

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

OP (FC).No. 4449 of 2012 (R)

OP 542/2009 OF THE FAMILY COURT,THRISSUR

PETITIONER(S):RESPONDENT

HAMSA
S/O.VALAVIL VEETIL HYDROS HAJI
MALESAMANGALAM DESOM, THIRUVILLAWAMALA VILLAGE
TALAPPILLY TALUK.

BY ADV. SRI.P.JAYARAM

RESPONDENT(S):PETITIONERS

1. HAIRUNNEESA
W/O.VALAVIL VEETIL HAMSA, MALESAMANGALAM DESOM
THIRUVILWAMALA VILLAGE, TALAPPILLI TALUK.
2. JASNA, AGED 18 YEARS
D/O.HAIRUNEESA, RESIDING DO. DO.
3. HASNA, AGED 13 YEARS
(MINOR), D/O. HAIRUNEESA, DO. DO.
4. SHAHABAS, AGED 7 YEARS
(MINOR)
S/O.DO. DO.(MINORS 3 AND 4 REPRESENTED BY MOTHER AND
GUARDIAN 1ST RESPONDENT HAIRUNEESA.

R1-R4 BY ADV. SRI.MAHESH V.MENON

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

OP(FC). No. 4449 of 2012

Dated this the 19th day of November, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner herein is the respondent in OP.No.542/2009 on the files of the Family Court, Thrissur, which was instituted by the respondents herein seeking return of gold ornaments, household articles and for maintenance, both past and future. The above original petition was decreed by the Family Court after setting the petitioner herein as exparte, on 4.6.2010, as per Ext.P5 order. The petitioner herein filed IA.No.3815/2010 seeking to set aside the exparte decree along with IA.No.3814/2010 seeking for condonation of delay of 71 days in filing the application to set aside the exparte decree. Ext.P7 and P6 are the copies of those applications. The court below had dismissed both IAs through Exts.P8 and P9 orders on the default of the petitioner to appear before the court on 31.8.2010, despite specific directions issued in that respect. It is challenging

Exts.P8 and P9 orders and also challenging the steps initiated for execution of the decree based on Exts.P10 and P11, the above original petition is filed. Inter alia, the petitioner is seeking relief to allow Exts.P6 and P7 interim applications and to set aside the exparte decree .

2. Heard; both sides. Counsel on behalf of the respondents contended that, there occurred callous negligence on the part of the petitioner in prosecuting the case before the Family Court. It is contended that, even after Ext.P5 order the petitioner has not taken any proper care in pursuing the matter to get the exparte decree set aside. The application itself was filed only at a belated stage. Despite specific direction issued by the Family Court to the petitioner to appear before that court on 31.8.2010, the petitioner had failed to appear and the interim applications were dismissed only on that count. A technical contention is also raised that the approach made before this court by invoking Article 227 is not maintainable, because the apposite remedy available to the petitioner is to approach the Family Court itself seeking for restoration of Exts.P6 and P7 applications.

3. When the above original petition came up for admission on 19.12.2012, this court granted an interim stay against further steps of execution, subject to condition of the petitioner

depositing a sum of Rs.1,50,000/- before the court below. A report received from the Family Court, Thrissur, dt. 28.7.2015 would indicate that the said amount was deposited before the Family Court on 17.1.2013. There is merit in the contention raised on behalf of the respondents that the proper course available to the petitioner was to approach the Family Court itself seeking for restoration of Exts.P6 and P7 interim applications. However, learned counsel appearing for the petitioner contended that the petitioner was denied of any opportunity to contest the case on merits and the exparte decree, if executed, would result in causing severe legal injuries, loss and prejudice to the petitioner. It is also contended that if the petitioner is relegated to the Family Court to seek remedy by way of restoration of Exts.P6 and P7 interim applications, it may cause further delay and will only multiply the proceedings. It is conceded on behalf of the petitioner that this court can permit the respondents to withdraw the amount of Rs.1,50,000/- which is under deposit, appropriating the said amount towards liability of the petitioner to provide maintenance to respondents 2 to 4. On the basis of the concession expressed as above, this court is of the opinion that in order to have an expeditious adjudication of the matter on merits before the Family Court, the petition to set aside the

exparte decree can be allowed.

4. Therefore, in exercise of the supervisory jurisdiction vested on this court, the above original petition is disposed of on the following terms;

(i). The original petition is allowed to the extent of quashing Exts.P8 and P9 orders passed by the Family Court in IA.Nos.3814/2010 and 3815/2010 in OP.No.542/2009. Those applications will stand allowed, subject to condition of permitting the respondents to withdraw the amount of Rs.1,50,000/- under deposit before the Family Court. Consequently the exparte decree passed by the Family Court in OP.No.542/2009 (Ext.P5) dt. 4.6.2010 will stand set aside. The Family Court will restore the case on its files and shall proceed with the trial of the case and shall dispose of the same at the earliest possible.

5. Considering the fact that the original petition is of the year 2009, all earnest efforts will be taken by that court to dispose of the case at the earliest, at any rate, within 3 months from the date of receipt of a copy of this judgment.

6. The amount allowed to be withdrawn by the respondents shall be appropriated towards liability of the petitioner to provide maintenance to respondents 2 to 4 in OP. No.542/2009, when

the original petition is ultimately decided.

7. The parties will appear before the Family Court on 11.12.2015.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/