

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

OP (FC).No. 86 of 2015 (R)

(OP Nos.1374/2013, 803/2014 & MC No.18/2014 of FAMILY COURT,TRIVANDRUM)

PETITIONER:

NAVEENA B. NAIR, AGED 24 YEARS
D/O. BINDHU K., SREEKANDA, T.C.11/154(4)
NANDAN NAGAR, NANDANCODE, KOWDIAR
THIRUVANANTHAPURAM.

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENT:

DEEPAK V. NAIR, AGED 31 YEARS
S/O VIKRAMAN NAIR, T.C.6/940 (2), DEVAGEETHAM
YOGESWARI LINE, MANJADIMOODU, VATTIYOORKKAVU
THIRUVANANTHAPURAM.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 25-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 86 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE PETITION IN O.P.NO.1374/2013 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P2: TRUE COPY OF PETITION IN O.P.NO.830/2014 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P3: TRUE COPY OF THE PETITION IN M.C.NO.18/2014 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P4: TRUE COPY OF THE PETITION IN O.P.NO.845/2014 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P5: TRUE COPY THE PETITION IN O.P.NO.926/2014 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P6: TRUE COPY THE INTERIM APPLICATION IN O.P.NO.1374/2013 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P7: TRUE COPY THE INTERIM APPLICATION ie I.A.NO.3471/2014 IN O.P.NO.803/2014 BEFORE THE FAMILY COURT, THIRUVANANTHAURAM.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

VPS

PS TO JUDGE

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

O.P.(FC) No.86 of 2015

Dated this the 25th day of March, 2015

J U D G M E N T

P.N.Ravindran, J.

The petitioner is the wife of the respondent. The marriage between them was solemnised on 1.11.2010. Later the parties fell out and they are now residing separately. The petitioner has filed O.P.No.1374 of 2013 for recovery of gold ornaments and money, O.P.No.803 of 2014 for a decree dissolving the marriage between her and the respondent and M.C.No.18 of 2014 claiming maintenance under section 125 of the Code of Criminal Procedure, on the file of the Family Court, Thiruvananthapuram. The respondent husband has through his father and power of attorney holder filed O.P.No.845 of 2014 and O.P.No.926 of 2014, the former a petition seeking dissolution of the marriage between the parties and the latter for recovery of money and gold ornaments. It appears in all the three cases initiated by the petitioner wife i.e., O.P.No.1374 of 2013, O.P.No.803 of 2014 and M.C.No.18 of 2014, the respondent has not been served. The respondent is stated to be in United States of America. Since service was not effected on the respondent in the three cases instituted by the wife, the petitioner filed Exts.P6 and P7 applications before the Family Court, Thiruvananthapuram praying for service of notice by paper publication. It is stated that till date orders

have not been passed thereon permitting service of notice by paper publication. It is stated that unless the respondent is duly served, it will lead to delay in disposal of the cases filed by her. The petitioner has in this original petition prayed for a direction to the Family Court, Thiruvananthapuram to allow Ext.P6 and Ext.P7 applications to serve notice by paper publication. In the alternative he has prayed that he may be allowed to serve notice on the respondent through his father and power of attorney.

2. Pursuant to the order passed by this Court, Family Court Judge, Thiruvananthapuram has submitted a report dated 20.3.2015. In the penultimate paragraph thereof, the Presiding Officer has reported as follows:

"In O.P.803/2014 notice issued to the respondent/husband in the party array was returned with the endorsement that he is in United States. Thus the case was again posted for fresh notice and to take steps. In spite of opportunities given no application was filed by the petitioner to serve notice to the power of attorney holder who instituted the OPs by the husband. Only if an application u/O.III CPC is made then only this court can order notice be served on the power of attorney holder who actually represent the husband in other two cases before the court. In spite of that petitioner applied for substituted service in OP 1374/2013."

3. The Presiding Officer has also enclosed a copy of the B diary in O.P.Nos.803 of 2014 & 1374 of 2013. The materials on record disclose that the petitioner has not so far taken steps to serve notice on the respondent through his father and power of attorney, who has on behalf of the respondent filed O.P.Nos.845 of 2014 and 926 of 2014 in the very same Family Court. Under Order III rule 3 of the Code of Criminal Procedure facilitates such service. Since the respondent has

already instituted O.P.No.845 of 2014 and O.P.No.926 of 2014 in the very same Family Court through his father and power of attorney, the petitioner will be free to file applications before the Family Court seeking permission to serve the notice on the respondent by serving the notice on the said power of attorney. Such a course of action will not in any way cause prejudice to the petitioner.

In such circumstances, we dispose of the writ petition with a direction that in the event of the petitioner filing separate applications in the three cases instituted by her in Family Court, Thiruvananthapuram praying for permission to serve notice on the respondent in O.P.No.1374 of 2013, O.P.No.803 of 2014 and M.C.No.18 of 2014 by serving the notice on his power of attorney who has on behalf of the respondent instituted O.P.No.845 of 2014 and O.P.No.926 of 2014 in the very same Family Court, the court below shall allow the applications and permit service of notice on the power of attorney of the respondent. It will be open to the petitioner to have the three cases advanced to an earlier date for the said purpose.

**P.N.RAVINDRAN,
(JUDGE)**

**ANIL K.NARENDRA,
(JUDGE)**

vps

