

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

OP (FC).No. 41 of 2015 (R)

I.A.NOs.1637/14 AND 1638/14 IN OP 961/2013 of FAMILY COURT, CHAVARA

PETITIONER(S)/PETITIONER/RESPONDENT:

ANSAR, AGED 43 YEARS
S/O.ABDUL REHMAN KUNJU,
KALLOOR KIZHAKKATHIL,
KOZHIKODE MURI, KARUNAGAPPALLY,
KOLLAM DISTRICT.

BY ADVS.SRI.K.SIJU
SRI.S.ABHILASH

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

- 1.SHEEJA @ NOUFIA,
D/O.ASHRAF, AGED 30 YEARS,
KALEEKKAL VEEDU,
CHAVARA BRIDGE P O,
KARUNAGAPPALLY,
KOLLAM DISTRICT-691501.
- 2.ABDUL AHAD, S/O.ANSAR,
AGED 8 YEARS, KALEEKKAL VEEDU,
CHAVARA BRIDGE P O,
KARUNAGAPPALLY, KOLLAM DISTRICT-691501.
(MINOR REPRESENTED BY THE 1st RESPONDENT MOTHER).

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 41 of 2015 ®

APPENDIX

EXHIBITS FOR THE PETITIONER :

EXT.P1 : COPY OF PETITION IN OP NO.961/13 (OP NO.1378/11 OF FAMILY COURT-KOLLAM) ON THE FILE OF FAMILY COURT, CHAVARA.

EXT.P2 : COPY OF JUDGMENT IN OP NO.961/13 DATED 30.9.2013.

EXT.P3 : COPY OF IA NO.1638/14 UNDER ORDER IX RULE 13 OF CPC.

EXT.P4 : COPY OF IA NO.1637/14 UNDER SECTION 5 OF THE LIMITATION ACT.

EXT.P5 : COPY OF PETITION IN EA NO.100/14 FILED UNDER ORDER XXI RULE 26 OF CPC.

EXHIBITS FOR THE RESPONDENTS :

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

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

O.P.(F.C.)No.41 of 2015

Dated this the 9th day of February, 2015.

J U D G M E N T

Mohanan, J.

The petitioner herein is the sole respondent in O.P.No.961/13 of Family court, Chavara, which was originally filed as O.P.No.1378/11 of the Family court, Kollam. The above original petition was filed by his wife and son of the petitioner under section 26 and Order 7 Rule 1 and 2 of CPC r/w section 7 of the Family court Act. The prayer in the above original petition was for recovery of 33 sovereigns of gold ornaments, or, Rs.6,93,000/- towards its market value in the alternative and Rs.1,50,000/- towards patrimony, Rs.25,000/- towards value of house hold articles with 6% interest per annum from the respondent and his assets, Rs.25,000/- the amount given on the date of marriage and Rs.3,60,000/- towards past maintenance. The petitioner herein and the 1st respondent are husband and

wife, who belonged to Muslim community and their marriage was solemnised on 10.3.2005 as per the custom prevailing in the Muslim community and in their wedlock, a male child was born to them, who at the time of filing the petition had attained the age of 6 years. The petitioner herein, who is the sole respondent therein, set ex parte on 28.9.2013 and the said original petition was disposed of by Ext.P2 judgment and consequently a decree was passed on 30.9.2013. The petitioner subsequently approached the Family court, Chavara, by filing I.A.No.1638/14 (Ext.P3) dated 4.12.2014 to set aside the ex parte decree and also filed I.A.No.1637/14 (Ext.P4) dated 4.12.2014 to condone the delay of 369 days that occurred in filing Ext.P3. The grievance now projected by the petitioner is that though he preferred Exts.P3 and P4 as early as on 4.12.2014, no orders are passed on the interlocutory applications and at the very same time, the court below is now proceeding with the execution proceedings in E.P.No.14/14 and the proceedings in the execution petition stands posted to

16.3.2015 for sale of his property and therefore in the above original petition, it is prayed to issue necessary directions to the Family court, Chavara, to hear and dispose Ext.P3 to P5 before proceeding further with the execution of the ex parte decree in E.P.No.14/14.

2. Heard the learned counsel for the petitioner. Considering the nature of the order which we propose to pass, notice to the respondents is dispensed with.

3. Admittedly, the petitioner is the husband and also the father of 2nd respondent. There is no challenge about the marriage and the paternity of 2nd respondent. As born out from Ext.P2 order, the petitioner is set ex parte. However, the petitioner has approached the court below by filing Exts.P3 and P4 praying respectively to set aside the ex parte decree and to condone the delay that occurred in filing Ext.P3 petition. The said petitions are pending consideration. If the execution petition is allowed to proceed, Exts.P3 and P4 will become infructuous and therefore it is only just and proper to issue a direction to

the court below to take up Exts.P3 and P4 and to dispose the same and in the meanwhile the proceedings in E.P.No.14/14 can be ordered to be deferred. It can be seen that the respondent herein approached initially the Family court, Kollam on 24.10.2011 and no money towards maintenance is received by them even though Ext.P2 order was in favour of them. So, even though we are inclined to grant the relief as sought for, the same can be granted only on terms.

In the result, this original petition is disposed of directing the Family court, Chavara, to take up Exts.P3 and P4 and pass appropriate orders thereon as expeditiously as possible @ within a period of 45 days from the date of producing a copy of this judgment before the said court, on condition, the petitioner depositing half of the amount ordered by the court below towards past maintenance and on further condition of depositing half of the maintenance amount ordered by the court below towards future maintenance w.e.f. 30.9.2013 onwards ie., the date of

Ext.P2 order. The amount towards half of the past maintenance and towards the arrears of future maintenance shall be deposited within 3 weeks from today and the petitioner shall continue to pay future maintenance as ordered and the court below is free to pass appropriate orders with respect to those amounts, based upon the outcome upon Exts.P3 and P4 petitions.

The original petition is disposed of accordingly.

Sd/-

V.K.MOHANAN, Judge

Sd/-

P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge