

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

OP (FC).No. 336 of 2015 (R)

AGAINST THE ORDER IN E.A.NO.18/2014 IN E.P.NO.8/2014 IN Original Petition
NO.603/2013 OF FAMILY COURT, IRINJALAKUDA.

PETITIONER:

M.K.SHAJI, AGED 64 YEARS
S/O. MALIYAMVEETIL KUMARAN, RETIRED DISTRICT JUDGE
SAYEESHWARAM, HOSPITAL ROAD, CHAVAKKAD

BY ADVS.SRI.K.R.VINOD
MS.JENCY SUSAN JOSE
SRI.V.SRI NATH

RESPONDENT:

GEETHA SHAJI
W/O. M.K SHAJI, SAI-KAMAL, 11TH CROSS
UDAYA NAGAR, .AYYANTHOLE, THRISSUR 680 103

BY ADVS. SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SRI.ASHISH MOHAN
SMT.T.RESHMA

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
25-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 336 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: THE COPY OF THE E.A NO 18/2014 FILED BY THE RESPONDENT IN EP NO 8/2014 OF THE FAMILY COURT,IRINJALAKUDA.

EXHIBIT P2: THE COPY OF THE COMMON ORDER IN I.A NO 42/2014 AND I.A NO 50/2014 IN OP NO 603/2013 DATED 12-02-2014.

EXHIBIT P3: THE CERTIFIED COPY OF THE ORDER OF THE FAMILY COURT,IRINJALAKUDA IN EA 18/2014 IN EP NO 8/2014 DATED 16-06-2015.

EXHIBIT P4: THE COPY OF THE AFFIDAVIT SWORN BY ADV. A.C MOHANAKRISHNAN.

EXHIBIT P5: THE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED 30-06-2015

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**C.K. ABDUL REHIM
&
SHAJI P. CHALY, JJ.**

O.P.(F.C) No.336 of 2015

Dated this the 25th day of September, 2015

JUDGMENT

C.K. Abdul Rehim,J.

This Original Petition is filed seeking to invocation of jurisdiction vested on this Court under Article 227 of the Constitution of India for interfering with Ext.P3 order of the Family Court, Irinjalakuda, passed in E.A. No.18/2014 in E.P. No.8/2014 in O.P.No.603/2013.

2. E.P. No.8/2014 was filed by the respondent herein seeking recovery of an amount of Rs.3,38,830/- from the petitioner, who is the judgment debtor as per the decree in O.P.No.603/2013. The amount sought to be recovered pertains to monthly maintenance ordered in favour of the respondent herein, at the rate of Rs.20,000/- per month. E.A No.18/2014 was filed seeking attachment of amounts standing credit in the Treasury Savings Bank Accounts of the petitioner with the District Treasury, Thrissur, under Account Nos.TSB 1804 and TSB 9109. The District Treasury Officer, Ayyanthole, Thrissur

was cited as garnishee in the said application. Ext.P1 is the copy of E.A. No.18/2014. Contention of the petitioner herein that, he was not served with copy of the Execution Petition or Ext.P1 Execution Application. It is also contended that the address of the petitioner was wrongly shown in those applications. Malafide intention is attributed against the respondent in showing an incorrect address. It is alleged that her intention was to obtain an order of attachment behind back of the petitioner. The Family Court allowed Ext.P1 application through Ext.P3 order, passed on 16.06.2015. It is evident from Ext.P3 that the Family Court had issued notice to the garnishee and a report was obtained. The report of the garnishee indicated that Treasury Savings Bank Account No.1804 does not exists in the name of the petitioner and that the petitioner had opened Treasury Savings Bank Account No.9109, on 22.10.2012. It was also reported that an amount of Rs.69,695/- is standing credit in the said account as on 25.05.2015. Under such circumstances, the Family Court passed an order of attachment of the amounts standing credit in TSB Account No.9109 and the garnishee was directed to transmit the amounts to the Court. It is aggrieved by

Ext.P3, this Original Petition is filed.

3. Contention of the petitioner is that the amount ordered to be attached is pension received by the petitioner, who is a retired Judicial Officer. It is contended that the said amount is not attachable in view of provisions contained under Section 60 (1)(g) of the Code of Civil Procedure. Learned counsel for the petitioner raised contention that the amount deposited in the Treasury Savings Bank Account, being pension received by the petitioner, is not attachable in view of the dictum contained in the decision of the Hon'ble apex court in **Union of India v. Jyoti Chit Fund and Finance [1976 KHC 871]** and in view of a later decision of the Hon'ble Supreme Court in **Radhey Shyam Gupta v. Punjab National Bank and Another [2009 KHC 4050]**. Hence Ext.P3 order is assailed as per se illegal and unsustainable.

4. This Court takes note of the fact that there is no evidence to show that the petitioner had taken any contention before the Family Court in E.A. No.18/2014 disputing the legality of the attachment sought for. It is also contended that the observations contained in Ext.P3 to the contrary, are factually incorrect.

According to the petitioner, the observations contained in the impugned order to the effect that the judgment debtor had entered appearance through counsel and that he was heard, are absolutely incorrect. It is further mentioned that the contentions noted in paragraph 4 of Ext.P3 order with respect to the question of jurisdiction of the Family Court was not actually raised on behalf of the petitioner. According to the petitioner, neither himself nor his counsel were served with copy of Ext.P1 petition and that they were not given any opportunity to oppose such application before the Family Court. The petitioner had produced Ext.P4, which is an affidavit sworn to by the lawyer who is appearing for him before the Family Court. In Ext.P4 it is categorically stated that copy of Ext.P1 application was not served on him and that he had not appeared before the Family Court or argued the matter while considering Ext.P1 application.

5. However, subsequent to passing of Ext.P3 order, the petitioner had filed Ext.P5 objection seeking for lifting the attachment. Since the Family Court has not taken any steps to re-consider the matter, this Original Petition is filed challenging Ext.P3 order.

6. There cannot be much dispute on the legal aspects that amount of pension received by a person is not attachable under Section 60(1)(g) of the Code of Civil Procedure. But in the case at hand, when Ext.P1 application was moved, no objection was seen raised before the Family Court, taking a contention that the amount sought to be attached is the amount of pension received by the petitioner. No materials have been produced to prove that the amount is not attachable. However, there exists a controversy regarding denial of opportunity to the petitioner to contest E.A No.18/2014. Ext.P3 order would indicate that counsel had entered appearance on behalf of the petitioner herein before the Court below and contested the application on the question of territorial jurisdiction. However, Ext.P4 affidavit sworn to by the lawyer concerned would indicate that he has not made any such appearance and he was not aware about Ext.P1 application. Whatever be the real situation, we are of the opinion that if the attachment made is with respect to an amount forbidden under provisions of the CPC, it will result in an illegality. Therefore it is only just and proper in the interests of justice for the Family Court to have an adjudication before

release of the amount under the order of attachment to the respondent herein. It is evident that Ext.P5 objections was filed by the petitioner in this regard before the Family Court. Ends of justice can be achieved by directing the Family Court to consider Ext.P5 and to adjudicate on the question regarding sustainability of the order of attachment, after affording proper opportunity to both sides.

7. It is pertinent to note that, when the above Original Petition came up for admission, this Court had granted an interim stay of operation of Ext.P3 order subject to condition of the petitioner depositing a sum of Rs.30,000/- towards arrears of maintenance admitted. It is evident from Ext.P6 receipt produced by the petitioner that the amount of Rs.30,000/- was deposited before the court below on 03.08.2015. Learned counsel for the petitioner submitted that despite the fact that this Court had granted an interim stay on 21.07.2015, Ext.P3 order has taken effect and the garnishee had already transmitted the amount of Rs.69,695/- to the Family Court. However, it is conceded that the amount has not been disbursed to the respondent herein.

8. Under the above mentioned circumstances, the Original Petition is hereby disposed of by directing the Family Court to consider Ext.P5 objection raised by the petitioner against the order of attachment. An adjudication shall be conducted with respect to sustainability of Ext.P3 order, taking note of provisions contained under Section 60(1)(g) of CPC and the settled legal precedents mentioned above. The petitioner shall be given opportunity to substantiate that the amount attached under Ext.P3 is the pension disbursed to him from the Government and that the same is not liable to be attached. If the Family Court is satisfied on adjudication that the amount ordered to be attached under Ext.P3 is the amount of pension received by the petitioner, the same shall be ordered to be refunded to the petitioner. It is also made clear that the Family Court will disburse the amount of Rs.30,000/- already deposited by the petitioner to the respondent herein.

9. Learned counsel for the petitioner made an appeal to this Court to direct an early disposal of the matter in view of the fact that the amount of pension received by him is now under order of attachment and it is the only amount available for his

livelihood. Considering the exigency of the matter, the Family Court is directed to take an appropriate decision as directed above, at the earliest, at any rate within a period of one month from the date of receipt of a copy of this judgment.

10. It is also made clear that no further amount shall be attached from the Treasury Savings Bank Account of the petitioner on the basis of Ext.P3 order, until a decision is taken in the matter.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

smv
25.09.2015