

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 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

OP (FC).No. 154 of 2015 (R)

AGAINST THE ORDER IN OP 726/2008 of FAMILY COURT,
KOLLAM, DATED 21.07.2012.

PETITIONER(S):

SHIBIJA, AGED 30 YEARS,
D/O.NALINAKSHAN, 'AKSHAYA', PUTHENKULAM P.O.,
POOTHAKKULAM VILLAGE, KOLLAM DISTRICT.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENT(S):

PRADEEP KUMAR, AGED 34 YEARS,
KSEB ENGINEER, S/O.RAMACHANDRAN, CHARUVILA VEEDU,
THAZHATHUCHERRY, MEENADU VILLAGE,
KOLLAM DISTRICT - 691 572.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 01-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 154 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS
----- :

**EXT P1 : A TRUE PHOTOCOPY OF THE COMMON JUDGMENT OF THE
FAMILY COURT, KOLLAM IN OP 726/2008.**

**EXT P2 : A TRUE PHOTOCOPY OF THE ORDER DATED 18-9-2014 IN EA 80/14
IN EP 2/14 IN OP NO.726/2008 OF THE FAMILY COURT, KOLLAM.**

RESPONDENT(S)' EXHIBITS
----- :

NIL

//True Copy//

P.A. to Judge

SS

**C.K. ABDUL REHIM &
K. RAMAKRISHNAN, J.**

O.P. (F.C.) No.154 of 2015

Dated this the 1st day of June, 2015

J U D G M E N T

C.K. Abdul Rehim, J

The petitioner herein is the petitioner in E.A.No.80/2014 in E.P.No.2/2014 in O.P.No.726/2008 on the files of the Family Court, Kollam. O.P.No.726/2008 was filed by the petitioner along with her son against the respondent herein and his parents, seeking declaration of title over certain immovable properties and for return of gold ornaments, value of the car and certain house hold articles and also for past and future maintenance. The Family Court conducted joint trial of O.P.No.726/2008 along with O.P.No.725/2008 and O.P.(G&W) No.761/2008. O.P.No.726/2008 was decreed in part declaring the petitioner herein as absolute owner of the scheduled property and allowing her to realize a sum of ₹5,00,000/- along with interest. The petitioner was also allowed to realize maintenance from the respondent at the rate of ₹3,000/- per

month and also maintenance for the child at the rate of ₹2,000/- per month. The petitioner herein had filed E.P.No.2/2014, in execution of the above said order (Ext.P1) dated 21.07.2012. During pendency of the execution petition, the petitioner filed E.A.No.80/2014 seeking enhancement of the maintenance of ₹2,000/- per month allowed with respect to the minor child. But the Family Court dismissed the said E.A. through Ext.P2 order, finding that such a petition is not maintainable and observing that the petitioner can seek separate remedy under Section 127 of the Code of Criminal Procedure. It is challenging Ext.P2, this writ petition is filed.

2. Contention of the petitioner is that, the court below ought to have found that the maintenance amount given to the child at the rate of ₹2,000/- is too insufficient based on the subsequent development that the child is now studying in Standard - V at Aiswarya Public School, Poothakkulam, and that the petitioner is not in a position to bear the expenses of such study. According to the petitioner dismissal of the application as not maintainable, is highly erroneous.

3. We are of the considered opinion that there is no illegality, infirmity, irregularity or impropriety with respect to

Ext.P2 order, which is impugned in this writ petition. The petitioner cannot seek a modification of the decree by filing an execution application, at the stage of execution of the decree. The Family Court was right in dismissing such an application as not maintainable. If the petitioner has got any case that a decree requires modification under the changed circumstances, she has to seek appropriate remedy before the Family Court in appropriate proceedings. At any rate a modification cannot be granted in an execution application filed for the said purpose.

Since we do not find any error in exercise of jurisdiction vested on the Family Court in passing Ext.P2 order, interference is declined. Consequently the writ petition is hereby dismissed. However, it is made clear that the above judgment will not stand in the way of the petitioner seeking appropriate remedy for the modification of Ext.P1 order in accordance with law, in appropriate proceedings.

Sd/-

C.K. Abdul Rehman, Judge

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge