

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. 309 of 2015 (R)

PETITIONER(S)/PETITIONER:

RASEENA.P, AGED 30 YEARS,
D/O.FATHIMA KUNJU, Bismi Mansil, Thangazhikam Puriadam,
Jonakappuram, Kollam.

BY ADV. SRI.S.SUBHASH CHAND

RESPONDENT(S)/RESPONDENTS:

1. MUBARAK,
S/O.SHOUKATH, SHAFI MANZIL, MUTTAKKAVU,
NEDUMBANA.P.O, KOLLAM-691 576.
2. SHOUKATH,
SHAFI MANZIL, MUTTAKKAVU, NEDUMBANA.P.O.,
KOLLAM-691 576.
3. SEBIA,
SHAFI MANZIL, MUTTAKKAVU, NEDUMBANA.P.O.,
KOLLAM-691 576.
4. SHEFIK,
SHAFI MANZIL, MUTTAKKAVU, NEDUMBANA.P.O.,
KOLLAM-691 576.

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

:2:

OP (FC).No. 309 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 TRUE COPY OF THE ORIGINAL PETITION BEARING OP.107/2011
SUBMITTED BY THE PETITIONER BEFORE THE FAMILY COURT, KOLLAM.**
- P2 TRUE COPY OF APPLICATION TO SET ASIDE EXPARTE ORDER BEARING
I.A.1649/2013 FILED BY THE RESPONDENTS BEFORE THE FAMILY
COURT, KOLLAM.**
- P3 TRUE COPY OF THE ORDER DATED 30/6/2014 IN OP.107/2011 PASSED BY
THE FAMILY COURT, KOLLAM.**
- P4 TRUE COPY OF THE DECREE DATED 30/6/2014 IN OP.107/2011 PASSED BY
THE FAMILY COURT, KOLLAM.**
- P5 TRUE COPY OF THE EXECUTION PETITION BEARING EP.NO.10/2015
SUBMITTED BY THE PETITIONER.**
- P6 TRUE COPY OF THE I.A.1694/2014 DATED 9/6/2014.**
- P7 TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER IN
I.A.1696/2014.**
- P8 TRUE COPY OF THE ORDER DATED 16/5/2015 IN I.A.1696/2014 IN
OP.107/201 PASSED BY THE FAMILY COURT, KOLLAM.**

RESPONDENT(S)' EXHIBITS

----- : **NIL**

//TRUE COPY//

PA TO JUDGE

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

O.P.(F.C.) No.309 of 2015

Dated this the 9th day of July, 2015

JUDGMENT

K. Ramakrishnan, J

This is an application filed by the respondent in I.A.No.1696/2014 in O.P.No.1007/2011 on the file of the Family Court, Kollam, challenging Ext.P8 order under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner filed the above original petition seeking certain monitory reliefs and earlier it was a decreed ex-parte. Respondent filed Ext.P2 petition to set aside the ex-parte decree and that was allowed on cost. Again he remained absent and the court below had passed Ext.P3 judgment and Ext.P5 execution petition was filed and at that time, they filed Ext.P6 petition to set aside the ex-parte decree for which

Ext.P7 objection was filed. But without considering the objection, Family Court passed Ext.P8 order, allowing the petition to set aside the ex-parte decree on payment of cost. Aggrieved by the same, the present revision has been filed.

3. Since we felt that the petition can be disposed of at the admission stage itself, we heard the counsel for the petitioner and dispensed with notice to respondents.

4. The grievance of the counsel for the petitioner was that, no speaking order was passed and the attitude of the respondents will go to show that their attempt is only to prolong the matter and the application should not have been allowed by the Family Court.

5. It is seen from the order that, the order was passed on consent on payment of cost. Court below had considered the conduct of the respondents and allowed the application only on payment of cost of ₹1,000/- to the respondent. The counsel for the petitioner also submitted

that, the cost was received and there is nothing on record to show that the cost was received under protest. So under the circumstances, we do not find any merit in the petition. Further we do not find any reason to invoke Article 227 of the Constitution of India to interfere the order, as it is only an application to set aside ex-parte decree and that was allowed, for giving opportunity to the parties to meet the case on merit, which do not feel suffer any illegality warranting interference. Court below had judiciously considered the question and allowed the same only on cost. So under the circumstances, it does not warrant any interference under Article 227 of the Constitution of India.

6. When we were about to dispose of the petition, the counsel for the petitioner wanted the case to be expedited at the earliest. Considering the fact that the case is of the year, 2011, court below is directed to expedite disposal of the case as expeditiously as possible at any rate within five months from the date of receipt of this judgment.

With the above direction and observation the petition is disposed of. Communicate this order to the court below at the earliest.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

SS