN,
T.C 26/1352, PANAVIDA ROAD, THIRUVANANTHAPURAM.

BY ADV. SRI.R.GOPAN

RESPONDENT(S)/RESPONDENT:

**INDU, AGED 29 YEARS,
W/O. SURESH KUMAR, ARUNODAYAM VEETIL, KATTANAM VILLAGE
KATTANAM MURI-695001.**

**BY ADVS. SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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

Mat. Appeal No. 831 of 2015

Dated this the 14th day of October, 2015

JUDGMENT

Abdul Rehim,J.

The respondents in OP.No.1027/2013 on the files of the Family Court, Mavelikkara are the appellants herein. The respondent herein is the petitioner before the court below. The case was instituted seeking for recovery of gold ornaments and for realisation of money and also seeking dissolution of the marriage existing between the 1st appellant and the respondent. Appellants 2 to 4 are the parents and sister of the 1st appellant. The case was decreed ex parte by the Family Court on 16.12.2013, declaring the marriage as dissolved and allowing the respondent herein to realise gold ornaments worth 326.710 grams or its value for an amount of Rs.8,73,949/- and for return of Rs.2,50,000/- along with interest at 6% and also

directing return movables scheduled as item No.2 in the petition or in lieu of that for payment of its value at Rs.15,136/-.

2. The appellants filed IA.No.1228/2014 seeking to set aside the exparte decree along with IA.No.1227/2014 seeking for condonation of delay of 180 days in filing the said petition. It was contended that, the case was initially instituted before the Family Court, Alappuzha and it was transferred to the Family Court, Mavelikkara after establishment of that court. It is averred in the interim applications that the appellants were not having any knowledge about the transfer of the case and that they have not received any notice from the court to which the case was transferred. According to the appellants, when they made enquiries at Family court, Alappuzha they came to know that the case was transferred to the Family court, Mavelikkara . But since no notice was received from the Family court, Mavelikkara, they made enquiries and it was

revealed that the case was decreed exparte on 16.12.13. According to the appellants, they came to know about the exparte decree only on 6.6.2014. Therefore it is prayed that the exparte decree may be set aside after condoning the delay in filing the application.

3. The interim applications for setting aside the exparte decree and for condonation of delay were opposed by the respondent through objections filed contending that there was a mediation settlement arrived during pendency of the matter before the Family Court at Alappuzha and the parties have signed a compromise on 11.3.2014. Thereafter the case was posted on several occasions for complying the terms of the compromise and the appellants have not turned up. While so the case was transferred to the Family court at Mavelikkara, and inspite of several adjournments the appellants have not appeared. Therefore it is contended that, there is no sufficient grounds to set aside the exparte order. After evaluating

the rival contentions, the Family Court took notice of the compromise alleged to have been arrived at before the Family court at Alappuzha. It was observed that the appellants were set *ex parte* when the case was pending before the Family court at Alappuzha and the case was transferred only thereafter. The *ex parte* decree was passed on 16.12.2013, when the appellants were not turned up, finding that despite arriving at a compromise the appellants failed to appear before the Family Court, Alappuzha and that the Family Court, Alappuzha had declared them *ex-parte*. It is found that there is no reason to condone the delay or to set aside the *ex parte* decree. It is aggrieved by the dismissal of the interim applications, this appeal is filed.

4. Contentions of the appellants are that, the court below had failed to consider the fact that no notice was issued to the appellants intimating about posting of the case before the Family Court at Mavelikkara. Therefore the

court below ought to have considered the contention of the appellants that they were not having intimation regarding posting of the case. It is contended that the court below had failed to consider the fact that the appellants came to know about the ex parte decree only on 6.6.2014. Hence it is contended that dismissal of the interim applications without considering the relevant aspects will amount to an erroneous exercise of jurisdiction vested on the Family Court.

5. Per contra, learned counsel for the respondent contended that, there was callous negligence on the part of the appellants in prosecuting the matter before the Family Court at Alappuzha. It is stated that on two occasions, when the case was pending before the court at Alappuzha, the appellants were absent and they were declared ex parte. But subsequently those orders were set aside. The appellants have willingly arrived at a compromise when the case was sent for mediation. But they have turned up after

the compromise and failed to appear before the court below. It is also contended that there was no notice issued from the Family Court at Mavelikkara, because the appellants were already declared ex-parte at the time when the case was transferred to the court at Mavelikkara.

6. From the rival contentions it is evident that, there were callous negligence and laches on the part of the appellants in prosecuting the case before the Family Court. There exists a dispute between the parties as to whether the ex-parte order passed by the court at Alappuzha was set aside before transfer of the case or not. According to the appellants, when an ex-parte order was passed against them, they have filed an application on 30.5.2013 to set aside the exparte order and the court at Allapuzha had allowed the same. This aspect is disputed by learned counsel for the respondent, contending that they were declared exparte and thereafter the case was posted on 30.5.13 before the court at Alappuzha. But without setting

aside the exparte the case was transferred to Mavelikkara on 9.7.2013. Whatever that be, it remains a fact that, after transfer of the case to the court at Mavelikkara the appellants were not put to notice regarding the posting date. Further, this court is of the opinion that considering the larger interest involved, that the appellants could not contest the matter on merits before the court below, a lenient view ought to have been taken in the matter of setting aside the decree passed ex-parte. Hence, we are inclined to condone the delay and to set aside the ex-parte decree, subject to awarding of compensatory cost payable to the respondent.

7. The respondent had raised a further contention that the decree with respect to dissolution of the marriage cannot be annulled, because the respondent had remarried on completion of the statutory appellate period, within which there was no appeal filed against the exparte decree. This is a matter which need to be taken into consideration by the

Family Court while disposing the original petition afresh. It will be left open to the respondent to take all such contentions to challenge the relief sought for dissolution of the marriage.

8. Under the above mentioned circumstances, the appeal is hereby allowed to the extent of setting aside the order passed by the Family Court, Mavelikkara in IA.No.1228/2014 & IA.No. 1227/2014 in OP.No.1027/2013. The said interim applications will stand allowed subject to condition of the appellants paying cost of Rs.15,000/- to the respondent either directly or to her counsel appearing before the court below, within a period of 3 weeks from today. The Family Court is directed to proceed further in the original petition, once payment of the cost is noticed through any proper memo/acknowledgment to be filed by the appellants within the said period.

9. Considering the fact that the case was originally instituted before the Family Court, Alappuzha during the

year 2012, the Family Court is directed to take all earnest efforts to dispose of the case at the earliest possible, at any rate, within a period of 6 months from the date of receipt of a copy of this judgment.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

