

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

OP (FC).No. 220 of 2015 (R)

I.A. NO. 272/2014 IN OP NO. 929/2011 OF THE FAMILY COURT, THIRUVALLA

PETITIONER/2ND PETITIONER :

**VARGHESE, AGED 63 YEARS,
S/O. LATE KOSHY, CHARUVIL MANU VILLA,
KUMPALAMPOIKA P.O.,
VADASSERIKKARA VILLAGE, RANNY TALUK,
PATHANAMTHITTA DISTRICT**

**BY ADVS.SRI.V.SETHUNATH
SRI.V.R.MANORANJAN (MUVATTUPUZHA)**

RESPONDENT/RESPONDENT :

**SUNU ANNIE THOMAS, AGED 30 YEARS,
D/O. K.P. THOMAS, KARAKKATTU HOUSE, KUNNAM MURI,
VECHOOCHIORA P.O., CHETHACKAL VILLAGE, RANNY TALUK,
PATHANAMTHITTA DISTRICT, PIN-686514**

**R1 BY ADVS. SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: THE TRUE COPY OF THE PETITION IN OP NO.929/2011 ON THE FILE OF THE FAMILY COURT, THIRUVALLA DT 28/9/2011.

EXHIBIT P2: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER AND OTHERS BEFORE THE FAMILY COURT, THIRUVALLA DT NIL.

EXHIBIT P3: THE TRUE COPY OF THE PROOF AFFIDAVIT FILED BEFORE THE FAMILY COURT BY THE 1ST RESPONDENT DT. NIL.

EXHIBIT P4: TRUE COPY OF THE PETITION FILED BEFORE THE FAMILY COURT TO REOPEN THE EVIDENCE DT 11.03.2015.

EXHIBIT P5: THE TRUE COPY OF THE ORDER OF THE FAMILY COURT, THIRUVALLA IN IA NO272/2014 IN OP NO.929/2011 DT 12-3-2015.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

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

O.P (FC) No. 220 OF 2015

DATED THIS THE 4th DAY OF JUNE, 2015

J U D G M E N T

K. Ramakrishnan, J:

This is an application filed by the 2nd petitioner in the lower court in IA No.272/2014 in OP No.929/2011 on the file of Family Court, Thiruvalla challenging the order dismissing the application for re-open the evidence invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner herein is the 2nd petitioner and the respondent is the respondent in I.A. No.272/2014 in OP 929/2011 on the file of Family Court, Thiruvalla. That OP was filed by the respondent herein for return of money and value of gold ornaments. The petitioner is the father-in-law of the petitioner in the lower court and he is the power of attorney holder of the son who is working abroad. The wife of the

petitioner is also a party to the OP. The allegation in the petition filed by the respondent herein was that at the time of marriage certain gold ornaments and money were given and though marriage was dissolved, those things were not returned. So she filed the petition for return of those gold ornaments and money. The petitioner was examined in that case and it was posted for the evidence of the respondent and since no evidence was adduced it was closed. The evidence was closed and posted for hearing. At that time the petitioner herein filed an application for re-open the evidence and also produced a witness list showing the present husband of the petitioner in the original proceedings and the Manager, Federal Bank, Vadasserikara and the application was allowed. The 1st respondent in the lower court was examined as RW1 and certain documents were also marked and thereafter on the basis of the representation made by the counsel for the respondent in the lower court, the evidence was closed. It is thereafter that Ext.P4 petition as I.A. No.272/2014 was filed by the

present petitioner to re-open the evidence to examine those witnesses. That petition was dismissed by the learned Family Court Judge by impugned Ext.P5 order which is being challenged by the petitioner in this petition.

3. Heard the counsel for the petitioner and counsel for the respondent.

4. Counsel for the petitioner submitted that the case of the respondent was that in fact amount was not received neither from the respondent nor from her family members as alleged by the respondent in the petition filed by the petitioner before the court below and the amounts were received or borrowed from somebody else. In order to prove that fact some more evidence is required.

5. On the other hand the counsel for the respondent submitted that one of the witnesses cited was the present husband of the respondent herein and purpose for which he has to be examined has not been mentioned in the petition. No reason has been stated as to why he had to be examined in the case. He has nothing to do with first marriage.

Further the opportunity already given was not utilized by the petitioner and it was on the basis of submission made by the counsel for the petitioner that the evidence was closed. So the attempt of the petitioner is only to protract the proceedings and nothing more.

6. We have considered both the submissions of learned counsel for the petitioner and the respondents and also gone through the documents produced along with petition. It is an admitted fact that the first witness shown in the witness list submitted is admittedly the present husband of the respondent herein. There is nothing mentioned in the petition or in the proof affidavit filed by the respondent in the lower court as to why this witness has to be examined to prove the case of the respondent. Further there is nothing to be proved through the present husband regarding the things transpired between the petitioner and the respondents in the lower court in respect of the earlier marriage. So under the circumstances there is some force in the submission made by the counsel for the respondent

regarding examination of the first witness mentioned in the list, namely the present husband of the respondent and that is only to harass the petitioner and nothing more. As regards the second witness is concerned, he need be examined only for the purpose of producing the bank account to show that certain amounts were withdrawn from the account of the present petitioner and that will have to be proved. But this opportunity could have been utilized by the petitioner even at the time when the evidence was re-opened at his instance earlier. But that was not done. However we feel that meet the ends of justice and also to find out the real truth in the transaction, some more opportunity has to be given to the petitioner to prove his case. But at the same time for that purpose for harassing the respondent her present husband need not be examined. The prayer for examining first witness in the witness list cannot be granted even if the petition to re-open the evidence is allowed. But on account of the laches on the part of the petitioner some inconvenience has been caused

to the respondent as well. That can be compensated only by awarding cost. The court below ought to have exercised the discretion of allowing the application even if the court found that it is to protract by awarding reasonable cost to meet the inconvenience caused to the other side on account of laches on the part of the petitioner. So under the circumstances we feel that the order passed by the court below has to be set aside and petition can be allowed on payment of cost of Rs.5,000/- as cost to the counsel for the respondent in the lower court and on production of proof of such payment then court below is directed to allow the application and re-open the evidence and give opportunity to the petitioner examine the Bank Manager alone to prove the alleged withdrawal of the amount and payment of the amount which the petitioner wants to prove by examining that witness. If any document has to be produced to controvert that evidence, by the respondent herein the court below is directed to give opportunity to the petitioner in the lower court who is the respondent herein also to

adduce further evidence and dispose of the case as expeditiously as possible within a time frame of 3 months from the re-opening of the case. If the cost is not paid as directed by this court, then order passed by the court below will stand restored and court below can dispose of the petition on the basis of evidence already recorded.

With the above observations and directions this petition is disposed of.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge