

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

OP (FC).No. 311 of 2015 (R)

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(ARISING FROM OP 1008/2013 of FAMILY COURT, ERNAKULAM)**

PETITIONER:

**VINCY MARY JOHN
D/O. JOHN, AGED 32, 6B
LINK HEIGHTS APARTMENT,
PANAMPILLY NAGAR COCHIN 36, ERNAKULAM.**

BY ADV. SRI.V.K.BALACHANDRAN

RESPONDENT:

**VIJAY DANIEL
S/O.A.M.DANIEL, 1-9-52/E/4, NEAR A.G.CHURCH,
RAM NAGAR P.O, HYDERABAD 500 020,
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**BY ADVS. SMT.GISA SUSAN THOMAS
SMT.GASHWINI**

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - COPY OF THE MEMORANDUM OF AGREEMENT DATED 28/6/2015 BETWEEN THE PETITIONER AND RESPONDENT BEFORE THE MEDIATOR.
- EXT.P2 - COPY OF THE AFFIDAVIT FILED BY THE RESPONDENT IN O.P.1008/2013 PENDING BEFORE THE FAMILY COURT, ERNAKULAM DATED 23/7/2014.
- EXT.P3 - COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER DATED 5/9/2014 TO EXT.P2
- EXT.P4 - COPY OF IA.NO.3432/2014 BEFORE THE FAMILY COURT, ERNAKULAM.
- EXT.P5 - COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER TO EXT.P4.
- EXT.P6 - COPY OF IA NO. 1810/2015 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM.
- EXT.P7 - COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITINER TO EXT.P6.
- EXT.P8 - COPY OF THE ORDER PASSED BY THE FAMILY COURT, ERNAKULAM DATED 12/6/2015 IN EXT.P6.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC) No. 311 OF 2015

DATED THIS THE 15th DAY OF SEPTEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner and the respondent herein are parties before the Family Court, Ernakulam in various cases instituted as OP No.1008/2013, OP No. 1367/2013, MC No.223/2013 and OP 641/2015. Marriage between petitioner and the respondent was on 16-04-2007 and a male child was born out of the wedlock on 17-08-2011. The matrimonial relationship is remaining strained. The petitioner had filed OP No.1008/2013 before the Family Court seeking dissolution of the marriage, alleging the ground of cruelty and desertion. She had also filed OP 1367/2013 against the respondent herein and his mother seeking return of money. M.C No.223/2013 was filed by the petitioner seeking maintenance from the respondent for herself and the child. It is averred in the writ petition that, the disputes were once settled as per Ext.P1 'memorandum

of agreement'. But the respondent had withdrawn from the terms of the mediation settlement and proceeded to contest the matters before the Family Court. Later, the respondent herein had filed G.O.P No. 641/2015 seeking permanent custody of the minor child. It is stated that the first 3 cases, OP No.1008/2013, OP No.1367/2013 and MC No.223/2013 are ripe for trial and a joint trial of all the 3 cases had already been allowed by the Family Court. It is mentioned that the petitioner had filed proof affidavit and documents in those cases and the Family Court has to proceed with recording of evidence.

2. Meanwhile, the petitioner filed IA 3432/2014 in OP 1008/2013 claiming litigation expenses to the tune of Rs.50,000/- pendente lite. The respondent contested the claim by filing Ext.P5 counter affidavit. The family Court disposed of the interim application through order dated 19-01-2015 directing the respondent to pay a sum of Rs.15,000/- towards litigation expenses to the petitioner, within a period of one month. It is alleged that the

respondent had failed to comply with the direction and to make payment of the amount ordered. Later the respondent filed IA 1810/2015 seeking review of the order dated 19-01-2015. The petitioner contested the matter by filing Ext.P7 counter affidavit. But the Family Court heard the review petition on 06-06-2015 and passed an order on 17-06-2015 as per Ext.P8, reviewing the earlier order and only reserving the right of the petitioner to claim litigation expenses in the main petition. It is aggrieved by Ext.P8 order, as well as seeking early disposal of the cases which are ordered for joint trial, this writ petition is filed.

3. Counsel appearing on behalf of respondent contended that, Ext.P8 order was passed by the Family Court after considering the fact that, the respondent had not filed any objection in the original application filed by the petitioner seeking litigation expenses. It is after finding that the order dated 19-01-2015 was issued without affording proper opportunity to the respondent to dispute the claim, the earlier order was reviewed. According to learned

counsel for the respondent, Ext.P8 order is passed only on by the Family Court after considering the objections raised by the respondent against the claim for litigation expenses. Hence it is contended that the order impugned suffers from no infirmity.

4. This court takes note of the fact that Ext.P8 order is a totally non-speaking order. The Family Court has not discussed any reason for allowing the review petition. As contended by learned counsel for the petitioner, there is no findings as to there existed any error apparent on the face of the record with respect to the earlier order, which ought to have been reviewed. Being a totally non-speaking order, Ext.P8 need to be interfered by this court, in the normal circumstances. But considering the interest of justice this court is not proposing to remand the issue for any fresh decision, because the cases are now posted for trial and for recording of evidence. Interest of the petitioner stands protected since it is already observed in Ext.P8 that she can raise a claim for litigation expenses when the main case is

considered. This court makes it clear that it will be left open to the petitioner to raise such a claim while adducing evidence. It will be obligatory on the part of the court below to take a decision with respect to such claim while rendering the judgment in OP 1008/2013.

5. With respect to relief sought for to the extent of directing expeditious disposal of the cases, this court had called for a report from the Family Court, through the registry. A report submitted by the learned Judge, Family Court, Ernakulam, dated 17-07-2015 would indicate that the cases, OP No.1008/2013, OP No.1367/2013 and MC No.223/2013 are posted together after ordering joint trial. It is stated that all the cases were posted together for trial on 14-09-2015. Learned counsel for the petitioner submits that the cases now stands adjourned to 11-11-2015. In the report it is stated that, OP No.641/2015, subsequently filed by the respondent herein is not ripe for trial. That case is at the stage of mediation at present and a report from the mediation centre is awaited. However it is mentioned that

the said case also stands posted along with the other 3 cases.

6. Regarding the request for directing an early disposal of the cases, the learned Judge had submitted that a large number of cases are targeted for disposal during the current year, which include about 900 and odd cases of the year 2012. It is stated that in view of the administrative directions issued from this court, preference is given for disposal of old cases. However, it indicated that best efforts will be taken to dispose of the cases at the earliest, at any rate on or before 31-03-2015. This court takes on record the above undertaking.

7. Under the above mentioned circumstances the above original petition is hereby disposed of by directing the Family Court, Ernakulam to take all earnest efforts to dispose of OP No.1008/2013, OP No.1367/2013 and MC No.223/2013 on an early basis, at any rate within the period mentioned in the report as stated above. It will be also left open to the Family Court to consider joint trial of OP

No.641/2015 along with these cases, if possible. However the trial of the earlier 3 cases need not be delayed on the basis of pendency of OP No.641/2015. It is also made clear that the parties will be at liberty to approach the Family Court with respect to any order of interim custody of the child during pendency of OP No. 641/015.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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P.A. to Judge