

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. 275 of 2015 (R)

**AGAINST THE JUDGMENT DATED 09-07-2013 IN OP 797/2013
OF FAMILY COURT, CHAVARA**

PETITIONERS:

- 1. BABU,
AGED 35 YEARS
S/O. SADANANDAN, KUNNUTHARA, VADAKKETHIL
ELAPPIKULANGARA P.O., KATTANAM.**
- 2. RAJAMMA
W/O. SADANANDAN, KUNNUTHARA VADAKKETHIL
ELAPPIKULANGARA P.O., KATTANAM.**

BY ADV. SMT.K.M.RASHMI (PARAVOOR)

RESPONDENT(S):

**LATHIKA
D/O. KUMARAN, AGED 31 YEARS,
LEKHA BHAVANAM, MUZHANGODI
THODIPOOR P.O., KARUNAGAPPALLY.**

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

AMG

OP (FC).No. 275 of 2015 (R)

APPENDIX

PETITIONERS EXHIBITS

- P1 - TRUE COPY OF THE JUDTMENT DT. 9.7.13 IN OP NO. 797/2013 FILED BEFORE THE FAMILY COURT, CHAVARA.**
- P2 - TRUE COPY OF THE EP NO. 43/2014 FILED BEFORE THE FAMILY COURT, CHAVARA.**
- P3 - TRUE COPY OF THE IA NO. 738/2015 IN OP 797/2013 FILED BEFORE THE FAMILY COURT, CHAVARA.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 275 OF 2015

DATED THIS THE 24th DAY OF JUNE, 2015

J U D G M E N T

K. Ramakrishnan, J:

This is an application filed by the petitioners seeking the interference of this court for staying the execution proceedings invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. The allegation in the petition was that the respondent herein filed OP 797/2013 before the Family Court, Chavara against the petitioners herein and obtained an exparte decree. They came to know about the exparte decree only when they received notice in the execution proceedings. Though they filed Ext.P3 application to set aside the exparte order, that petition has not been disposed of. But the court below is trying to execute the exparte decree and that proceedings are now pending before the Family Court, Mavelikkara, as transferred from Family Court, Chavara. So the petitioner has no other remedy

except the approach this court seeking the following reliefs:

(i) Issue an appropriate order to stay all further proceedings of E.P 43/2014 of Family Court, Chavara till orders are passed in I.A. 738/2015 in O.P 797/2013.

(ii) Issue such other appropriate writ, order or direction as this Hon'ble Court may deem just and proper in the circumstances of the case.

3. Considering nature of the claim this court felt that the petition can be disposed of at the admission stage itself dispensing notice to respondents.

4. The petitioners have got a remedy of filing an application to stay the proceedings before the court which passed the decree or even before the court to which the decree has been sent for execution invoking Order XXI Rule 26 of Code of Civil Procedure. So without resorting to that remedy coming to this court for staying the proceedings in execution cannot be encouraged. If the petitioners file an application for that purpose, then the court concerned is directed to consider and pass appropriate orders in that

application. The Family Court, Chavara is also directed to expedite disposal of the petition filed by the petitioners to set aside the exparte decree passed by that court, which has been sent for execution court, Family Court, Mavlikkara.

5. With the above directions and observations this petition is dismissed.

6. Office is directed to communicate this judgment to the concerned court immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge