

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 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

OP (FC).No. 36 of 2015 (R)

AGAINST THE ORDER IN OP 463/2005 of FAMILY COURT,TRIVANDRUM

PETITIONER/COUNTER PETITIONER:

P.K.SURESH
S/O DIVAKARAN, 28/1513, PUTHIYA ROAD
KOCHU KADAVANTHARA, ERNAKULAM 682020

BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA

RESPONDENTS/PETITIONERS:

1. MOUSHAMI SURESH,
D/O BALACHANDRAN, TC 17/1935-1,
PALACE ROAD, POOJAPPURA,
THIRUVANANTHAPURAM-01

2. ADITH SURESH,
S/O. MOUSHAMI SURESH, TC 17/1935-1,
PALACE ROAD, POOJAPPURA,
THIRUVANANTHAPURAM-01.

R1 BY ADV. SRI.N.M.JAMES
R1 BY ADV. SRI.N.R.SURESH KUMAR

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
15-06-2015, ALONG WITH OPFC. 37/2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF OBJECTION TO OP 463/2005.

EXHIBITP2: TRUE COPY OF ORDER DATED 17.2.2009

EXHIBITP3: TRUE COPY OF IA 2175/12

EXHIBITP4: TRUE COPY OF OBJECTION TO IA 2175/2012

EXHIBIT P5: TRUE COPY OF THE COMMON ORDER DATED 8.7.2014

RESPONDENTS' EXHIBITS:

EXT.R1(A) COPY OF THE MEMO DATED 24.7.2014 FOR PAYMENT OF RS.1,500/-
ISSUED BY THE PETITIONER'S COUNSEL, WHO APPEARED BEFORE THE
COURT BELOW.

/TRUE COPY/

P.S TO JUDGE

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

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O.P.(FC)Nos.36 & 37 of 2015
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Dated this the 15th day of June, 2015.

JUDGMENT

Abdul Rehim, J:

Both these original petitions are filed against the very same common order, which is produced as Ext.P5 in both these cases, passed by the Family Court, Thiruvananthapuram in I.A.Nos.2175/2012 and 1386/2011 in O.P.No.463/2005. The respondents herein filed O.P.No.463/2005 before the Family Court seeking recovery of gold ornaments or its market value of ₹2,14,424/-. The petitioner herein entered appearance in that original petition and filed objections. Later, due to consecutive non-appearance of the petitioners in the original petition, who are the respondents herein, the Family Court dismissed the original petition as per Ext.P2 order, dated 17.2.2009.

2. I.A.No.1386/2011 was filed by the respondents herein seeking restoration of O.P.No.463/2005, along with I.A.No.2175/2012 seeking for condonation of delay of 765 days in filing the application for restoration. The petitioner herein filed a detailed objections against the delay condonation

application, as per Ext.P4. But the Family Court had condoned the delay and allowed the application for restoration through Ext.P5 order, subject to condition of the respondents herein paying a cost of ₹1,500/- to the petitioner.

2. Contention of the petitioner is that the cause of delay was not properly explained before the Family Court and the affidavit filed in support of I.A.No.2175/2014 contained incorrect and untrue statements. From the order impugned it is evident that the first respondent herein had stated that she left for Thiruvananthapuram along with her sister in the year 2005 and inspite of earnest efforts she could not contact her counsel till 2009. The Family Court appreciated the evidence adduced in the matter by examination of the first respondent herein as PW1. However, the Family Court was not impressed with the explanation submitted by the first respondent in causing the delay, and observed that the explanation that she could not contact her counsel after she left Ernakulam is nothing but a cock and bull story. But the Family Court observed that it is only just and proper to give an opportunity to the respondents to substantiate their case on merits, because divorce between the parties have already been effected and the original petition was

only for maintenance and for return of gold ornaments. Hence the delay was condoned subject to condition of payment of cost.

3. We notice that, these original petitions are filed invoking supervisory jurisdiction vested on this Court under Article 227 of the Constitution of India. Even though the Family Court had observed that the reason mentioned with respect to condonation of delay cannot be accepted in toto, a lenient view was taken to allow the petitioner to contest the matter on merits, subject to condition of payment of cost. We are of the impression that while allowing the restoration application the Family Court was only upholding the larger principle that causes should be decided on merits as far as possible, rather than dismissing them on technicalities. The discretion exercised by the Family Court cannot in any manner be termed as an erroneous exercise of jurisdiction vested on that court, which will warrant invocation of supervisory jurisdiction vested under Article 227. Further it is pointed out that the cost ordered has already been paid and it was accepted by counsel appearing for the petitioner before the court below. It is also noticed that the Family Court has appointed an Advocate Commissioner to record evidence in the original petition. Under such circumstances, we are not inclined

to interfere with Ext.P5 order passed by the Family Court.

Consequently these writ petitions fail and the same are hereby by dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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