

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

OP(Crl.).No. 413 of 2015 (Q)

PETITIONERS:

- 1. L.P.LOPPAZ, AGED 85 YEARS, DOLLY BHAVANAM
KIZHAVOOR, MUKHATHALA, KOLLAM**
- 2. REETHA LOPPAZ, AGED 75 YEARS, DOLLY BHAVANAM
KIZHAVOOR, MUKHATHALA, KOLLAM**

**BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.V.S.THOSHIN**

RESPONDENTS:

- 1. SHEEJA, D/O. MANI, SREEPADAM HOUSE
KODUTHIRAPALLY PIRAGIRI, PALAKKAD
NOW RESIDING AT PETROVIA, KIZHAVOOR
MUKHATHALA, KOLLAM, PIN-691577**
- 2. JOHNSON LOUIS LOPPAZ, S/O. L.P.LOPPAZ
DOLLY BHAVANAM
KIZHAVOOR, MUKHATHALA, KOLLAM-691577**

BY PUBLIC PROSECUTOR SMT. SHEEBA M.T.

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 10-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

O.P.(CRL) NO. 413/2015

APPENDIX

PETITIONERS' EXHIBITS

**EXT.P1 COPY OF THE EXPARTE ORDER DATED 26.04.2013 IN CMP
NO.5167/2013 IN M.C.114/2013 PENDING BEFORE THE JUDICIAL FIRST
CLASS MAGISTRATE'S COURT-II, KOLLAM**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A.TO JUDGE

SD

P. UBAID, J.

O.P.(CrI) No.413 of 2015

Dated this the 10th day of December, 2015

JUDGMENT

The petitioners herein are the respondents in M.C.No.114/2013 of the Judicial First Class Magistrate's Court-II, Kollam, which is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V.Act'). On an application brought by the claimant along with the main proceeding as CMP 5167/2013, the learned Magistrate passed an ad interim order under Section 23(2) of the D.V.Act on 20.06.2013, restraining the petitioners herein from causing any sort of obstruction; physical or otherwise, to the peaceful residence of the claimant in the shared household. The said order is under challenge in this proceeding brought under Article 227 of the Constitution of India. What the petitioner practically requires is a speedy disposal of the case on merits. Ext.P1 is the copy of the impugned order. It shows that CMP No.5167/2013 is yet to be decided on merits by the learned Magistrate after hearing both sides. Instead of making appearance before the court below, and making contest

in CMP No.5167/2013, the petitioners rushed to this Court under Article 227 of the Constitution of India. The order passed by the court below is not an interim order on merits. It is only an ad interim order which is always subject to variation or modification, on merits. The petitioners can very well file their statement of objection before the learned Magistrate and have the CMP No.5167/2013 heard and disposed of on merits. The main proceeding being one of 2013, that itself can be decided on merits by the learned Magistrate, if it is ripe for trial and if all pre-trial steps are over. Instead of making contest there, the petitioner wrongly approached this Court unnecessarily under Article 227 of the Constitution.

In the above circumstances, this petition is disposed of with observation that the petitioner can very well make contest in CMP No.5167/2013, which the learned Magistrate will consider and dispose of on merits, or if the main proceeding itself is ripe for trial and disposal, such a course also can be resorted to by the learned Magistrate.

Sd/-
P. UBAID, JUDGE

sd

// True Copy // P.A. to Judge