

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 29TH DAY OF JUNE 2015/8TH ASHADHA, 1937

OP (FC).No. 27 of 2015 (R)

AGAINST THE ORDER IN OP 1940/2011 of FAMILY COURT,
ERNAKULAM.

PETITIONER(S)/RESPONDENT::

SARATH LAL @ KANNAN, AGED 41 YEARS,
S/O.CHAKRAPANI, KADAVIL VEEDU, NEENDOOOR,
VADAKKEKARA, PARAVOOR, ERNAKULAM DISTRICT 683 522.

BY ADVS.SRI.SANTHOSH SUBRAMANIAN
SRI.E.A.THANKAPPAN
SRI.SHERRY J. THOMAS
SRI.S.SREEKUMAR (NORTH PARAVUR)

RESPONDENT(S):

SMT.MANJU, AGED 34 YEARS,
D/O.BABU, CHIRAKKAL VEEDU, ASOKAPURAM,
ALUVA, ERNAKULAM - 683 101.

R1 BY ADVS. SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 29-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 27 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE I.A 4096/14 FILED UNDER O.XVI R627
- P2: TRUE COPY OF THE I.A NO.4304/14 FILED UNDER ORDER XV, RULE 5 OF C.P.C READ WITH SECTION 45-A OF INDIAN EVIDENCE ACT.
- P3: TRUE COPY OF THE ORDER IN I.A.4304/14 IN I.A NO.4096/14 IN OP NO.1940/2011.

RESPONDENT(S)' EXHIBITS

: **NIL**

//True Copy//

P.A. to Judge

SS

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

O.P.(F.C.)No.27 of 2015

Dated this the 29th day of June, 2015

JUDGMENT

K. Ramakrishnan, J

This is an application filed by the respondent in the O.P., challenging Ext.P3 order, invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the respondent in O.P.No.1940/2011 of the Family court, Ernakulam. The respondent herein filed O.P.No.1588/2014 and M.C.No.306/2011 and also the above O.P. and all these cases were tried jointly. The evidence in this case was recorded by appointing an Advocate Commissioner. During the course of cross examination of PW1, certain documents were shown to her regarding the operation of the locker in the bank, which she had admitted to be correct, but that document could not be marked through her. So after recording the Commissioner's Report, the petitioner filed I.A.No.4096/2014 to receive additional witness

list and also filed I.A.No.4304/2014 to receive documents and re-open evidence for the purpose of admitting certain electronically created documents under Section 45A of the Indian Evidence Act in evidence. That petition was dismissed by the learned Family Court Judge by the impugned order. Aggrieved by the same, the present petition has been filed.

3. Heard the counsel for the petitioner and counsel for the respondent.

4. The counsel for the petitioner submitted that in fact there is an admission of these documents by the witness/ PW1 when she was examined in court, but the same was not marked through her, as the evidence was recorded through Commissioner and it was only a copy of the Petition Register that has been put to her. In order to prove the case, it is necessary to summon certain documents from the police station as well as from the bank and examine the persons to prove the same. No prejudice will be caused to the other side and those are required for the purpose of proving the case of the petitioner. The counsel for the petitioner also submitted that, one of the witnesses examined on his side to prove the contents of the documents

produced, had stated that, he was not the person who issued the same and so he is not competent to prove the same. Since the evidence has recorded through Commissioner and the petition to be filed only after submission of the Commissioners Report, that was the reason for the delay.

5. On the other hand, the counsel for the respondent vehemently opposed the application on the ground that, he was given an opportunity to adduce evidence and some witnesses were examined before Commissioner and only after that the evidence was closed and the application was posted for hearing, that such an application has been filed with a view to prolong the matter.

6. We have considered the submissions made by both sides.

7. The examination of the witnesses on both sides were conducted by appointing an Advocate Commissioner. It is submitted by the counsel for the petitioner that, though a witness was examined to prove the documents, sought to be marked now, the witness has stated that he was not competent to prove the same. So under such circumstances, without getting

further permission from the court, he cannot examine further witness and the Commissioner has no authority to extend the time for that purpose as well. So under the circumstances, there is some force in the submission made by the counsel for the petitioner for the delay in filing the application. However certain documents were already produced and marking of that document is required to be done through some competent person and an opportunity ought to have been given by the court below for that purpose. Even if there was some delay in filing the application, if those documents are required for proving the case of the parties, that should have been allowed by the court by ordering cost as compensation for the inconvenience on the other side, on account of the delay. The reason given by the court below for rejection of the application appears to be unsustainable in law.

So under the circumstances, we are inclined to allow the application on condition that the petitioner shall pay a cost of ₹1,000/- in the court below within a week from today and if the cost is paid within that time, then court below is directed to allow the applications and re-open the evidence and give opportunity to the petitioner, who is respondent in the court

below to adduce further evidence as mentioned in the petition and thereafter dispose of the case as expeditiously as possible.

With the above direction and observation the petition is disposed of. Office is directed to communicate this order to the concerned court, immediately.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge