

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP (FC).No. 258 of 2015 (R)

(AGAINST THE ORDER IN I.A.23/2015 IN OP 1149/12 OF THE FAMILY COURT,
ALAPPUZHA)

PETITIONER(S) :

1. SHEMIM SULAIMAN AGED 60 YEARS
S/O.SULAIMAN, KOLLAMPARAMBIL, MADAPPALLY PO
THENGANA, CHANGANASSERRY TALUK
(NOW RESIDING AT KOLLAMPARAMBIL HOUSE
PERUMANCHERRY, KOTTAYAM DISTRICT)

2. NOORJAHAN, W/O.SULAIMAN, AGED 54 YEARS
KOLLAMPARAMBIL, MADAPPALLY PO, THENGANA
CHANGANASSERRY TALUK
(NOW RESIDING AT KOLLAMPARAMBIL HOUSE
PERUMANCHERRY, KOTTAYAM DISTRICT)

3. SULAIMAN AGED 60 YEARS
KOLLAMPARAMBIL, MADAPPALLY PO, THENGANA
CHANGANASSERRY TALUK
(NOW RESIDING AT KOLLAMPARAMBIL HOUSE
PERUMANCHERRY, KOTTAYAM DISTRICT)

BY ADVS.SRI.BABU CHERUKARA
SRI.ANZAR BASHEER

RESPONDENT(S) :

SURUMI KASSIM, AGED 22 YEARS
D/O.KASIMKUNJU, SAIMY MANZIL, MULAKKUZHA MURI
MULAKKUZHA VILLAGE, PO, MULAKKUZHA
CHENGANNUR, ALAPPUZHA DISTRICT

R1 BY ADV. SRI.A.C.DEVY

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 09-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 258 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1-COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PARTIES DURING
THE PENDENCY OF OP NO.1149 OF 2012 BEFORE THE FAMILY COURT, ALAPPUZHA

EXT.P2-COPY OF THE RECEIPT DATED 5.7.13 ISSUED BY THE RESPONDENT

EXT.P3- COPY OF THE ORDER DATED 5.7.13 OF THE FAMILY COURT, ALAPPUZHA
IN OP NO.1149 OF 2012

EXT.P4- COPY OF THE ORDER DATED 5.7.2013 IN CRL M.C.NO.5232 OF 2014 OF
THIS HONOURABLE HIGH COURT

EXT.P5- COPY OF THE IA NO.23 OF 2015 IN OP NO.1149 OF 2012 FILED BEFORE
THE FAMILY COURT, ALAPPUZHA

EXT.P6- COPY OF THE ORDER DATED 13.01.2015 IN IA NO.23 OF 2015 IN OP
NO.1149 OF 2012 OF THE FAMILY COURT, ALAPPUZHA.

/TRUE COPY/

P.S. TO JUDGE.

s1.

C.K.Abdul Rehim & Mary Joseph, JJ.

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O.P.(FC) No.258 of 2015

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Dated this the 9th day of November, 2015.

JUDGMENT

Abdul Rehim, J.

1. In this original petition instituted under Article 227 of the Constitution of India, the petitioners are challenging Ext.P6 order passed by the Family Court in I.A.No.23 of 2015 in O.P.No.1149 of 2012. The case before the Family Court was filed by the respondent herein seeking for return of gold and money. In order to vacate an interim order of attachment of immovable property passed by the Family Court, the petitioners have furnished security by producing Fixed Deposit Receipt to the tune of ₹5,25,000/-, deposited at the Federal Bank, Thengana Branch. Subsequently the case before the Family Court (O.P.No.1149 of 2012) was settled between the parties in terms of Ext.P1 Memorandum of Agreement. Among terms of the settlement arrived it was agreed upon that, the amount of security

furnished through the Fixed Deposit can be realized by the respondent, in lieu of her claims, as and when the criminal case instituted by her alleging offence punishable under Section 498A of the Indian Penal Code, will be withdrawn and as and when the marriage is dissolved through 'Talaq'. It is stated that, based on Ext.P1 Memorandum of Agreement, O.P.No.1149 of 2012 was disposed of by the Family Court on 5.7.2013, after endorsing Ext.P2 receipt signed by the respondent herein acknowledging receipt of the gold ornaments. Subsequently, the petitioners herein have approached this court in CrI.M.C.No.5232 of 2014 seeking to quash the criminal case, which was pending before the Judicial First Class Magistrate, Changanacherry as C.C.No.44 of 2013, which was instituted at the instance of the respondent alleging offence punishable under Section 498A I.P.C. CrI.M.C.No.5232 of 2014 was allowed by this court through Ext.P4 order by quashing the further proceedings in C.C.No.44 of 2013, after making it clear that the amount of Rs.5,25,000/- in deposit before the Family Court,

Alappuzha shall be disbursed to the respondent herein.

2. Based on the compromise and based on Ext.P4 order of this court, the respondent herein filed I.A.No.23 of 2015 before the Family Court seeking for disbursal of the amount of security deposit to the tune of ₹5,25,000/-, along with interest accrued thereon. The relief sought for in the said application (Ext.P5) was to handover the 'Fixed Deposit Receipt' to the respondent and to direct the Bank Manager to permit her to withdraw the amount with interest. The said application was allowed by the Family Court on 13.1.2015 as per Ext.P6 order, which is impugned in this original petition.
3. Contention of the petitioners is that, as per the terms of Ext.P1 Agreement the respondent is not entitled to withdraw the interest accrued on the Fixed Deposit. It is stated that, the counsel appearing for the petitioners herein before the court below had made an endorsement on Ext.P5 interim application to the effect that the petitioners have no objection in releasing the amount of ₹5,25,000/- only. But the court below, without considering such an endorsement

and without considering the terms of Ext.P1 Agreement, had allowed the interim application. However, it is conceded that, on the basis of Ext.P6 order the respondent herein had already withdrawn a total amount of ₹6,27,974/- from the Bank. It is argued that the permission for withdrawal of the amount was permitted through a non-speaking order which was passed without considering the specific objection and it had caused severe prejudice and heavy financial loss to the petitioners.

4. Heard; counsel appearing on both side. This court takes note of the fact that Ext.P5 interim application was filed by the respondent on 8.1.2015, as evidenced from the endorsement on the 'Docket Sheet'. There is an endorsement made by the counsel appearing for the petitioners before the court below on 7.1.2015, to the effect that, copy of the interim application was received and that they have no objection in releasing ₹5,25,000/- only. It is further evident that the Family Court had considered the said application on 13.1.2015. Proceedings noted by the Family Court in the Docket Sheet on

13.1.2015 is that, *“this ptn. filed by the ptnr. for lifting the money attachment of Federal Bank, Thengana Branch. This case is closed on 5.7.13 as settlement”*. On the same day the interim application was allowed through Ext.P6 order. The further endorsement in the Docket Sheet would indicate that the F.D.Receipt was returned to the respondent from the Family Court on 24.1.2015.

5. It is evident from the facts mentioned above that, the interim application seeking for return of the FD Receipt and seeking issuance of direction to the Bank Manager permitting withdrawal of the amount under Deposit was not opposed by the petitioners before the Family Court, except the endorsement made as mentioned above. Presumably, the Family Court had allowed the application because there was no express objection raised disputing the request for release of the interest accrued on the Fixed Deposit. The petitioners could have opposed such prayer before the Family Court, when the matter was considered by that court on 13.1.2015. Even thereafter, the petitioners have not taken any steps either to challenge the said

order or to seek for a correction or review of the said order, till 24.1.2015, the date on which the Fixed Deposit Receipt was returned to the respondent from the Family Court. As admitted in this original petition, the impugned order had already taken effect and the respondent herein had already withdrawn the entire amount from the Bank on 10.2.2015. It is only thereafter, in the month of June 2015, that the petitioners have approached this court challenging Ext.P6 order.

6. Under the above mentioned circumstances, we do not think that the petitioners are entitled for any relief from this court, especially in this original petition filed under Article 227 of the Constitution of India by invoking the supervisory jurisdiction vested on this court. We are not in a position to hold that the Family Court had committed any error of jurisdiction in allowing the application, since no specific objection was raised with respect to release of the interest accrued on the Fixed Deposit. Further, it is evident that the impugned order has taken effect and it stands implemented. However, if the petitioners

are of the opinion that the impugned order happened to be passed on the basis of any mistake committed by the court below, it is open for them to approach that court itself, seeking review or correction or modification of the order. It will be also left open to the petitioners to take appropriate remedy to realise the amount from the respondent, if permissible under law. Having not chosen to take any such recourse, the original petition now filed seeking to set aside the order, cannot be entertained.

7. Hence the original petition deserves no merit and the same is hereby dismissed, subject to liberty of the petitioners to seek any appropriate remedy as mentioned above, to the extent permissible under law.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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