

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP (FC).No. 306 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OP 482/2010 of FAMILY COURT,
NEDUMANGAD DATED

PETITIONER(S)/RESPONDENT:

SAJI AGED 42 YEARS
S/O. APPUKUTTAN, RESIDING AT AMMA BHAVANAM
VIRALI VILA VEEDU, KALLIYOOR P.O.
THIRUVANANTHAPURAM - 695 042.

BY ADVS.SRI.MANJU ANTONEY
SMT.B.WALSOM JEE SINILLO
SRI.R.ANAS MUHAMMED SHAMNAD
SRI.JOSEPH CHACKO

RESPONDENT(S)/PETITIONER:

ROBINA
D/O.RAJAMONY, R.G. HOUSE, KILIYOOR
VELLARADA VILLAGE, NEYYATINKARA TALUK
THIRUVANANTHAPURAM, VELLARADA P.O. 695 505.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(FC).306/2015

APPENDIX

PETITIONER'S EXTS.

EXT. P1. TRUE COPY OF THE RESTORATION APPLICATION DT. 18.1.2014 (IA.NO.95/2014).

EXT.P2 TRUE COPY OF DELAY CONDONATION APPLICATION DT. 18.1.2014 (IA NO.96/2014)

EXT. P3. TRUE COPY OF OBJECTION DT. 18.8.2014 IN IA.NO.95/2014 FILED BY THE PETITIONER.

EXT. P4 TRUE COPY OF OBJECTION DT. 18.8.2014 IN IA. NO.96/2014.

EXT. P5 TRUE COPY OF PL NO.5701/13 DT. NIL FILED AND ITS ACCOMPANYING NOTICE DATED 30.11.13 ISSUED BY THE DISTRICT LEGAL SERVICES COMMITTEE, THIRUVANANTHAPURAM.

EXT. P6 TRUE COPY OF TRUE/CERTIFIED COPY OF ORDER DT. 11.3.2015 IN IA.NO.96/2014 IN OP.NO.482/10 PASSED BY THE FAMILY COURT.

EXT. P7 TRUE COPY OF ORDER DT. 12.3.2015 IN IA.NO.95/2015.

EXT. P8 TRUE COPY OF JUDGMENT (EXPARTE) OF DIVORCE DT. 31.8.2009 PASSED BY THE FAMILY COURT, NEDUMANGAD IN OP.NO.749/2009.

EXT. P9 TRUE COPY OF ANOTHER SUBSEQUENT JUDGMENT (EXPARTE) OF DIVORCE DT. 20.6.2013 WAS PASSED BY THE FAMILY COURT, NEDUMANGAD IN OP.(IDA) NO.749/2009 IN FAVOUR OF THE PETITIONER.

EXT.P10 TRUE COPY OF REFER CHARGE (REPORT) DT. NIL FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.1, NEYYATTINKARA IN CRIME NO.1489/12 OF NEMAM POLICE STATION.

/TRUE COPY/

PS TO JUDGE.

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

OP(FC).No. 306 of 2015

Dated this the 9th day of July, 2015

JUDGMENT

K.Ramakrishnan,J.

This petitioner who is the respondent in OP.No.482/2010 on the file of the Family Court, Nedumangad is challenging Exts.P6 and P7 orders passed by the Family Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and the respondent were husband and wife and the respondent filed OP.No.482/2010 for return of gold ornaments. That OP was dismissed for default on 4.3.2013 and thereafter she filed Ext.P1 I.A. 95/2014 along with Ext.P2 IA.No.96/2014 to restore the petition dismissed for default along with petition for condonation of delay. The petitioner filed Exts.P3 and P4 objections for the same. The Family Court Judge by Exts.P6 and P7 orders allowed applications on cost. In fact there were proceedings before the Legal Services Authority evidenced by Ext.P5 and also earlier application for divorce filed by the petitioner herein which was

allowed ex parte twice. So the court below was not justified in allowing the application without considering the objection and the order passed by the court below is liable to be set aside. Hence this petition.

3. On going through the nature of the relief prayed for, this court felt that the petition can be disposed of at the stage of admission itself dispensing with notice to the respondent after hearing the counsel for the petitioner.

4. The counsel for the petitioner submitted that the laches on the part of the respondent in prosecuting the case is writ large on the face of it and the court below should not have allowed the application.

5. It is admitted fact that the respondent herein filed a petition OP.No.482/2010 before the Family Court for return of gold ornaments and also other articles or realisation of its value . It is also an admitted fact that the petition was dismissed for default and she filed Exts.P1 and P2 petition to restore the petition dismissed for default along with delay condonation application. In the delay condonation petition it was mentioned that since she went abroad for a temporary period, she could not

appear and conduct the case. That was the reason stated for delay in filing the application as well. The respondent who is the petitioner herein filed detailed objection. Merely because she was not diligent in conducting the other cases filed by the petitioner is not a ground to come to the conclusion that she was not diligent in conducting this case also. Merely because divorce was granted is not a ground to come to the conclusion that the petition filed by the wife for return of gold ornaments is not a genuine one and it was filed to harass the petitioner as well. The court below has considered all the aspects and in fact allowed the application by awarding cost in each application which appears to be reasonable and justifiable as well. So under the circumstances we feel that it is not a fit case to interfere with the discretionary order passed by the court below allowing the application for restoring the OP dismissed for default by invoking the supervisory jurisdiction under Article 227 of the Constitution of India. The court below was justified in granting opportunity to the parties to meet the case on merit in the circumstances of the case.

6. So under the circumstances there is no merit in the petition, the same is liable to be dismissed in limine. However considering the fact that the case is of the year 2010, the Family court is directed to expedite the case as expeditiously as possible, at any rate within 6 months from the date of receipt of this judgment.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

