

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 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

OP (FC).No. 301 of 2015 (R)  
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AGAINST THE ORDER IN OP 208/2008 of FAMILY COURT, THIRUVALLA

PETITIONER:  
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N. BALAN ACHARY, AGED 59 YEARS,  
S/O. NANU, RATHEESH BHAVAN, MUTHOOR MURI,  
THIRUVALLA VILLAGE, THIRUVALLA TALUK, PATHANAMTHITTA.

BY ADVS.SRI.M.P.MADHAVANKUTTY  
SRI.GOKUL DAS V.V.H.

RESPONDENT:  
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SUBHADRA KUMARI  
W/O. N.BALAN ACHARY, RATHEESH BHAVAN, MUTHOOR MURI,  
THIRUVALLA VILLAGE, THIRUVALLA TALUK,  
PATHANAMTHITTA - 686 101.

SRI.C.V.MANU VILSON (CAVEATOR)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON  
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 301 of 2015 (R)

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APPENDIX

PETITIONER'S EXHIBITS:

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EXT.P1 - CERTIFIED COPY OF THE ORDER DT. 19.1.15 IN IA NO. 1326/2015 IN  
IA NO. 893/2015 IN IA NO. 2401/2010 IN OP NO. 208/2008 BEFORE THE  
FAMILY COURT, THIRUVALLA.

RESPONDENT'S EXHIBITS:NIL

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/TRUE COPY/

P.S TO JUDGE

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

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O.P.(FC)No.301 of 2015  
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Dated this the 15<sup>th</sup> day of July, 2015.

**JUDGMENT**

**Ramakrishnan, J:**

This original petition is filed by the respondent in the lower court challenging Ext.P1 order passed by the court below under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner filed OP.No.208/2008 before the Family Court, Thiruvalla seeking partition of the petition schedule property and in the alternate for sale of item No.1 in court between the petitioner and the respondent. The case was posted to 27.7.2009 for conducting auction. There was no representation for the petitioner and he could not appear before the court below. Since the respondent bid the property for 30 lakhs, the court below confirmed the sale in her favour. The petitioner through his power of attorney holder filed IA.No.2401/2010 for setting aside the sale conducted on 27.7.2009 and that petition was dismissed for default. Thereafter the petitioner again filed IA.No.893/2012 for restoration of IA.No.2401/2010 and the

above case was called on 8.5.2013. Since the power of attorney holder laid up, neither the power attorney holder of the petitioner nor his counsel could appear before the court below. Consequently that restoration application was dismissed. Since he was working abroad, he could not appear personally. When he came to India on leave, it was learnt that the case was not properly conducted by the power of attorney holder. So he filed I.A.No.1326/2013 to restore the application dismissed for default and by Ext.P1 order the Family Court dismissed the application. Aggrieved by the same, the present petition has been filed.

3. Considering the scope of inquiry, this Court felt that this petition can be disposed of at the admission stage itself.

4. The counsel for the petitioner only wants an opportunity to participate in the auction so that maximum amount can be fetched for the property as according to him it was sold for a meager amount and if he can able to purchase the property for more amount, he can own the property and the respondent will get due share in the sale proceedings

which will be beneficial to her as well.

5. It is an admitted fact that the original case was filed by the petitioner herein before the court below for partition of the plaint schedule property and it was also in a way admitted that both are having equal shares in the property and since item No.1 could not be properly partitioned, they have agreed for sale of the property in auction among the sharers. Accordingly the case was posted to 27.7.2009 for auction and on that date since the petitioner could not appear, sale was conducted in his absence and the respondent purchased the same for an amount of Rs.30 lakhs and the sale was confirmed in her name is the allegation made in the petition. Thereafter the petitioner filed I.A.No.2401/2010 to set aside the sale through his power of attorney holder but that was dismissed for default and another application was filed as I.A.No.893/2012 for restoration of IA.No.2401/2010 and that was also dismissed for default as the power of attorney holder did not prosecute the same. It was thereafter when the petitioner came to India, he filed the present petition to restore those two applications which were

dismissed for default. It is seen from the records that the petitioner was examined as PW1 and his power of attorney holder was examined as PW2 and one doctor was examined as PW3 and Ext.A1 medical certificate was produced. The court below had after verification of the records found that his earlier power of attorney holder had participated in the auction and represented the petitioner and it was on that basis that the sale was confirmed in favour of the respondent, who became the successful bidder in the auction. The court below on appreciation of the evidence came to the conclusion that there was no proper explanation for the delay in filing the application to set aside the sale which out to have been filed within 60 days of date of sale. So on going through the detailed order passed by the court below, it cannot be said that the petitioner was diligent in prosecuting the case for giving liberty to the petitioner to get the petition dismissed for default restored. So we do not find any reason for interfering with the order passed by the court below as there is no illegality committed by the court below in passing the impugned order. So, under the circumstances we do not find

any reason to invoke the supervisory jurisdiction under Article 227 of the Constitution of India to interfere with Ext.P1 order passed by the Court below. So the writ petition lacks merit and the same is dismissed.

In the result, this petition is dismissed.

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

**Sd/-**  
**K. RAMAKRISHNAN, JUDGE.**

/true copy/

P.S to Judge

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