

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

OP (FC).No. 16 of 2015 (R)

I.A.Nos.438/2014 & 437/2014 IN OP 892/2013 of FAMILY COURT,
PATHANAMTHITTA

PETITIONER(S)/1ST RESPONDENT :-

AYOOB KHAN, AGED 36 YEARS
S/O.ABDUL MAJEED, KARIMBILACKAL AYOOB MANZIL
MANKULAM P.O, MANGARAM MURI, KONNY VILLAGE
KOZHENCHERRY TALUK, PATHANAMTHITTA DISTRICT

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT(S)/PETITIONER :-

SHIMLA, AGED 31 YEARS
D/O.SHAMSUDEEN, KOLLARICKAL THAZHETHU VEEDU
KANNAMKODU MURI, ADOOR TALUK, ADOOR VILLAGE
PATHANAMTHITTA - 691 523.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

OP (FC).No. 16 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXHIBIT P1 : TRUE COPY OF THE JUDGMENT IN O.P NO 892/2013 ON
THE FILE OF THE FAMILY COURT, PATHANAMTHITTA.

EXHIBIT P2 : TRUE COPY OF THE PETITION TO SET ASIDE THE EX-
PARTE DECREE FILED BEFORE THE FAMILY COURT PATHANAMTHITTA IN
I.A NO 438/2014 IN O.P NO 892/2013.

EXHIBIT P3 : TRUE COPY OF THE PETITION TO CONDONE THE DELAY
FILED ALONG WITH EXT.P2 PETITION IN I.A NO 437/2014 IN O.P NO
892/2013

RESPONDENT(S) ' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

V.K.MOHANAN & P.D. RAJAN, JJ.

O.P.(FC) No.16 of 2015

Dated this the 20th day of January 2015

J U D G M E N T

Mohanan, J.

The petitioner herein is the first respondent in O.P.No. 892 of 2013 before the Family Court, Pathanamthitta and the grievance now projected by the petitioner in the above original petition is that the court below is proceeding to execute the ex parte decree in O.P.No.892 of 2013, despite the fact that the petition for setting aside the ex parte decree and the delay petition are pending.

2. It is trite to the fact that the petitioner has filed Exts.P2 and P3 petitions, which are applications respectively to set aside the ex parte decree dated 10.12.2013 and to condone the delay occurred in filing Ext.P2 petition. Hence, his prayer is for a direction to the Family Court, Pathanamthitta to dispose of I.A.Nos.438 of 2014 and 437 of 2014 in O.P.No.892 of 2013 as early as possible.

3. We have heard the learned counsel appearing for the petitioner. As we propose to dispose of the Original

Petition and considering the nature of the order proposed to be passed, notice to respondent is dispensed with.

4. The petitioner and the respondents are husband and wife and their marriage was solemnized on 14.10.2001 as per the religious rites and customs. However, the relationship subsequently strained and thus, the respondent herein preferred O.P.No.892 of 2013 in the Family Court, Pathanamthitta for recovery of money and gold ornaments.

5. According to the petitioner, he was in gulf country and as such, he could not participate in the proceedings and consequently, the court below passed an ex parte order on 10.12.2013 as per Ext.P1 judgment. According to the petitioner, when he came to know about the ex parte order, he approached the court below by filing I.A.Nos.438 of 2014 and 437 of 2014. The prayer in I.A.No.438 of 2014 is to set aside the above referred ex parte order, whereas the prayer in I.A.No.437 of 2014 is to condone the delay of 110 days that occurred in filing Ext.P2 petition to set aside the ex parte decree. According to the petitioner, though the above petitions were filed as early as on 30.4.2014, the same have not been considered so far and in spite of the pendency of that petitions, the court below is proceeding to execute the decree.

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6. In the light of the above facts and circumstances, we are of the view that this Original Petition can be disposed of directing the Family Court, Pathanamthitta to take up Exts.P2 and P3 petitions and to dispose of the same as expeditiously as possible.

In the result, this Original Petition is disposed of directing the learned Judge, Family Court, Pathanamthitta to take up Exts.P2 and P3 petitions (I.A.Nos.438 of 2014 and 437 of 2014 in O.P.No.892 of 2013), if the same are in order and pending in that court and dispose of the same as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment before the said court. The court below is directed to defer all further proceedings pursuant to the ex parte decree dated 10.12.2013 in O.P.No.892 of 2013 till the disposal of the above referred applications.

**Sd/-
V.K.MOHANAN, JUDGE.**

**Sd/-
P.D. RAJAN, JUDGE.**