

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 6TH DAY OF JULY 2015/15TH ASHADHA, 193

OP (FC).No. 237 of 2015 (R)

ARISING FROM EP No.4/2013 IN OP 1058/2009 of FAMILY COURT, ERNAKULAM

PETITIONER:

- 1. NOUSHAD,
AGED 35 YEARS, S/O.VEERAVUNNI,
RESIDING AT VAZHAKKAMATTOM HOUSE
EAST VELIATHUNADU KARA, ALUVA WEST VILLAGE.**
- 2. VEERAVUNNI
VAZHAKKAMATTOM HOUSE,
EAST VELIATHUNADU KARA
ALUVA WEST VILLAGE.**

BY ADV. SRI.RAJIV NAMBISAN

RESPONDENT:

**ASMA BEEVI
D/O.KOUAKUTTY,
RESIDING AT CHANGANIKKODATH HOUSE
WEST KADUNGALLOOR KARA, KADUNGALLOOR VILLAGE.**

BY ADV. SRI.SAKIR.K.H.

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 06-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

OP (FC) No.237/2015.

APPENDIX

PETITIONER'S EXHIBITS

EXT- P1 - TRUE COPY OF THE AUCTION NOTICE DATED 20-05-2015.

RESPONDENT'S EXHIBITS

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

O.P (FC) No. 237 OF 2015

DATED THIS THE 6th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

This is an application filed by the judgment debtor in EP 4/2013 of Family Court, Ernakulam seeking direction to issue to the court below under Article 227 of the Constitution of India. It is alleged in the petition that the petitioner herein are the judgment debtor in EP 4/2013 in OP 1058/2009 on the file of the Family Court, Ernakulam. The OP was filed by the respondent herein to get back the gold ornaments or its value and cash entrusted at the time of marriage. Since the petitioners did not appear, the petition was disposed of exparte. The petitioner filed filed I.A. 3688/2012 to set aside exparte decree along with I.A 3689/2012 to condone the delay in filing the application. While those petitions were pending, the respondent filed EP 4/2013 for executing decree for sale of property of the 2nd petitioner herein. After making proclamation, it was posted

for sale as per Ext.P1 auction notice. So the petitioner has no other remedy except to approach this court to keep the execution petition pending till the disposal of the application filed to set aside exparte decree. Hence the petition.

2. Heard counsel for the petitioners and respondent.

3. Grievance of the petitioners is that though they filed an application to set aside the exparte order along with delay condonation application, the court below has not passed any order in those application before proceeding with the execution petition filed by the respondent to execute the exparte decree. Grievance of the petitioners appears reasonable and genuine. However, this court while granting stay directed the petitioner to deposit Rs.3,00,000/- towards the decreetal amount as condition for granting stay as per order dated 04-06-2015 and again as per order dated 26-06-2015 permitted the petitioners to deposit Rs.2,00,000/- out of Rs.3,00,000/- within a particular period.

4. Both the counsels submitted that the amount as directed as per order dated 26-06-2015 has been deposited. Counsel for the petitioners sought one month more time to deposit the balance amount of Rs.1,00,000/- directed to be despited by this court as per order dated 04-06-2015. But the counsel for the respondent submitted that as on today, an amount is more than Rs.14 lakhs is due.

5. It may be mentioned here the petitioners have already moved the court below for setting aside the exparte decree. If that decree is set aside then the execution petition will have to be dismissed. Before disposing that application, it is not proper on the part of the court below to proceed with the execution. So under the circumstances this court feels that the petitioners can be granted 3 weeks more time to deposit balance amount of Rs.1,00,000/- directed to be deposited, by this court as per order dated 04-06-2015 and if that amount is deposited then the court below is directed to expedite disposal of I.A. 3688/2012 & I.A 3689/2012 as expeditiously as possible, at any rate

within 2 months from that day. If the amount is not deposited as directed by this court then the court below is at liberty to proceed with the execution petition. Simultaneously with the disposal of application to set aside exparte decree filed by the petitioners. The amount deposited by the petitioners is permitted to be withdrawn by the respondent on furnishing an undertaking that if ultimately the case is decided against the respondent, she will re-deposit the same.

6. With the above directions and observations this petition is allowed.

7. Communicate this judgment to the concerned court immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge