

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

OP (FC).No. 32 of 2015 (R)

AGAINST THE ORDER IN I.A.NO.1138/2014 IN OP 1330/2012 of FAMILY
COURT,TRIVANDRUM DATED 13.8.2014

PETITIONER(S) :

RADHAKRISHNAN AGED 50 YEARS
S/O.THANKAPPAN, KARUVAMOODU HOUSE, VALIYARA
VELLANADU, NEW RESIDING AT 17TH MILE, JERAMPUR (P.O.)
CHANGLAGU DISTRICT, ARANACHAL PRADESH

BY ADV. SRI.NIDHI BALACHANDRAN

RESPONDENT(S) :

1. MINI S.R
D/O. K. SUMATHI, ANI BHAVAN, MOTTAMOODU
NEMOM(P.O), PALLICHAL VILLAGE, NEYYATTINKARA
THIRUVANANTHAPURAM
2. AYSWARYA M.R. (MINOR)
D/O.MINI, ANI BHAVAN, MOTTAMOODU
NEMOM(P.O), PALLICHAL VILLAGE, NEYYATTINKARA
THIRUVANANTHAPURAM

R1 BY ADV. SRI.RAM MOHAN.G.
R1 BY ADV. SRI.G.P.SHINOD
R1 BY ADV. SRI.MANU V.
R1 BY ADV. SRI.GOVIND PADMANAABHAN
R1 BY ADV. SRI.AJIT G.ANJARLEKAR

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (FC).No. 32 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT P1:TRUE COPY OF THE PETITION IN OP.1330/2012 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM

EXT P2:TRUE COPY OF THE AFFIDAVIT FILED BY THE 1ST RESPONDENT IN OP.1330/2012

EXT P3:TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN OP.1330/12

EXT P4:TRUE COPY OF THE IA.166/13 FILED BY THE 1ST RESPONDENT FOR INTERIM MAINTANANCE

EXT P5:TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO EXHIBIT P4 PETITION.

EXT P6:TRUE COPY OF THE ORDER DATED 26TH 8 2013 ISSUED BY THE FAMILY COURT , THIRUVANANTHAPURAM.

EXT P7:TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE COUNSEL FOR THE PETITIONER.

EXT P8:TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT

EXT P9:TRUE COPY OF THE PETITION TO STRUCK OF THE DEFENSE FILED BY THE PETITIONER

EXT P10:TRUE COPY OF THE ORDER DATED 13.08.2014 IN IA.1138/2014 IN OP.1330/12

RESPONDENT(S) ' EXHIBITS

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NIL.

TRUE COPY

PA TO JUDGE.

acd

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

O.P.(FC) No. 32 of 2015

Dated this the 4th day of March, 2015

JUDGMENT

V.K.Mohanana,J.

The petitioner herein, is the husband of respondent No.1 and father of respondent No.2. As per the facts alleged in the above original petition, the marriage between the petitioner and the 1st respondent was solemnized on 27.5.1998 as per the Hindu rites and ceremonies and in that wedlock, the 2nd respondent, a girl child, was born to them. Due to difference of opinion among the couple, the respondents filed O.P.No.1330/2012 for recovery of money, value of gold ornaments and maintenance from the petitioner herein as evidenced by Ext.P1. The petitioner, who is the respondent therein filed objection to Ext.P1. The said

objection is produced as Ext.P3 in this O.P.(FC). During the pendency of the above main matter, the 1st respondent herein filed a petition claiming interim maintenance from the petitioner as per Ext.P4, i.e. I.A.No.166/2013 to which the petitioner herein filed Ext.P5 objection. The Court below, after considering case of the claimants and the objection filed by the petitioner herein, issued Ext.P6 order granting interim maintenance at the rate of ₹5,000/- each for the wife and the daughter per month from the date of the petition i.e., 18.8.2012 and also directed to pay the arrears within 60 days from the date of that order and also ordered that monthly maintenance from the date of that order shall be positively paid before 10th of every month. Subsequently, the petitioner preferred Ext.P7, I.A.No.2136/2013, stating that in paragraph 5 of Ext.P5 objection, the amount given to the respondent was shown mistakenly as ₹15,000/- and

consequently, sought an order to correct the said mistake crept in the affidavit and the petition. Though Ext.P6 order was issued as early as on 26.8.2013, no payment was made and therefore, the respondents herein filed I.A.No.1138/2014 in O.P.No.1330/2012 with a prayer to stuck off the defence of the petitioner, who is the respondent in the main matter pending before the Court below. As no objection was filed, the Court below allowed the said prayer as per Ext.P10. It is at this stage, the petitioner preferred this O.P.(FC) praying inter alia to set aside Ext.P10 order dated 13.10.2014 in I.A.No.1138/2014 in O.P.No./1330/2012 of the Family Court, Thiruvananthapuram.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

3. The learned counsel for the petitioner, after taking us through Ext.P5 objection, submitted that by a

typographical mistake, the amount paid to the respondents shown as ₹15,000/- in paragraph 5 of Ext.P5 and though a petition was filed to correct the said mistake, the Court below refused to consider the same and passed Ext.P10 order. Whereas the learned counsel appearing for the respondents, after taking us through Ext.P3 objection, it is submitted that in the above referred main objection to the O.P.No.1330/2012, particularly in paragraph 5, the very same petitioner has stated that he paid ₹15,000/- to the claimants and therefore, the contention of the petitioner that the figure shown as ₹15,000/- is a clerical mistake cannot be accepted.

4. We have carefully considered the rival submissions made by the both the counsel and we have perused the materials produced in this O.P.(FC).

5. Having regard to the facts and circumstances involved in this case, we are of the view that this Court

need not go into the contentions advanced by the learned counsel for the petitioner as well as the respondents about the reliefs sought for by the petitioner as per Ext.P7 petition, since the same is pending before the Court below. We are also of the view that while Ext.P7 is pending before the Court below, we cannot approve the approach of the Court below in issuing Ext.P10 order. However as pointed out by the learned counsel for the respondents, though Ext.P6 order was passed as early as on 26.8.2013, so far no single pie was paid by the petitioner towards the claimants, who are none other than his wife and daughter. Therefore, we are inclined to issue a direction to the Family Court to consider Ext.P7 petition and such directions can be issued only on terms and to enable the Court to pass fresh orders, Ext.P10 can be quashed.

In the result, this O.P.(FC) is disposed of setting aside Ext.P10 order so as to enable the Court below to pass

fresh orders on Ext.P7 petition and thereafter, if necessary, to pass orders in I.A.No.1138/2014, on condition that the petitioner deposits half of the arrears as on today as per Ext.P6 order in the Court below within one month from today. On depositing such amount, the respondents herein are free to withdraw the said amount. On complying with the above direction, the Court below is directed to consider Ext.P7 and pass appropriate orders thereon within 45 days from the date of receipt of a copy of this judgment.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

