

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

OP (FC) .No. 233 of 2015 (R)

AGAINST THE ORDER IN OP(G&W)NO.767/2011 of FAMILY COURT, KOTTARAKKARA
DATED 31-05-2013

PETITIONER/DECREE HOLDER:

SULFA BEEVI, AGED 56 YEARS,
RIYAD MANZIL, MADATHARA P.O, CHIRAVOOR,
KOLLAM DISTRICT.

BY ADVS.SRI.V.PREMCHAND
SRI.V.TEKCHAND

RESPONDENT/JUDGMENT DEBTORS:

1. SHAHINA,
SHANAVAS MANZIL, PARUTHIVILA, KIZHAKKUMBHAGOM,
CHITHARA P.O., MANCODU VILLAGE, KOTTARAKARA TALUK
KOLLAM DISTRICT-691213.

2. SHAIK MUHAMMED ALI (MINOR)
REPRESENTED BY IST RESPONDENT MOTHER
SHANAVAS MANZIL, PARUTHIVILA, KIZHAKKUMBHAGOM,
CHITHARA P.O., MANCODU VILLAGE, KOTTARAKARA TALUK
KOLLAM DISTRICT-691213.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 233 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 31.5.2013 IN O.P. (G&W)
767/2011 BEFORE THE FAMILY COURT, KOTTARAKARA.

EXHIBIT P2: TRUE COPY OF THE B-DIARY IN E.P.22/2014 IN O.P (G&W)
767/2011 BEFORE THE FAMILY COURT, KOTTARAKARA.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(FC)No.233 of 2015
.....

Dated this the 17th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner/decreed holder in EP.No.22/2014 in OP(G&W)No.767/2011 on the file of the Family Court, Kottarakkara seeking interference of this Court for an expeditious disposal of the execution petition under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner filed OP (G&W) No.767/2011 before the Family Court, Kottarakkara against the first respondent for getting permanent custody of the second respondent/ minor grandson under section 25 of the Guardian and Wards Act and that case was decided ex parte in favour of the petitioner on 31.5.2013. Thereafter she filed Ext.P2 execution petition as EP.No.22/2014 to execute the decree. The court below had not executed the decree instead postponed the case repeatedly on no reasons to deny the fruits of the decree to the petitioner. The court below even advised the first respondent to file an application to set aside the ex

parte decree. So the petitioner has no other remedy except to approach this Court seeking the following reliefs:

- i. issue a direction to the Family Court, Kottarakara to take up E.P.No.22/2014 in O.P.(G&W)No.767/2011 and dispose of the same expeditiously.
- ii. issue a direction to the Family Court, Kottarakara to dispose of EP.No.22/2014 in OP.(G&W) No.767/2011 within a time limit.
- iii. Any other reliefs this Court deems fit.

3. On the basis of the allegations made, we have called a report from the Family Court Judge, Kottarakara and the learned Family Court Judge sent the report dated 13.7.2015, wherein it has been mentioned that, on the basis of the warrant issued, minor child was produced before the court and though interim custody was ordered on several occasions to have interaction for a period of 1 or 2 hours, the child was not willing to go with the decree holder and thereafter the judgment debtor filed EA.No.38/2015 for staying further proceedings under Order XX1 Rule 26 of the Civil Procedure Code and also filed IA.Nos.415/2015 and 416/2015 to set aside the ex parte decree along with delay condonation application and after hearing both sides, applications were allowed on payment of cost of Rs.2,000/- and it is posted to 21.7.2015 for payment of cost.

4. Since the minor ward was not willing to go with the grandmother, the execution petition could not be closed by handing over the child to the decree holder. Since application to set aside the ex parte decree and delay condonation application have already been set aside by the court below on payment of cost and it is posted to 21.7.2015 for complying with the order of payment of cost, this Court feels that there is no necessity to issue any direction as prayed for in this petition. If cost is paid, automatically the ex parte decree will be set aside and the parties will be at liberty to adjudicate case before the court below on merit. If the petitioner wants any interim custody after the ex parte decree is set aside, she is at liberty to move that court for that purpose and if such an application is filed, the lower court is directed to consider and dispose of that application after hearing both sides in accordance with law without delay.

With the above directions and observations, this writ petition is dismissed.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

