

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

OP(Crl.).No. 293 of 2015 (Q)

**C.M.P.NO.759 OF 2015 AND C.M.P.NO.760 OF 2015 IN M.C.NO.572 OF 2013 BEFORE
THE FAMILY COURT, TIRUR.**

PETITIONER/RESPONDENT:

**SURESH KUMAR,
S/O. ILLATHUPARAMBU SUBRAMANIAN,
ILLATHUPARAMBU HOUSE,
CODAKKAL (PO), TIRUR TALUK,
MALAPPURAM DISTRICT.**

BY ADV. SRI.JAMSHEED HAFIZ

RESPONDENT/RESPONDENT:

- 1. ANITHA, AGED 32 YEARS,
D/O. KUNJHAPPAN, PALOORTHODI HOUSE,
KALPAKANCHERY (PO), PIN - 676 552,
TIRUR TALUK,
MALAPPURAM DISTRICT.**
- 2. DIYA KRISHNA (MINOR), AGED 3 YEARS,
D/O. ANITHA
REPRESENTED BY THE MOTHER 1ST RESPONDENT**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 09-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 : COPY OF THE PETITION IN M.C.NO. 572/2013 BEFORE THE FAMILY COURT TIRUR, DATED 18-04-2013

EXHIBIT P2 : COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER HEREIN DATED 04-03-2015

EXHIBIT P3 : COPY OF THE CHIEF AFFIDAVIT AND CROSS EXAMINATION OF THE 1ST RESPONDENT IN M.C.NO. 572/2013 BEFORE THE FAMILY COURT TIRUR DATED 15-06-2015

EXHIBIT P4 : COPY OF THE APPLICATION FOR RECEIVING THE WITNESS LIST AS C.M.P.NO. 759/2015 IN M.C.NO. 572/2013 BEFORE THE FAMILY COURT TIRUR DATED 05-08-2015

EXHIBIT P5 : COPY OF THE APPLICATION PRODUCING DOCUMENT AS C.M.P.NO.760/2015 IN M.C.NO. 572/2013 BEFORE THE FAMILY COURT TIRUR DATED 05-08-2015

EXHIBIT P6 : COPY OF THE ORDER IN C.M.P.NO. 759/2015 IN M.C.NO. 572/2013 BEFORE THE FAMILY COURT TIRUR DATED 05-08-2015

EXHIBIT P7 : COPY OF THE ORDER IN C.M.P.NO. 760/2015 IN M.C.NO. 572/2013 BEFORE THE FAMILY COURT TIRUR DATED 05-08-2015

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE

skr

SUNIL THOMAS, J.

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O.P.(Crl.).No. 293 of 2015

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Dated this the 9th day of September, 2015

JUDGMENT

The petitioner herein is the respondent in M.C.No.572 of 2013 of the Family Court, Tirur. The respondents herein who are the wife and minor daughter sought interim maintenance from the petitioner. The petitioner herein was contesting the proceedings. Ultimately the wife was examined. Thereafter, before the commencement of the trial of the husband he filed C.M.P.No. 759/2015 and 760/2015 seeking permission to file a list of witnesses as well as to let in a new document. The court below, by separate orders, rejected both the applications on the ground that the application was belatedly filed and that too, after the examination of the wife. It was also held that the trial had commenced and there was no valid ground made out and if the petition was allowed at that stage, it will cause prejudice to the petitioner.

2. This is challenged by the petitioner in this writ proceedings. It is submitted by the learned counsel that the trial is posted to tomorrow. Patently, the evidence of one party cannot be completely shutout, though there is a possibility of contending that the respondent has belatedly approached the court, with a document, to which the wife had no access before letting her evidence. However, shutting out a chance to adduce all evidence, will not be in the best interest of either side. In other words normal course would have been to allow C.M.P.No. 759 of 2015 notwithstanding the delay. It appears that the court was more concerned by the fact that it was filed at the belated stage that too, after the wife had tendered her oral evidence.

3. Regarding the document sought to be produced, whether they were essential for the purpose of deciding the question of maintenance is a different aspect. However, it cannot be said that the court went wrong in holding that

the application was belatedly filed, not only that, the evidence shall not be shutout. Since, there was a chance of further protracting the proceedings on that ground alone.

4. I am not inclined to issue notice to the petitioner at this stage, since it may further delay the trial. Hence I am inclined to allow both the applications, even at the risk of not issuing notice to the 1st respondents herein. Hence I feel that both the applications are also liable to be allowed in the interest of both sides and also to avoid a further delay in ultimate justice being rendered to both parties. However it is also pertinent to note that the documents sought to be let in evidence is one touching upon the claim raised by the petitioner and tendering it in evidence without giving her an opportunity to explain her side, may work out in justice to the wife. Hence the interest of the wife would be protected if she is permitted to be recalled, at her option, to give evidence touching upon the

documents referred to in C.M.P.No. 760 of 2015.

In the result O.P.(Crl) is allowed. The impugned orders are set aside and C.M.P.No. 759 of 2015 and C.M.P.No. 760 of 2015, are allowed, subject to the condition that if the wife proposes to tender evidence on the documents referred to in C.M.P.No. 759 of 2015, she shall be recalled and examined on condition that the reasonable expenses for her travel to court, shall be deposited by the petitioner husband, which shall be determined by the court below, incase she exercises the option to be recalled. O.P. is allowed.

Sd/-
SUNIL THOMAS,
JUDGE.