

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

OP (FC).No. 264 of 2015 (R)

I.A. NO.2153/2015 IN O.P. NO.1319/2014 OF FAMILY COURT, ERNAKULAM.

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PETITIONER(S):

**NIMI MANOHARAN, D/O.A.N. MANOHARAN,
AGED 35 YEARS, AYINIPULLY HOUSE,
KRISHNAKRIPA, LOUIS GARDEN,
SOUTH KALAMASSERY K.D. PLOT, PIN - 683 109,
NOW WORKING AT IBS SOFTWARE SERVICES (P) LTD,
3RD FLOOR, LEELA INFOPARK, INFOPARK CAMPUS
KUSUMAGIRI. P.O., KAKKANAD, KOCHI - 682 030.**

**BY ADVS.SMT.GISA SUSAN THOMAS,
SMT.NEENU.P.KUMAR,
SMT.K.S.SHALEEJA.**

RESPONDENT(S):

- 1. SUJITH K.M., AGED 39 YEARS,
S/O.N.K. MADHUSUDANAN, KARIPPAYIL HOUSE,
KURUPPAMKULANGARA. P.O., CHERTHALA - 688 551.**
- 2. MADHUSUDANAN, AGED 76 YEARS,
S/O.KUMARAN, KARIPPAYIL HOUSE,
KURUPPAMKULANGARA. P.O., CHERTHALA - 688 551.**
- 3. VIJAYA, AGED 67 YEARS,
W/O.MADHUSUDANAN, KARIPPAYIL HOUSE,
KURUPPAMKULANGARA. P.O., CHERTHALA - 688 551.**

BY ADV. SMT.LEKHA SURESH.

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1 TRUE COPY OF THE O.P NO.1674/2013 FILED BY THE
1ST RESPONDENT PENDING BEFORE THE FAMILY COURT,
ERNAKULAM.
- EXHIBIT P2 TRUE COPY OF THE O.P NO.2383/2013 FILED BY THE
1ST RESPONDENT PENDING BEFORE THE FAMILY COURT,
ERNAKULAM.
- EXHIBIT P3 TRUE COPY OF THE O.P NO.1319/2014 FILED BY THE PETITIONER
PENDING BEFORE THE FAMILY COURT, ERNAKULAM.
- EXHIBIT P4 TRUE COPY OF THE RORDER DATED 26/05/2015 IN TR.PC NO.525/2014
OF THIS OF THIS HON'BLE COURT.
- EXHIBIT P5 TRUE COPY OF IA NO.2153/2015 IN O.P NO.1319/2014 BEFORE
FAMILY COURT, ERNAKULAM FOR JOINT TRIAL.
- EXHIBIT P6 TRUE COPY OF THE RORDER DATED 06/06/2015 IN I.A NO. 2153/2015 IN
O.P NO.1319/2014 PASSED BY THE HON'BLE FAMILY COURT,
ERNAKULAM.

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER
IN TR.PC. 525/2014.
- EXT.R1B COPY OF THE ORDER IN I.A.2374/2014 IN TR.PC.525/2014
DATED 30/01/2015.
- EXT.R1C COPY OF THE COUNTER AFFIDAVIT FILED BY ME TO I.A.2153/2015.

//TRUE COPY//

P.A. TO JUDGE

rs.

**C.K. ABDUL REHIM, J.
&
ANIL K. NARENDRA, J.**

O.P (FC) No. 264 OF 2015

DATED THIS THE 26th DAY OF JUNE, 2015

J U D G M E N T

Abdul Rehman, J.:

This writ petition under Article 227 of the Constitution of India is filed seeking to set aside Ext.P6 order passed by Family Court, Ernakulam in I.A. No.2153/2015 in OP No.1319/2014. The petitioner herein is the petitioner in OP 1319/2014 before the Family Court. The respondents herein are the respondents before the court below. The original petition was filed seeking relief for return of Gold ornaments alleged to have entrusted with the respondents. The 1st respondent is the husband of the petitioner. There is a girl child born out their wedlock on 11-06-2012. The 1st respondent herein filed OP 1674/2013 seeking custody of the minor child, which is also pending disposal before the family court. The 1st respondent herein had also filed OP No.2383/2012 seeking dissolution of the marriage. The

petitioner herein had filed another case M.C. No.83/2014 seeking for maintenance, for herself and the child. It is averred in this writ petition that respondents 2 & 3 had filed a transfer petition before this court seeking transfer of O.P No.1319/2014 from the Family Court, Ernakulam. But this court had dismissed the transfer petition through Ext.P4 order dated 26-05-2015. Meanwhile O.P. No.1674/2013 was posted for trial. At that stage the petitioner herein filed I.A 2153/2015 in OP No.1319/2014 seeking joint trial of the said case along with O.P No.1674/2013 and OP No.2383/2013. The Family Court had dismissed the above interlocutory application through Ext.P6 order, observing that OP No.1674/2013 is ripe for trial and an Advocate Commissioner was already appointed to record the evidence. Since the other cases are not ripe for trial, the application for joint trial cannot be granted, is the findings. It is aggrieved by Ext.P6 order, this writ petition is filed.

2. Contention of the petitioner is that issue agitated in all the cases have originated out the same matrimonial

dispute existing between the petitioner and the 1st respondent. It is mentioned that the allegations and averments made in all the cases more or less identical. According to the petitioner the witnesses to be examined and the documents to be marked are also likely to be one and the same. Therefore it is contended that, it was only just and proper in the interest of justice to have a joint trial of all the above said cases.

3. Per contra, the 1st respondent has filed detailed counter affidavit mainly contending that the attempt of the petitioner is only to protract the trial of OP No.1674/2013, with an oblique motive to deny right of the 1st respondent to have custody of the minor child. It is also mentioned that the evidence to be adduced in OP No.1319/2014 is totally different from the evidence to be adduced in OP No.1674/2013, and a joint trial of both those cases will cause delay in disposal of OP No.1674/2013. It is further complained that the petitioner herein is flagrantly violating orders passed by the Family Court with respect to the

visitorial rights allowed to the 1st respondent. According to the 1st respondent, all the case are not ripe for trial and if a joint trial is ordered it will cause delay in disposal of OP No.1674/2013. It is also mentioned that, eventhough an Advocate Commissioner was appointed for recording evidence the petitioner is not co-operating and she took consecutive adjournments with respect to recording of evidence.

4. This court had called for a report from the Family Court regarding the present stage of the cases referred above. In a report submitted by the Judge, Family court on 23-06-2015, it is mentioned that in all the cases counselling and mediation are over and written objections were filed by the respondents in all the cases, except by respondents 2 & 3 in OP No.1319/2014. It is mentioned that an Advocate Commissioner was appointed in OP 1674/2013 on 04-05-2015 and the case now stands posted for report on 29-07-2015. All other cases also stands posted to the same date. It is also mentioned that, counsel for the petitioner submitted

that M.C No.83/2014 is being withdrawn and the said case is also posted to 29-07-2015.

5. While considering the facts and circumstances and rival contentions on both sides, we take note of the fact that all the cases filed before the Family Court pertain to disputes related to the same matrimonial relationship. As contended by the petitioner, there is every chance that the witnesses as well as documents to be marked in all the cases may be common to a great extent. It is only just and proper for speedy dispensation of justice to have a trial of all the cases together. It will be convenient in the interest of justice and in the interest of the parties to have trial of all the cases together. We notice that the application for joint trial was dismissed only because O.P No.1674/2013 is ripe for trial, whereas the other cases are not ripe for trial. From the report now submitted by the Family Court it is evident that the other cases also can be put to trial within a short time, if the parties co-operate. Needless to observe that if there is any non-co-operation from the side of the petitioner

or otherwise, it is left open to the Family Court to take appropriate steps to secure speedy disposal of the cases. We are of the opinion that there is no justification to deny joint trial of the cases together, merely for the reason that one of the cases is not ripe for trial.

6. Under the above mentioned circumstances the writ petition is hereby allowed. Exhibit P6 order is hereby quashed and I.A. No.2153/2015 in O.P No.1319/2014 is allowed to the extent of ordering joint trial of OP Nos.1319/2014, 1674/2013 and 2383/2013. We record the submission made by the petitioner that M.C No.83/2014 will be withdrawn. The Family Court, Ernakulam shall take effective steps to start trial of the above said cases without any further delay and to complete the trial at the earliest possible, at any rate within a period of 4 months from today.

7. Learned counsel for the 1st respondent raised complaint with respect to non-compliance of the interim arrangement permitted with respect to visitation of the minor child. It is left open to the 1st respondent to seek

appropriate remedy before the Family court to ensure enforcement of such order passed. It is also left open to the 1st respondent to seek appropriate modification of the arrangements, if there exist any circumstance. Needless to observe that if any such application is made by the 1st respondent, the Family court shall consider the same and shall take appropriate decision notwithstanding the fact that trial of the cases had started.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

ANIL K. NARENDRAN, JUDGE.

AMG

True copy

P.A. to Judge