

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 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

OP (FC).No. 260 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OP 2017/2012 of FAMILY COURT,
NEDUMANGAD, DATED:17.07.2014

PETITIONER(S):

VINAYAKAN, AGED 50 YEARS,
S/O.HARIDAS, V.S.NILAYAM, K.K.NAGAR,
KARAKULAM, NEDUMANGADU,
REPRESENTED BY POWER OF ATTORNEY HOLDER, RAJ SAJEEV JOHN,
SAVINA NIVAS, T.C.30/2674, TITANIUM P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.K.SABU
SRI.S.R.SUNJITH

RESPONDENT(S):

1. SHEEBA KUMARI,
D/O.THANKAMANI, KAMUKARA POIKA VEEDU, K.K.NAGAR,
KARAKULAM P.O., NEDUMANGADU - 695 564.
2. VINEESHA, D/O.VINAYAKAN,
RESIDING AT RAJ SAJEEV JOHN, SAVINA NIVAS, T.C.30/2674,
TITANIUM P.O., THIRUVANANTHAPURAM- 695 021.
3. VIJESH, S/O.VINAYAKAN,
RESIDING AT RAJ SAJEEV JOHN, SAVINA NIVAS, T.C.30/2674
TITANIUM PO, THIRUVANANTHAPURAM 695 021.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 16-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 260 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE PHOTO COPY OF OP NO.2017/12 FILED BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT , NEDUMANGAD.
- P2- TRUE PHOTOCOPY OF WRITTEN STATEMENT/OBJECTION FILED BY THE PETITIONER.
- P3- TRUE PHOTO COPY OF EXPARTE DECREE IN OP 2017/12 DATED 17.7.14.
- P4- TRUE PHOTO COPY OF EXPARTE JUDGMENT IN OP NO.2017/12 DATED 17.7.19.
- P5- TRUE PHOTOCOPY OF APPLICATION FOR SETTING ASIDE THE EXPARTE DECREE AND JUDGMENT IN OP 2017/12.
- P6- TRUE PHOTOCOPY OF ORDER IN IA 1155/14.
- P7- TRUE PHOTOCOPY OF ORDER IN IA NO.1155/14 DATED 20.3.2015.
- P8- TRUE PHOTOCOPY OF POWER OF ATTORNEY DATED 19.10.2012.

RESPONDENT(S)' EXHIBITS

: NIL

//True Copy//

P.A.To Judge

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

O.P.(F.C.) No.260 of 2015

Dated this the 16th day of June, 2015

JUDGMENT

K. Ramakrishnan, J

The petitioner in I.A.No.1155/2014 in O.P.No.2017/2012 on the file of the Family Court, Nedumangad, is the petitioner herein, who filed this application challenging the order passed by the court below invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. The petitioner is the respondent in O.P.No.2017/2012 which was filed by respondents herein, who are the wife and children of the petitioner. They were living together as husband and wife on the basis of marriage agreement, after conducting ceremonial marriage dated 18.03.1995 and two children were born to them in the wedlock. The claim of the wife in the lower court was that they were living together as husband and wife and from

10.09.2011 they were living separately and she was driven out of the house and the gold ornaments and money given to her at the time of marriage were misappropriated and they were not returned and no maintenance has been paid to them. So they claimed the relief of return of gold ornaments and money and maintenance both past and future by filing for the petition before the court below.

3. Though respondent was served with notice, he did not appear. So he was declared ex-parte. First petitioner filed proof affidavit and Ext.A1 was marked and the first petitioner in the lower court in the original petition was examined as PW1 and after considering the evidence, the court below had allowed the original petition in part directing the petitioner herein to hand over ten sovereigns of gold ornaments or its value amounting to ₹2,20,000/- to the first petitioner and also allowing the first petitioner to realise ₹50,000/- from the petitioner herein which was given

at the time of marriage as pocket money to him and also granting a decree for past maintenance at the rate of ₹5,000/- to the first petitioner and ₹5,000/- each to petitioners 2 and 3 by way of past and also granted future maintenance at the same rate to the petitioners in the lower court. The first petitioner was allowed to realize the maintenance amount for and on behalf of minor respondents 2 and 3 as well. Thereafter, petitioner filed Ext.P5 petition as I.A.No.1155/2014 to set aside the ex-parte decree and the court below after hearing both sides relying on the decision reported **Summer Sand Hill Resort and Ayurvedic Centre v. S.B.T. [2010(1) KLT 478]**, allowed the application on condition of depositing ₹1,50,000/- towards portion of the decree amount on or before 17.04.2015 otherwise the petition will be dismissed. This order was passed on 12.03.2015. Since the petitioner did not pay the amount, by Ext.P7 order the learned Family

Court Judge dismissed the I.A. Aggrieved by Exts.P6 and P7 orders, the present petition has been filed by the petitioner challenging that order.

4. Considering the scope of enquiry, we felt that the petition can be disposed of at the admission stage itself, after hearing the counsel for the petitioner.

5. The counsel for the petitioner submitted that there is dispute regarding the marriage and also the dispute regarding giving of gold ornaments and cash as claimed by the petitioners in the original petition and those things can be decided only on the basis of evidence. So the cost ordered by the court below is exorbitant and imposing such condition will amount to denial of opportunity for the petitioner to hear the case itself on merit.

6. We have gone through the order of the court below. In appropriate cases, court is having power to impose conditions even to direct deposit portion of the

decree amount so as to meet the ends of justice as mentioned in the decision relied on by the court below. In this case, the amount ordered to be deposited will not even cover the maintenance amount due to the petitioners in the main petition. So this order passed by the court below cannot be said to be illegal or improper, requiring interference of this court, invoking the supervisory jurisdiction under Article 227 of the Constitution of India. So under the circumstances, we do not find any merit in the petition. However, the counsel for the petitioner sought time for depositing the amount. So we feel that, the same can be allowed and granting two months time more from today to the petitioner to deposit the amount, before the court below in two equal monthly installments. If the amount is paid within the time mentioned above, then the lower court is directed to allow the application and give opportunity to the parties to meet the case on merit. If the

amount is not deposited as stated above, then the order of the court will be restored. Communicate this order to the court below at the earliest.

With the above direction and observation, the original petition is disposed of.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge

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