

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

OP (FC).No. 29 of 2015 (R)

OP 421/2013 of FAMILY COURT, THIRUVALLA

PETITIONER(S) :

ACHAMA MATHEWS AGED 57 YEARS
W/O.DR.ABRAHAM RAJAN MATHEWS, 34, SANDWAY
BRAMPTON, ONTARIO, L7A 2T9
CANADA REP.BY HER POWER OF ATTORNEY HOLDER MRS.CELINE JOSEPH
AGED 61, W/O.LATE K.J.JOSEPH, RESIDING AT 5B
PLUM FLOWER NURSERY SCHOOL ROAD, CHALIKKAVATTOM
VYTTILA, KOCHI-682019.

BY ADVS. SRI.K.R.VINOD
MS.JENCY SUSAN JOSE
SRI.V.SRI NATH

RESPONDENT(S) :

DR.ABRAHAM RAJAN MATHEWS, AGED 59 YEARS
S/O.LATE ABRAHAM MATHEWS, RAJAN BHAVAN
ANJILLITHANAM P.O., KUNNANTHANAM, MALLAPALLY
PATHANAMTHITTA-689645.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 29 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF POWER OF ATTORNEY EXECUTED BY THE
PETITIONER.

EXHIBIT-P2: THE COPY OF THE DIVORCE PETITION FILED BY THE RESPONDENT
BEFORE THE HON'BLE FAMILY COURT, ERNAKULAM AS OP
NO.1826/12.

EXHIBIT-P3: THE COPY OF THE ORIGINAL PETITION FILED BY THE RESPONDENT
BEFORE THE HON'BLE FAMILY COURT, THIRUVALLA AS OP
NO.421/2013.

EXHIBIT-P4: THE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER
HEREIN IN OP NO.421/2013 BEFORE THE FAMILY COURT,
THIRUVALLA.

RESPONDENT(S) ' EXHIBITS

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NIL

TRUE COPY

PA TO JUDGE.

acd

K.T.SANKARAN & P.D. RAJAN, JJ.

O.P.(FC) No. 29 of 2015

Dated this the 13th day of February, 2015

JUDGMENT

K.T.Sankaran, J.

The reliefs prayed for in this O.P.(FC) is to issue a direction to the Family Court, Thiruvalla to dispose of O.P.No.421/2013 on the file of the Family Court, Thiruvalla as expeditiously as possible and within a time frame. O.P.No.421/2013 was filed by the respondent, who is the husband of the petitioner for cancellation of documents and for permanent prohibitory injunction.

2. In the Original Petition, the petitioner made the following averments:

".....Even though the written statement was filed about 1 year back, so far the Learned Family Court judge did not take evidence of the case despite the fact that the petitioner

and the respondent were ready to adduce evidence. It is humbly submitted that the petitioner is permanently residing in Canada and it is very difficult for her to frequently come and instruct her lawyers with respect to the case. The circumstances being so, an early disposal of Exhibit P3 Original Petition is just and necessary to secure the ends of justice to the petitioner. Even though the petitioner had requested the Learned Family Court judge to dispose off the case at the earliest opportunity available to the court, the Learned Family Court Judge was not amenable to consider the request of the petitioner."

3. The Division Bench before which the case came up for admission directed the Registry to obtain a report from the Presiding Officer, Family Court, Thiruvalla as to whether O.P.No.421/2013 was ripe for trial and whether it could be disposed of within a short time. The learned Judge of the Family Court, Thiruvalla submitted a report dated 10.2.2015 stating that O.P.No.421/2013 was dismissed for default on 28.1.2015. The present O.P. was also filed on 28.1.2015. The learned Judge of the Family

Court stated in the report that the petitioner herein and her power of attorney holder did not appear before the Family Court on many of the posting dates and the averments made in the Original Petition are false. The learned Judge has also forwarded a copy of the order sheet, which shows the following details:

"13.6.2013:	No time, hence adjourned by notification to 5.8.2013.
5.8.2013:	No sitting adjourned by notification to 9.9.2013.
9.9.2013:	Petitioner absent, represented by counsel. Respondent absent. Call on 11.9.2013.
11.9.2013:	Both parties absent. No representation. Issue notice to the parties. For return of notice to 10.10.2013.
10.10.2013:	No time, hence adjourned by notification to 16.11.2013.
16.11.2013:	No sitting adjourned by notification to 14.1.2014.
14.1.2014:	Holiday, adjourned by notification to 24.2.2014.
24.2.2014:	Both parties absent, represented by counsels. For appearance of parties on 4.3.2014.

4.3.2014: Both parties absent, represented by counsels.
For appearance of parties to 6.6.2014.

6.6.2014: Both parties absent, represented by counsels
objection filed. For pre trial steps and
evidence. Adjourned to 19.6.2014.

19.6.2014: petitioner present. Respondent absent
represented by counsel. Joint trial along with
OP No.152/2013 allowed. Evidence will be taken in
OP No.421/2013 Pre trial steps and evidence to
16.7.2014.

16.7.2014: Petitioner and respondent absent represented
by counsel. Respondent filed fresh vakkalath.
Respondent directed to file proper answer to
interrogatories. For evidence to 16.9.2014.

16.9.2014: Both parties absent, represented by counsels.
For answer to interrogatories and evidence to
24.10.2014.

24.10.2014: petitioner and respondent absent, represented
by counsels. For evidence to 10.12.2014.

10.12.2014: Petitioner as well as counter petitioner absent,
represented by counsels. Allowed as a last
chance for appearance of parties and evidence
to 28.1.2015.

28.1.2015: Petitioner continuously absent. Power of
Attorney Holder of counter petitioner is absent.
The petitioner failed to appear before Court and

give evidence even after giving so many opportunities and ordering no further time and last chance. He never appeared before Court. Today is given as the final chance for evidence. No evidence adduced so far. So the OP is dismissed for default."

4. It is very clear from the details furnished by the learned Judge of the Family Court that the averments in the Original Petition are false. The learned counsel for the petitioner submitted that the petitioner tenders her unconditional apology for making incorrect averments in the Original Petition. The learned counsel submitted that the petitioner is working in Canada and she believed the words of the Advocate and the aforesaid averments were made in the Original Petition. It is not at all proper to make false averments in the Original Petition and on the basis of the false averments accuse the learned Judge of the Family Court for not disposing of the case expeditiously. Only because the Division Bench thought it

fit to call for a report from the Family Court, the real facts were disclosed. In the peculiar facts and circumstances of the case, we accept the unconditional apology made by the petitioner and desist from taking any further action in the matter.

3. Since the Original Petition which is sought to be disposed of at the earliest was dismissed on 28.1.2015, the relief prayed for in the Original Petitionn has become infructuous.

O.P.(FC) is accordingly dismissed. The Registry shall send a copy of the judgment to the Family Court, Thiruvalla.

K.T.SANKARAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

