

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

OP(Cr1.).No. 210 of 2015 (Q)

AGAINST M.C NO.228/2014 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT I, THAMARASSERY

PETITIONER/RESPONDENT:

SHYBIN MATHEW, AGED 33 YEARS,
S/O C.V. MATHEW,
TRANSCAR INDIA PRIVATE LIMITED, 80/81,
AMBATHOOR INDUSTRIAL ESTATE, CHENNAI,
TAMIL NADU STATE.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT/PETITIONER:

ANU K BABU, AGED 27 YEARS,
D/O BABU K.V., KOCHUPARAMBIL HOUSE,
PERUMPILLY POST,
THAMARASSERY, KOZHIKODE-673586.

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Cr1.).No. 210 of 2015 (Q)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF THE PETITION IN M.C.NO.228 OF 2014 FILED BY THE RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THAMARASSERY DATED 24.9.2014.

EXHIBIT P2: COPY OF THE APPLICATION CMP NO.5336 OF 2014 IN M.C.NO.228 OF 2014 FILED BY THE RESPONDENT DATED 24.9.2014.

EXHIBIT P3: COPY OF THE ORDER IN CMP NO.5536 OF 2014 IN M.C.228 OF 2014 DATED 24.9.2014.

EXHIBIT P4: COPY OF THE COUNTER FILED BY THE PETITIONER HEREIN IN O.A.NO.78 OF 2013 ON THE FILE OF THE FAMILY COURT, KOZHIKODE DATED 6.12.2013.

EXHIBIT P5: COPY OF THE PROCEEDINGS OF THE FAMILY COURT, KOZHIKODE, IN O.A.NO.78 OF 2013.

EXHIBIT P6: COPY OF THE AFFIDAVIT IN SUPPORT OF THE C.M.P.NO.2933 OF 2015 IN M.C.NO.228 OF 2014 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THAMARASSERY DATED 10.6.2015.

EXHIBIT P7: COPY OF THE C.M.P.NO.274/2015 IN C.M.P NO.5336/2014 IN M.C.NO.228 OF 2014 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THAMARASSERY DATED 20.12.2014.

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

O.P(Crl) No.210 of 2015

Dated this the 7th day of October, 2015

J U D G M E N T

The petitioner herein is the respondent in M.C No.228/2014 of the Judicial First Class Magistrate Court I, Thamarassery. It is a proceeding brought under Section 12 of the Prevention of Women from Domestic Violence Act (D.V Act) for certain reliefs. Along with the main proceeding, the claimant also filed C.M.P No.5336/2014 for some interim relief. On 24.9.2014 the learned Magistrate passed an ad interim order of maintenance, directing the petitioner to pay maintenance to his wife and the child at the rate of 1,500/- each per month, and the said application was posted for hearing. The petitioner herein had not entered appearance in court at that time. However he entered appearance as respondent on 17.1.2015 and sought time to file statement of objection. When the petitioner herein failed to file statement of objection after two or three postings, the learned Magistrate proceeded to record evidence in the main proceeding, and C.M.P No.5336/2014 was also posted the main

proceeding. On 10.6.2015 the petitioner herein filed his statement of objection along with an application to condone delay. The learned Magistrate allowed the said application on a cost of ₹3,000/-. When the petitioner failed to make payment of the cost as ordered, the learned Magistrate rejected the request and set the petitioner ex-parte. Accordingly, the learned Magistrate recorded ex-parte evidence. The claimant was examined as PW1 and Exts.P1 to P3 were marked on her side. Aggrieved by the rejection of his request, the petitioner brought this petition under Article 227 of the Constitution of India, for a direction to the court below to accept his statement of objection and to allow him to make contest in the proceeding.

2. As required by the Court, the learned Magistrate submitted a report dated 29.9.2015 showing the progress of the case. The learned Magistrate has also furnished the extract of proceedings from the date of filing till this date. The extract of proceedings in C.M.P No.5336/2014 shows that interim order was passed by the learned Magistrate without waiting for the appearance of the respondent. However, the learned Magistrate passed only an ad interim order without closing the application for interim relief, and the application proceeded along with the

main proceeding. Thus C.M.P No.5336/2014 is yet to be decided finally. Being a purely interlocutory order, an appeal may not lie against the said order dated 24.9.2014. Anyway, let appropriate orders be passed by the learned Magistrate on C.M.P No.5336/2014, after hearing the respondent also.

3. The petitioner's grievance is that his request to receive the statement of objection was wrongly rejected by the learned Magistrate. Of course, on a perusal of the materials, including the diary extract I find that the petitioner herein in fact failed to file his objection inspite of repeated opportunities granted by the learned Magistrate. The petitioner's grievance, that the learned Magistrate has struck off his defence due to failure to pay cost, is not substantiated by the diary extract. However, when the petitioner failed to file statement and when his request to receive his statement was also rejected, the learned Magistrate recorded evidence ex-parte. I find that the petitioner herein is really aggrieved. He made appearance in the court only on 17.1.2015, and within six months he filed a statement of objection along with an application to condone the delay in filing objection. Unfortunately, the learned Magistrate ordered a cost of ₹3,000/-. The petitioner's grievance is that due

to some unavoidable circumstances he could not make payment of cost as ordered. The learned counsel before this Court submits that the petitioner is ready to make payment of the cost as ordered by the learned Magistrate, and he makes a request for an opportunity to contest the matter in the trial court. I am inclined to grant the request made by the petitioner. It is appropriate and just that the dispute be decided on merits, after hearing petitioner also.

In the result, this Original Petition (Crl) is disposed of as follows:

- a) The procedural order of the learned Magistrate dated 22.8.2015, setting the petitioner herein ex-parte will stand set aside.
- b) The petitioner herein will deposit the cost of ₹3,000/- as ordered by the learned Magistrate, within three weeks from this date, in the trial court.
- c) On such deposit being made, the learned Magistrate will accept the statement of objection (counter statement) filed by the petitioner, and the learned Magistrate will proceed to decide and dispose of the main case itself, at the earliest.

d) If further orders are felt necessary in the circumstances in C.M.P No.5336/2014, the learned Magistrate may pass appropriate interim orders after hearing the petitioner also. However, if the main case itself can be disposed of within two months such interim orders need not be passed.

e) The petitioner will appear in the trial court on 19.10.2015.

Furnish a copy of this order to the learned counsel for the petitioner without any delay.

**P.UBAID
JUDGE**

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