

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 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

OP (FC).No. 224 of 2015 (R)

(AGAINST THE COMMON ORDER DT. 8.4.2015 IN IA.597/2013 AND 598/2013
IN OA. NO.276/2012 OF THE FAMILY COURT, KOZHIKODE)

PETITIONER(S)/IST RESPONDENT/PETITIONER:

ASHRAF AGED 33 YEARS
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
MR.M.MOIDEEN KOYA, "KOYAS", KOLLERI PARAMBA
MAKKADA P.O., KOZHIKODE - 674 617.

BY ADVS.SRI.P.V.KUNHIKRISHNAN
SRI.P.V.ANOOP

RESPONDENT(S)/PETITIONER AND RESPONDENTS 2 & 3/
RESPONDENTS:

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1. MUFEENA, AGED 27 YEARS
D/O.MAMMED KOYA, MANEEF MAHAL
OPP.ELATHUR RAILWAYSTATION, ELATHUR P.O
KOZHIKODE - 673 303.
 2. ABUBACKER MUSALIYAR, AGED 28 YEARS
S/O.SAIDALI QUITB, ELATHUR JUMA MASJID, ELATHUR
KOZHIKODE - 673 303.
 3. THE MUTAWALLI ELATHUR JUMA AT MAHAL
P.O.ELATHUR, KOZHIKODE - 673 303.

R1 BY ADV. SRI.C.KHALID
R1 BY ADV. SRI.K.P.MOHAMED SHAFI
R1 BY ADV. SRI.PHIJO PRADEESH PHILIP
R1 BY ADV. SMT.K.REEHA KHADER
R1 BY ADV. SMT.K.K.NESNA

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 04-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 224 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF THE PETITION IN O.A.NO.276/2012 FILED BY THE PETITIONER DATED 7.4.2012 AGAINST THE RESPONDENTS

EXT.P-2: TRUE COPY OF THE ORDER DATED 14.6.2012 IN O.A.NO.276/2012 ON THE FILE OF THE FAMILY COURT, KOZHIKODE.

EXT.P-3: TRUE COPY OF THE JUDGEMENT DATED 28.1.2011 IN O.P NO.317/2011 ON THE FILE OF FAMILY COURT, KOZHIKODE.

EXT.P-4: TRUE COPY OF THE PETITION FILED BY THE PETITIONER TO SET ASIDE THE EX-PARTE ORDER WHICH IS NUMBERED AS I.A.NO.598/2013 IN O.A.NO.276/2012 ON THE FILE OF FAMILY COURT, KOZHIKODE.

EXT.P-5: TRUE COPY OF THE PETITION FILED BY THE PETITIONER TO CONDONE THE DELAY IN FILING THE PETITION TO SET ASIDE THE EX-PARTE ORDER WHICH IS NUMBERED AS I.A.NO.597/2013 IN O.A.NO.276/2012 ON THE FILE OF FAMILY COURT, KOZHIKODE

EXT.P-6: TRUE COPY OF THE COUNTER FILED BY THE PETITIONER IN EXT.P4 DATED 8.7.2013

EXT.P-7: TRUE COPY OF THE COUNTER FILED BY THE PETITIONER IN EXT.P5 DATED 8.7.2013

EXT.P-8: TRUE COPY OF THE COMMON ORDER DATED 8.4.2015 IN I.A.NO.597/2013 AND I.A NO.598/2013 IN O.A.NO.276/2012 OF FAMILY COURT, KOZHIKODE.

RESPONDENT(S)' EXHIBITS

EXT. R1(A) TRUE COPY OF THE MARRIAGE CERTIFICATE DT. 28.8.2014

EXT. R1(B) TRUE COPY OF THE ORDER IN OP.NO.317/2011 DT. 28.11.2011 BEFORE THE FAMILY COURT, KOZHIKODE.

TRUE COPY

PS TO JUDGE

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

OP(FC).No. 224 of 2015

Dated this the 4th day of August, 2015

JUDGMENT

K.Ramakrishnan,J.

The 1st respondent in IA.597/2013 and IA.No.598/13 in OA.276/2012 before the Family Court Kozhikode has filed this petition challenging Ext.P8 order passed by the court below under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner filed OP .No. 317/2011 before the Family Court, Kozhikode against the 1st respondent for restitution of conjugal rights and in that, the 1st respondent took a contention that she was a divorced wife and the petitioner pronounced thalaq and the same was entered in the register of the 3rd respondent mosque and that was considered by the Family Court in paragraphs 10 and 11 of Ext.P3. The Family Court

found that there was no valid thalaq but restitution of conjugal rights was not possible. Against the above finding, the 1st respondent filed MA. No.425/2013 before this court and the same is pending before this court. Since the Family Court has found that there is no valid thalaq and the entry in the register maintained by the 3rd respondent was a mistake, the petitioner filed Ext.P1 petition as OA. No. 276/2012 for a declaration regarding matrimonial status in the light of the findings in Ext.P3 and for a mandatory injunction directing the respondents to remove the wrong entries in the register maintained by the 3rd respondent. Since the respondent did not appear, that petition was allowed and an exparte decree was passed. Thereafter the respondents herein filed Exts.P4 and P5 applications viz. IA.597/2013 and IA.598/2013 to set aside the exparte order and to condone the delay of 336 days in filing the application to set aside the ex-parte order and the petitioner filed Exts.P6 and P7 objections. But the Family Court

relying on the submissions made by counsel for respondents 2 and 3 alone allowed applications by passing Ext.P8 common order directing the respondents herein to pay cost of Rs.1000/- to the petitioner within one month. This order is being challenged by the petitioner.

3. The 1st respondent filed detailed counter denying the allegations and also stating that it is only to harass the petitioner that the present petition has been filed.

4. Heard counsel for the petitioner and the respondents.

5. Counsel for the petitioner submitted that his only grievance was that though he had filed a detailed counter to Exts.P4 and P5 applications vide Exts. P6 and P7 objections, those contentions were not properly considered by the Family Court and passed a non speaking order which will appear that the petitioner also conceded for allowing the application which in fact had not taken place.

6. On the other hand, counsel for the respondents

submitted that the order will go to show that the objections raised by the petitioner were also considered and it is only thereafter that Ext.P8 order has been passed. Further no prejudice will be caused to the petitioner in allowing the petitions. The relief ought not to have been granted by the Family Court in the petition filed by the petitioner.

7. It is an admitted fact that the petitioner and the 1st respondent are man and wife and they started residing separately. It is admitted that there was a thalaq notice issued . But according to the petitioner, there was no valid thalaq and he filed a petition seeking a decree for restitution of conjugal rights and the 1st respondent raised a contention that she was a divorced wife and necessary entries were made in the register maintained by the 3rd respondent and she contracted a second marriage and also having children in that wedlock. The petitioner also married another woman and now the application was filed only to harass her. But it is also seen from Ext.P3 judgment that

the Family Court, on the basis of evidence found that there was no valid thalaq but considering the circumstances refused the decree for restitution of conjugal rights. Aggrieved by the judgment of the Family Court that there is no valid thalaq, the 1st respondent filed MA. 425/13 before this court and that is pending. It is during the pendency of this appeal on the basis of the findings of the Family Court that there was no valid thalaqu that the petitioner filed Ext.P1 petition to declare that the marriage between the petitioner and the 1st respondent is subsisting and also for mandatory injunction directing respondents 2 and 3 to remove entries made in the register regarding marital status between the petitioner and the 1st respondent. It is also admitted fact that it was decided exparte and when the 1st respondent came to know about she filed Exts. P3 and P4 applications to set aside the exparte decree along with delay condonation petition for condoning the delay of 336 days. It is seen from Exts.P6 and P7 that detailed objections were

filed by the petitioner opposing the applications. But quite unfortunately in Ext. P8 common order nothing was mentioned about the objections raised but it is stated as follows:-

" Considering the circumstances pleaded by the applicant and the 1st respondent and the submission by counsel for R2 and R3 that they have no objection in IA.No.597/2013 and IA 598/2013 are conditionally allowed in terms of payment of total costs of Rs.1000/- to the 1st respondent within one month."

8. A reading of Ext.P8 will be seen that it was on the basis of submissions made by respondents 2 and 3 that there was no objection in allowing the application that a conditional order was passed directing to pay cost of Rs.1000/- to the 1st respondent who is the petitioner herein as a condition for allowing the applications. So there is some force in the submission made by the petitioner that the objections of the petitioner has not been properly appreciated by the court below and it is a non speaking order and the court should have passed a speaking order considering the objections. Hence Ext.P8 order passed by the

court below is liable to be set aside and the matter has to be remitted to the court below in accordance with law.

9. So the petition is allowed and Ext.P8 order passed by the Family Court in IA.No.597/2013 and IA.598/2013 are set aside and the matter is remitted to the court below for fresh disposal in accordance with law. Considering the fact the applications were of the year 2013, the Family Court is directed to expedite disposal of the applications within one month from the date of receipt of this judgment after giving opportunity to the petitioner who is the 1st respondent in that application to submit his objection and to pass appropriate orders in accordance with law on merits.

Communicate the judgment to the court below at the earliest.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

