

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. 222 of 2015 (R)

AGAINST THE ORDER IN I.A.NO.1230/2014 IN OP(HMA)NO.238/12 OF
FAMILY COURT, ALAPPUZHA

PETITIONER:

SHEENA, AGED 36 YEARS,
W/O KANNAPPAN, VADAKKEMAPPALA VELIYIL,
KANICHUKULANGARA P.O,
CHERTHALA REPRESENTED BY HER POWER OF ATTORNEY
SOBHANA, VADAKKEMAPPALA VELIYIL,
KANICHUKULANGARA P.O,
CHERTHALA, ALAPPUZHA.

BY ADV. SRI.P.SHANES METHAR

RESPONDENT:

KANNAPPAN, AGED 36,
S/O. RAVINDRAN, THOPPIL VEEDU,
KANICHUKULANGARA P.O,
CHERTHALA, ALAPPUZHA 688 524

R1 BY ADV. SRI.M.B.SANDEEP
R1 BY ADV. SMT.R.PRIYA
R1 BY ADV. SRI.V.VISAL AJAYAN
R1 BY ADV. SRI.B.SURJITH
R1 BY ADV. SRI.ABHILASH JOSE
R1 BY ADV. SRI.M.A.AHAMMAD SAHEER
R1 BY ADV. SMT.R.ANJANA

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 222 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORIGINAL PETITION IN OP (HMA) 238/2012 ON THE
FILE OF FAMILY COURT, ALAPPUZHA.

EXT.P2 TRUE COPY OF THE OBJECTION TO ORIGINAL PETITION IN OP (HMA)
238/2012 ON THE FILE OF FAMILY COURT, ALAPPUZHA.

EXT.P3 TRUE COPY OF THE ORIGINAL PETITION IN OP 478/2014 ON THE FILE OF
FAMILY COURT, ALAPPUZHA.

EXT.P4 TRUE COPY OF THE PETITION AND AFFIDAVIT IN IA NO. 1230/14 IN
OP (HMA) 238/2012 ON THE FILE OF FAMILY COURT, ALAPPUZHA.

EXT.P5 TRUE COPY OF THE OBJECTION TO IA NO. 1230/14 IN OP (HMA)
238/2012 ON THE FILE OF FAMILY COURT, ALAPPUZHA.

EXT.P6 TRUE COPY OF THE ORDER IN IA NO 1230/14 IN IN OP (HMA) 238/2012
ON THE FILE OF FAMILY COURT, ALAPPUZHA.

RESPONDENT'S EXHIBITS:NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P(FC)No.222 of 2015
.....

Dated this the 15th day of June, 2015.

JUDGMENT

Ramakrishnan, J:

The petitioner in I.A.No.1230/2014 in OP.(HMA) No.238/2012 on the file of the Family Court, Alappuzha has challenged the order of dismissal of that application by filing this petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that OP(HMA)No.238/2012 of Family Court, Alappuzha was filed by the respondent herein seeking divorce, return of gold ornaments and permanent custody of the minor child. That petition was decreed ex parte, which was subsequently set aside on the basis of an application filed by the petitioner herein. Thereafter the petitioner filed O.P.No.478/2014 before the same court seeking relief against the respondent herein for return of gold ornaments said to have been illegally detained by him and also for return of money, which was said to have been paid at the

time of her marriage. The respondent has not so far filed any objection in Ext.P3 petition filed by the petitioner in O.P.No.478/2014. The petitioner filed I.A.No.1230/2014 in O.P.(HMA)No.238/2012 seeking joint trial of that case with O.P.No.478/2014 and that petition was dismissed by the court below by Ext.P6 impugned order, which is being challenged by the petitioner by filing this petition.

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

4. We have called for a report from the Family Court regarding present stage of both the cases and the Family Court Judge had sent a detailed report regarding the same.

5. Learned counsel for the petitioner submitted that the evidence to be adduced in both the cases and the parties are same, and the finding in any one case will affect the merits of the other case as well and so unless joint trial is ordered prejudice will be caused to the petitioner.

6. On the other hand, learned counsel for the respondent submitted that earlier on several occasions, O.P.(HMA) No.238/2012 was decreed ex parte and later on the basis of an application filed by the petitioner herein it was set aside and

proof affidavit was filed. On that day, the petitioner was not cross examined. Later O.P.No.478/2014 was filed and thereafter the petitioner in O.P(HMA)No.238/2012 was cross examined as PW1 and it is only to prolong the matter that the present petition has been filed.

7. It is an admitted fact that O.P.(HMA)No.238/2012 was filed in the year 2012 by the husband against the petitioner herein, who is the wife of the respondent, seeking divorce, return of gold ornaments and custody of the child. It is also an admitted fact that though the petitioner herein appeared and filed objection, she did not participate in the proceedings. So it was decreed ex parte on a previous occasion. Later the ex parte decree was set aside and the matter was posted for evidence. Thereafter it is seen from the report that on several occasions the case was adjourned for cross examination of the witness in OP(HMA)No.238/2012 and lastly he was cross examined and when the case was posted for further evidence, the petitioner had filed an application for joint trial. It is also seen from the report that in O.P.No.478/2014, the respondents in that case appeared and objection has been filed and that case is also posted for evidence on 8.6.2015. So, under the

circumstances, we feel that trying these cases separately will cause prejudice to the parties as it is an interse matrimonial dispute between the husband and wife regarding gold ornaments, return of money and also custody of the child. In OP (HMA)No.238/2012 only the evidence of PW1 was completed. Even if joint trial is ordered, no prejudice will be caused to the petitioner in that case. The only thing to be done that he will have to be recalled and further cross examined on the basis of the claim made by the petitioner herein in her case and thereafter further evidence will have to be adduced on both sides. But, at the same time, we feel that on account of the indifferent attitude on the part of the petitioner, the matter of 2012 filed by the respondent was delayed up to 2014. So the inconvenience caused to the respondent has to be compensated by costs. So we feel that the order passed by the court below dismissing I.A.No.1230/2014 in O.P.(HMA) No.238/2012 has to be set aside and the petition can be allowed on payment of cost of ₹5,000/- to the counsel for the respondent in the lower court within three weeks from today. If cost is paid and proof of payment of cost is produced, then the court below is directed to allow the application for joint trial and

treat O.P.(HMA)No.238/2012 as leading case and recall PW1 and permit the petitioner herein to have further cross examination of the witness and then proceed with the case after giving an opportunity to both parties to adduce further evidence and dispose of the cases in accordance with law. Further, this Court directs the Family Court to expedite trial of both the cases as expeditiously as possible, at any rate, within four months from the date of allowing the application for joint trial. If cost is not paid, then the court below is at liberty to proceed with the trial of the cases separately and order passed by the court below dismissing the application for joint trial will be restored.

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

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

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P.S to Judge

