

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

OP (FC).No. 223 of 2015 (R)

(I.A.NO.260/2015 IN I.A.NO.1917/2014 IN O.P.NO.1655/2011 OF FAMILY COURT,
IRINAJALAKUDA)

PETITIONER/IST RESPONDENT:

SMITHA, AGED 31 YEARS,
D/O.MANI, EDATHARA HOUSE,
PANNITHADAM P.O.,THALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADVS.SRI.SANTHOSH P.PODUVAL
SMT.R.RAJITHA

RESPONDENT(S)/PETITIONERS:

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1. SANDEEP,S/O.SUKUMARAN,
CHARUVIL HOUSE, MANAVALASSERY VILLAGE,
KURUMBISSERY P.O., IRINAJALAKUDA, THRISSUR DISTRICT.
 2. SOBHA,W/O.KUMARAN,
CHARUVIL HOUSE, MANAVALASSERY VILLAGE,
KURUMBISSERY P.O., IRINAJALAKUDA, THRISSUR DISTRICT.
 3. KUMARAN, S/O.NANU,
CHARUVIL HOUSE, MANAVALASSERY VILLAGE,
KURUMBISSERY P.O., IRINAJALAKUDA, THRISSUR DISTRICT.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

OP (FC).No. 223 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1: TRUE COPY OF E.P 1/14 IN O.P 1655/2011 ON THE FILE OF FAMILY COURT, THRISSUR.
- EXT.P-2: TRUE COPY OF ORDER DATED 20.8.14 IN I.A. 1017/14 IN O.P 1655/2011
- EXT.P-3: TRUE COPY OF I.A. 2728/14 IN I.A. 1017/14 IN O.P 1655/2011 ON THE FILE OF FAMILY COURT, IRINJALAKUDA.
- EXT.P-4: TRUE COPY OF COUNTER IN I.A. 2728/14 IN I.A. 1017/14 IN O.P 1655/2011 ON THE FILE OF FAMILY COURT, IRINJALAKUDA.
- EXT.P-5: TRUE COPY OF I.A. 260/15 IN I.A.1017/14 IN O.P 1655/2011 ON THE FILE OF FAMILY COURT, IRINJALAKUDA.
- EXT.P-6: TRUE COPY OF ORDER DATED 2.2.15 IN IA 260/15 IN I.A. 1917/14 IN O.P 1655/2011 ON THE FILE OF FAMILY COURT, IRINJALAKUDA.
- EXT.P-7: TRUE COPY OF ORDER DATED 2.2.15 IN IA 2728/14 IN IA 1017/14 IN O.P 1655/14 ON THE FILE OF FAMILY COURT, IRINJALAKUDA.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

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

OP(FC).No. 223 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

K.Ramakrishnan,J.

1st respondent in IA.No.260/2015 in IA.No.1917/2014 in OP.No.1655/2011 on the files of the Family Court, Irinjalakkuda has challenged the order passed by that court invoking the supervisory jurisdiction of this court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner has filed OP.No.1655/2011 before the Family Court, Thrissur seeking return of gold ornaments and maintenance and that the petition was decreed ex-parte. The respondents have filed IA.Nos. 1017/2014 and 1018/2014 for setting aside the exparte decree and to condone the delay of 240 days in filing the applications and those two petitions were allowed by the Family Court by Ext.P2 common order on condition that the petitioners in that applications who are the respondents herein to deposit the entire

arrears of maintenance due to the child as on that date within 10 days, failing which the applications will be dismissed. Further observed that if the arrears of maintenance is deposited then the decree holder is directed to withdraw the amount and further observed that unless and until the amount is deposited by the 1st respondent he is not entitled to claim custody of the minor child. Ultimately the applications were disposed of with the above observations. Thereafter since the amount was not paid the petitioner filed execution petition for realisation of the amount. When execution petition was pending, respondents filed IA. No. 1967/2014 seeking for extension of time by 2 months and also filed another application as IA.No.1529/2014 seeking custody of the minor child. Hence time was allowed by one month and thereafter he filed I.A.No.2728/2014 to permit him to deposit Rs.10,000/- and to grant 2 months time for depositing the balance amount of Rs.27,500/- for which the petitioner filed detailed counter affidavit opposing the application. Learned counsel for the respondents filed IA.No.260/2015 seeking permission to deposit the entire arrears. The learned Family Court allowed the applications as per Exts. P6 and P7 thereby exparte decree passed against the respondents has been set

aside. The order is being challenged by the petitioner in this petition.

3. Though notice was served by the respondents, they remained absent.

4. Heard counsel for the petitioner.

5. The main contention raised by the petitioner is that since Ext.P2 order being a self working order, the court below should not have extended the time ignoring the contentions raised by the petitioner in those applications . It is admitted fact that the petitioner filed original petition for return of gold ornaments and maintenance and that the petition was decreed exparte. It is also admitted fact that the respondents herein filed two applications for setting aside the exparte decree along with a delay condonation application to condone the delay of 240 days in filing the application to set aside the ex-parte decree and that was disposed of by the Family Court by Ext.P2 order whereby applications were allowed on condition of depositing the entire arrears of maintenance ordered to the child as a condition for allowing the applications within 10 days from the date of Ext. P2 order and also observed that if the amount is not paid the applications will stand dismissed. Further observation in the

order is that if the amount is deposited then it can be withdrawn by the decree holder and unless and until the amount is deposited the 1st petitioner in that application is not entitled to make any claim for custody of the child. Though from the earlier part of the order, it may appear that it is a self working order, but in the subsequent observation shows that it need not be deemed to be a self working order. It is on that basis when applications were filed seeking extension of time, the court below had granted permission to deposit the entire amount ordered to be deposited as per Ext.P2. That was complied with as well. Further the right of parties to have their claims decided on merit cannot be denied to them on nice technicalities. What is required is to advance social justice and not injustice on technicalities.

6. So under the above mentioned circumstances, we do not find any reason to interfere with the order passed by the court below as there is no illegality or impropriety committed by the court below in passing the impugned orders. Further the court below had exercised jurisdiction vested so as to meet the ends of justice and to give an opportunity to the parties to meet their case on merit. Hence there is no merit in this writ

petition.

7. The OP(FC) is hereby dismissed . Considering the fact that the case is of the year 2011, the court below is directed dispose of the case as expeditiously as possible giving priority for disposal of the case. Communicate the order to the court below at the earliest.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

