

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP (FC).No. 229 of 2015 (R)

O.P. NO.459/2014 OF FAMILY COURT, KANNUR.

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PETITIONER(S):

ZAKARIA M.S. BHALDAR, AGED 36 YEARS,
S/O.MUHAMMED SIDDIK, K.G.N. TOWERS,
FLAT NO.1304, IMAM WADA ROAD,
OPPOSITE SABOO SIDDIK HOSPITAL,
DONGRI, MUMBAI-9.

BY ADVS.SRI.O.V.MANIPRASAD,
SRI.JOSE ANTONY.

RESPONDENT(S):

KHADEEJA C., AGED 27 YEARS, D/O.MAHAMOOD,
RESIDING AT "DARUSSALAM", THOTTIKKAL,
THIRUATTOOR P.O., THIRUVATTOOR VILLAGE,
PARIYARAM DESOM, TALIPARAMBA TALUK,
KANNUR DISTRICT-670 501.

BY ADVS. SMT.O.VBINDU,
SMT.V.P.SATHI.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 A TRUE COPY OF THE CONSENT TERMS FOR INTERIM ACCESS
DATED 10/12/2014 SIGNED BY THE PETITIONER AND THE
RESPONDENT BEFORE THE COUNSELOR OF FAMILY COURT AT
MUMBAI.
- EXT.P2 A TRUE COPY OF THE PETITION IN OP.459/2014 OF THE FAMILY
COURT, KANNUR.
- EXT.P3 A TRUE COPY OF THE JUDGMENT IN OP.459/2014 OF THE FAMILY
COURT, KANNUR.
- EXT.P4 A TRUE COPY OF THE AFFIDAVIT AND PETITION FILED AS IA.317/2015
IN O.P. NO. 459/2014.
- EXT.P5 THE TRUE COPY OF THE AFFIDAVIT IN SUPPORT IN I.A.316/2015 IN
O.P. NO.459/2014.
- EXT.P6 A TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A.370/2015.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

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

OP(FC).No. 229 of 2015

Dated this the 24th day of June, 2015

JUDGMENT

K.Ramakrishnan,J.

Respondent in OP.No.459/2014 of the Family Court, Kannur has filed this petition seeking intervention of this court for effective orders invoking Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner herein is the respondent in OP. No.459/2014 on the file of the Family Court, Kannur, which was filed by the respondent herein who is none other than the wife of the petitioner seeking certain reliefs. Since the petitioner did not appear, the Family Court passed an exparte decree in that matter. The petitioner came to know about the exparte order only when he received notice in the execution petition. Immediately he filed Ext.P4 petition to set aside the exparte

decree along with Ext.P5 petition to condone the delay and Ext.P6 petition to stay the execution till the disposal of the application to set aside the exparte decree. The Family Court is not passing any orders in those applications but at the same, time the Family Court is insisting for proceeding with the execution as well. So the petitioner has filed this petition seeking the following reliefs.

i) Issue a direction, directing the Family Court at Kannur to keep in abeyance of the execution proceedings pursuant to Ext.P3 judgment and decree in OP.No.459/2014 of the Family Court, Kannur subjected to the interim arrangement in Ext.P1, pending consideration of Ext.P4 and P5 applications by the Family Court, Kannur.

ii) Issue a direction, directing the Family Court at Kannur to consider and pass appropriate orders on Ext.P4 to P6 applications expeditiously.

Iii) Such other further reliefs as this Hon'ble Court may deem fit and proper to grant in the facts and in the circumstances of the case.

3. Heard counsel on both sides.

4. Though the petitioner had filed application before the Family Court to stay the execution proceedings till the disposal of the application to set aside the exparte decree,

the court below has not passed any orders. On the other hand the execution petition is being proceeded with. The application was opposed by the counsel for the respondent.

5. When an application has been filed by the petitioner to set aside the exparte order or decree along with a delay condonation application and also filed application for stay of execution under Order 21 Rule 26 of the Code of Civil Procedure to stay the decree pending disposal of the application to set aside exparte decree, the court below is expected to pass orders either way in those applications. Without passing any order in those applications proceeding the execution petition will only cause prejudice to the petitioner. Ultimately if the exparte decree is set aside and execution proceedings are completed, then it is very difficult to restore the original position as well, though it may file application for restoration of the status quo ante, it will only multiply the proceedings. In order to avoid such multiplication of proceedings, when such applications are filed the court below is bound to pass an order in those

applications. So we feel that this petition can be disposed of by giving direction to the Family Court to consider and dispose of Exts.P4 to P6 applications filed before that court within a period of 2 months from the date of receipt of this judgment. Till then the execution of the order in OP.No.459/2014 pending before the Family Court is directed to be kept in abeyance.

With the above observations the writ petition is disposed of. Office is directed to communicate this order immediately.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

