

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR.JUSTICE K. RAMAKRISHNAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

OP (FC) .No. 274 of 2015 (R)

AGAINST THE ORDER IN OP.NO.577/13 OF FAMILY COURT, IRINJALAKUDA

PETITIONER/RESPONDENT/RESPONDENT:

RENEL RAPPAL, AGED 33 YEARS,
D/O. MAVELI RAPPAL, THURAVANKAD DESOM,
PULLUR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENT/PETITIONER/PETITIONER:

JEMY JOSEPH, AGED 31 YEARS,
W/O. MAVELI RENEL, P.O.IRINJALAKUDA,
PIN 680 121.
D/O. ALAPPATTU PALANTHINGAL JOSEPH,
NEAR IRINJALAKUDA DON BOSCO SCHOOL,
IRINJALAKUDA VILLAGE,
MUKUNDAPURAM TALUK.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 274 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PETITION IN OP.NO.577/2013 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA.

EXT.P2 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN O.P.NO.577/2013 DATED 21.6.2014.

EXT.P3 TRUE COPY OF AMENDMENT APPLICATION AS I.A.NO.623/2015 IN OP.NO.577/2013 DATED 25.3.2015.

EXT.P4 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN I.A.NO.623/2015 IN OP.NO.577/2013 DATED 7.4.2015.

EXT.P5 TRUE COPY OF THE ORDER IN I.A.NO.623/2015 IN OP.NO.577/2013 DATED 12.5.2015.

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(FC)No.274 of 2015.

.....
Dated this the 24th day of June, 2015.

JUDGMENT

Ramakrishnan, J:

The respondent in I.A.No.623/2015 in O.P.No.577/2013 of the Family Court, Irinjalakuda has filed this petition challenging the order passed in that application under Article 227 of the Constitution of India.

2. It is alleged in the petition that O.P.No.577/2013 was filed by the respondent for dissolution of marriage on the ground of cruelty. The respondent, who is the petitioner herein, filed a detailed objection denying the allegation as per Ext.P2. Thereafter, after one year of filing the objection, the respondent herein filed Ext.P3 petition for amendment and though Ext.P4 objection was filed, the Family Court has allowed the application vide Ext.P5 order, which is not legally sustainable. Hence this petition.

3. Considering the scope of enquiry, we felt that the petition can be disposed of at the admission stage itself after hearing counsel for the petitioner and dispensing with notice

to the respondent.

4. Counsel for the petitioner submitted that new allegations have been made which were not in the original petition and that ought not have been allowed by the court below.

We have gone through the order passed by the court below and also the petition for divorce and objection filed by the respondent to the same. The application for divorce was filed on the ground of cruelty. Certain amendments were made only to correct certain mistakes regarding the persons mentioned therein and certain details of allegation of cruelty also were added by virtue of this amendment. It cannot be said to be a change of cause of action or introducing a new case so as to deny the prayer for amendment. However, even if that application is allowed, the petitioner will be getting an opportunity to file additional objection and whether allegations are correct or not is a matter to be considered by the Family Court on the basis of evidence. So under the circumstances, we do not find any merit in the petition. The court below has allowed the application only on cost considering the delay in filing the application. So there is no merit in the petition and

the petition is dismissed with liberty to the petitioner to file additional counter statement denying the allegations made in the amended petition and to challenge the genuineness of the allegations made by adducing proper evidence and that will have to be considered by the Family Court while passing final orders in the main petition.

Communicate a copy of this judgment to the concerned court immediately.

Sd/-
C.K.ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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