

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 24TH DAY OF JULY 2015/2ND SRAVANA, 1937

OP (FC).No. 262 of 2015 (R)

IN OP 617/2013 of FAMILY COURT, NEDUMANGAD

PETITIONER(S)/PETITIONER/RESPONDENTS:

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- 1. ISRAEL, S/O.DAVID,
KRIPA SADANAM VEEDU, AADUVALLY
THIRUVANANTHAPURAM DISTRICT**
 - 2. CHRISTAFER, S/O.MARIYADAS,
POLLAYIL PUTHEN VEEDU, V.P. VI/318, KIZHAKKE PANNIMALA
VELLARADA VILLAGE, KOOTHALI PO, NEYYATTINKARA
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENT(S)/RESPONDENT/PETITIONER:

**SHIMNAMOL
D/O.PUSHPAKUMARI, AYANIVILA VEEDU, THOONGAMPARA
KATTAKKADA, MARANELLOOR PO
THIRUVANANTHAPURAM DISTRICT,
REPRESENTED BY PUSHPAKUMARI, W/O SUSEELAN,
AYANIVILA VEEDU, THOONGAMPARA,
KATTAKKADA, MARANELLOOR PO
THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SMT.M.CHANDRALEKHA

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
24-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (FC).No. 262 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE OP NO.617/2013 OF FAMILY COURT,
 NEDUMANGAD**
- EXT.P2 - TRUE COPY OF THE JUDGMENT DATED 12.9.14 IN OP
 NO.617/2013**
- EXT.P3 - TRUE COPY OF THE ORDER DATED 12.2.2015 IN EA NO.156/14
 OF THE FAMILY COURT, NEDUMANGAD**
- EXT.P4 - TRUE COPY OF THE ORDER DATED 28.2.2015 OF FAMILY
 COURT, NEDUMANGAD IN E.A.NO.29/15 IN OP NO. 617 /2013**

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

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

O.P(F.C.).No.262 of 2015

Dated this the 24th day of July, 2015

JUDGMENT

C.K.Abhul Rehim, J.

The petitioners are the respondents in O.P. No.617/2013 on the files of the Family Court, Nedumangad.

2. The original petition was filed before the Family court seeking to set aside the sale deed and for restoration of ownership and possession of the scheduled property and also for realising of 35 sovereigns of gold ornaments and Rs.2 lakhs from the first petitioner. The petitioners were set ex-parte in the above case and an ex-parte decree was passed, when the petitioners failed to appear and to contest the case. The ex-parte decree was passed as early as on 12.09.2014. The respondent herein had filed E.P.No.83/2014 seeking execution of the decree. While so, the petitioners approached the Family court by filing E.A.No.156/2014 in E.P.No.83/2013 in

O.P.No.617/2014, seeking to set aside the ex-parte decree passed against them. Through Ext.P3 order dated 12.02.2015 the Family court had allowed the above application, subject to condition of the petitioners depositing a sum of Rs.2 lakhs towards part of the decree amount, on or before 27.02.2015. It is conceded that the petitioners have failed to remit the amount within the date stipulated. They filed a further application as E.A.No.29/2015 seeking for enlargement of time for payment of the said amount. But the Family court dismissed the petition through Ext.P4 order, observing that there is no valid reason existing for granting any extension of time to the petitioners. It is challenging Exts.P3 and P4, this writ petition is filed by invoking jurisdiction vested on this Court under Article 227 of the Constitution of India.

3. The respondent entered appearance through counsel. Heard learned counsel appearing on both sides.

4. We notice that the application to set aside the ex-parte was allowed by the Family court as early as

on 12.02.2015, subject to condition incorporated in Ext.P3 order. The petitioners have not chosen to challenge the said order within any reasonable time. On the other hand, they have approached the Family court seeking enlargement of time for depositing the said amount. Therefore it is evident that the petitioners were willing to abide by the condition incorporated by the Family court in Ext.P3 order. Hence, this Court cannot entertain any challenge raised by the petitioners against Ext.P3 order, at this point of time, that too by invoking the power of Article 227 of the Constitution of India.

5. With respect to Ext.P4 order we notice that the extension of time limit sought for by the petitioner was declined by the Family court, on the mere finding that there exists no valid reasons. It is evident from Ext.P4 that the petitioners have made deposit of a portion of the amount. But the learned counsel for the respondent had pointed out that no amount was deposited towards the condition imposed under Ext.P3. However, we notice that the observation in Ext.P4 is only to the effect that certain

deposits were made in various Banks. It is evident that despite Ext.P3 order was issued as early as in February 2015, the petitioner had not made any deposit of the amount as stipulated, despite the lapse of considerable time. However, as a last chance, we are inclined to grant a breathing time to the petitioners for depositing the amount.

6. Hence, the writ petition is hereby disposed of by directing the petitioners to make deposit of the amount of Rs.2 lakhs as directed in Ext.P3 order, within a period of one month from today.

The Family court is directed to keep in abeyance any coercive steps in the execution application till then. Needless to observe that if the petitioner failed to make the deposit within the time as stipulated above, the said court will take necessary steps to execute the decree.

Sd/-

C.K.ABDUL REHIM, JUDGE

Sd/-

K.RAMAKRISHNAN, JUDGE

VS