

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP (FC) .No. 5 of 2015 (R)

AGAINST THE ORDER IN OP 142/2012 of FAMILY COURT, IRINJALAKUDA
DATED 16-12-2014

PETITIONER:

SURENDRAN, AGED 65 YEARS,
S/O.PARAMBIKATTIL NARAYANAN, VELLANCHIRA DESOM,
ALLOOR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

RESPONDENT:

LAKSHMI,
W/O.RAKESH
D/O.THADATHIL LALITHAMBIKA,
METHALA VILLAGE & DESOM
KODUNGALLUR TALUK.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 5 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF OP 142/2012 ON THE FILES OF THE FAMILY COURT
IRIJALAKUDA.

EXT.P2 TRUE COPY OF OBJECTION FILED BY THE PETITIONER TO O.P.142/2012
BEFORE THE FAMILY COURT,IRINJALAKUDA.

EXT.P3 TRUE COPY OF REPLY NOTICE SEND BY THE PETITIONER.

EXT.P4 TRUE COPY OF PETITION IN I.A.2319/2014 IN OP 142/2012 ON THE
FILES OF THE FAMILY COURT,IRINJALAKUDA.

EXT.P5 TRUE COPY OF THE ORDER DT.16/12/2014 IN I.A.2319/2014 IN OP
142/2012 OF THE FAMILY COURT,IRINJALAKUDA.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
O.P.(FC)No.5 of 2015
.....

Dated this the 22nd day of May, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner, who is the respondent in I.A.No.2319/2014 in O.P.No.142/2012 on the file of the family court, Irnjalakkuda, challenging the order to the extent of imposing cost.

2. It is alleged in the petition that the original petition in the lower court was jointly filed by the respondent herein along with her mother late Lalithambika before the family court, Thrissur as O.P.No.142/2008 seeking a decree for realization of an amount of ₹6,000/- (₹3,000/- each) being the amount towards maintenance for both of them and also for a decree for realization of an amount of ₹1,40,000/- being the amount required to be spent by the respondent for completion of her Chartered Accountancy course and also for a decree for realization of an amount of ₹9,54,840/-being the amount alleged to have been spent by Lalithambika, the original first petitioner, before the lower court towards the marriage expenses of the

respondent herein. The original petition was later amended by incorporating further prayer for realization of an amount of ₹2,16,000/- being the arrears of maintenance for three years.

3. The petitioner herein appeared and filed a detailed objection stating that no amount is due and all disputes between them were settled by executing an agreement and there is no liability to pay any amount. In the meanwhile, the original first petitioner died. Thereafter when the case was posted for evidence, the respondent herein was examined as PW1 and the documents alleged to have been executed between the petitioner herein and the original first petitioner in the lower court and certain other receipts said to have been issued by the deceased, original first petitioner in the lower court, were confronted to her, the same were denied by PW1 in the box. Thereafter the petitioner filed I.A.No.2319/2014 for sending the disputed documents for expert opinion under section 45 of the Evidence Act and that petition was allowed by the court below by the impugned order on condition of payment of cost of Rs.10,000/- to the respondent herein within fifteen days. That order is being challenged by filing this petition before this Court by the petitioner.

4. Though notice was served on the respondent, she remained absent.

5. Heard the counsel for the petitioner.

6. The counsel for the petitioner submitted that the observation made by the court below that the application is belated is not correct. There was only a vague denial in the written statement regarding the documents mentioned in the reply notice and only when those documents were confronted to PW1 and she denied the same, he will be getting an opportunity to file an application to prove his case. So there is no laches on the part of the petitioner in filing the application and he has no intention to protract the proceedings as well.

7. There is some force in the submission made by the counsel for the petitioner. Having allowed the application for sending the disputed documents for expert opinion, the court below was not justified in ordering heavy cost as a condition for allowing the application. If the court felt that such an expert opinion is required for proper adjudication of the case and exercising discretion for allowing the application, for that purpose, the court should not have imposed heavy cost, which will tantamount to denial of the relief to the petitioner.

So, under the circumstances, we feel that the condition imposed by the court below for allowing the application is unsustainable in law and the same is liable to be set aside and the condition is set aside while allowing the application for sending the document for expert opinion. The court below is directed to take steps to send the documents for expert opinion and get opinion of the expert fixing the time limit for the expert to furnish report. The lower court is directed to dispose of the case on merit on the basis of evidence untrammelled by any observations made by the court below in the impugned order.

With the above directions and observations, the petition is allowed and disposed of accordingly.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

cl

