

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

OP (FC).No. 355 of 2015 (R)

**AGAINST THE ORDER DATED 8.7.2015 IN I.A.NO.2365/2015 IN OP.NO.794/2015
OF THE FAMILY COURT, THRISSUR**

PETITIONER(S)/PETITIONER :

**NOORSHAH, AGED 46 YEARS
S/O.LATE MUHAMMED AACHAPPULLY HOUSE, ANJUR VILLAGE
THALAPPILLY TALUK, THRISSUR.**

BY ADV. SRI.RAJIT

RESPONDENT(S)/RESPONDENT :

**SHANITHA, AGED 30 YEARS,
D/O.ABDUL RAHIMAN HAJI, CHALIYIL HOUSE
PUNNAYURKULAM VILLAGE, CHAVAKKAD TALUK, THRISSUR.**

BY ADV. SMT.CHINCY GOPAKUMAR

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

OP (FC).No. 355 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1- TRUE COPY OF THE PETITION OP NO.794/15 FILED BY THE PETITIONER
 BEFORE THE FAMILY COURT, THRISSUR.**
- EXT.P2- TRUE COPY IA 2365/15 IN OP NO.794/15 FILED BY THE PETITIONER
 BEFORE THE FAMILY COURT, THRISSUR.**
- EXT.P3- TRUE COPY OF COUNTER FILED BY THE RESPONDENT IN IA 2365/2015 IN
 OP NO.794/2015 BEFORE THE FAMILY COURT, THRISSUR**
- EXT.P4- TRUE COPY OF THE ORDER DATED 8.7.15 IN IA 2365/15 IN OP NO.794/2015**
- EXT.P5- TRUE COPY OF THE RELEVANT PAGES OF THE PASSPORT OF THE
 PETITIONER**

RESPONDENT(S)' EXHIBITS

- EXT.R1(a) THE COPY OF THE FIR NO.767/2014 DATED 19.3.2014 OF KUNNAMKULAM
 POLICE**
- EXT.R1(b) THE PHOTOCOPY OF THE PETITION DATED 10.6.2015 IN MC.NO.94/2014**
- EXT.R1(c) THE PHOTOCOPY OF THE COMPLAINT DATED 7.6.2015 BEFORE THE SHO,
 KUNNAMKULAM**
- EXT.R1(d) THE PHOTOCOPY OF THE MEMO DATED 10.6.2015 ISSUED BY THE
 MAGISTRATE COURT, KUNNAMKULAM**
- EXT.R1(e) PHOTOGRAPHS OF THE DESTROYED DOORS.**

/TRUE COPY/

PA TO JUDGE

VS

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

O.P.(FC)No.355 of 2015

Dated this the 4th day of December, 2015

JUDGMENT

C.K.Abdul Rehim, J.

In this original petition filed under Article 227 of the Constitution of India the petitioner is challenging an order passed by the Family court, Thrissur in I.A.No.2365 in O.P.No.794/15. By virtue of the said order, copy of which is produced as Ext.P4, the court below had dismissed an interim injunction application filed by the petitioner, under Order 39 Rule 1 of the Code of Civil Procedure.

2. The petitioner herein had filed O.P.No.794/15, seeking relief by way of a permanent prohibitory injunction restraining the respondent herein from causing any obstruction to the peaceful enjoyment and residence of the petitioner and his family members in the petition scheduled

property and from causing any damage or waste therein, and in the residential building situated therein. Allegations in the original petition in brief is that; there exists severe matrimonial discord between the petitioner and the respondent. The petition scheduled property exclusively belongs to the petitioner and the residential building situated therein was constructed by him, and that the said property is under the possession and enjoyment of the petitioner. It is stated that, during February 2014, the petitioner shifted the residence to the newly constructed house therein along with the respondent, their children and the mother of the petitioner. But thereafter the respondent had left the house on the basis of a quarrel with the petitioner and she started separate living at her parental home. But when the petitioner was in Malaysia, at his place of employment, the respondent along with the children had occupied and started residence in the building, after obtaining key of the house from the mother of the petitioner.

The petitioner had not expressed any objection against such residence. But the respondent had submitted false complaints against the petitioner and had removed the furniture and other articles from the house. The petitioner could not prevent such activities, since he was in Malaysia. But when he returned to the native place on 25.05.2015, it was found that, apart from the respondent and the children other family members of the respondent are also residing in scheduled property. It is specifically alleged that, because of the nuisance caused by the respondent and her family members, the petitioner could not reside in the house peacefully. It is also contended that the respondent and her family members have threatened the petitioner with dare consequences and hence the petitioner could not reside in the house peacefully. It is alleging that the respondent is not permitting the petitioner to reside in the building situated in the plaint scheduled in a peaceful manner, the relief by way of prohibitory injunction is sought for in the original petition.

3. In the application for temporary injunction, which is filed as Ext.P2, it is specifically stated that because of the threat created by the respondents and her family members, the petitioner is prevented from residing in the residential building situated in the scheduled property. Hence an interim injunction is sought for to the extent of restraining the respondent and her family members from causing any obstruction to the residence of the petitioner in the building and from possessing and enjoying the same and also for restraining the respondent from causing any damage or waste in the property.

4. The respondent herein filed objections to the interim application by stating that, there is an order passed by the Judicial First Class Magistrate Court under the Protection of Women from Domestic Violence Act, in M.P.No.11568/14, restraining the petitioner from forcefully evicting the respondent from the building situated in the plaint scheduled property. According to the respondent,

after returning from Malaysia the petitioner is residing in his ancestral house situated nearby. But in violation of the protection order, the petitioner had threatened the respondent and forcefully sent her out from the building. Consequently the respondent had submitted a complaint before the police on 07.06.2015 and also filed M.P.No.4830/15 before the Magistrate Court, alleging violation of the order of residence passed by the said court. It is stated that the Magistrate court had called for a report in the said application and the matter is under consideration before the said court. According to the respondent, the original petition seeking injunction was filed by suppressing of the above facts, in order to defeat the remedy granted by the Magistrate court under the Domestic Violence Act.

5. The court below while considering I.A.No.2365/15 observed that there is an order passed by the Judicial First Class Magistrate Court, Kunnankulam restraining the petitioner from committing any type of

domestic violence towards the respondent herein. Similarly, the order had also restrained him from evicting the respondent from the shared household, until further orders. The court below also considered the documents produced by the respondent herein to show that a Memo was issued to the police authority to execute the said order. Photographs were produced on behalf of the respondent to show that the petitioner is threatening her and a lock fitted to a room was also damaged and the gate was locked. Therefore, the contention raised on behalf of the respondent to the effect that the petitioner had violated the order of the Magistrate Court, was taken note of by the court below.

6. The court below also found that, after appearance of the respondent in the original petition on 04.07.2015, a direction was issued to both the parties to occupy the building without committing any violence against each other. But on 06.07.2015 the petitioner made a complaint before the court that the respondent had left the

home after locking the same, and the petitioner has to remain without able to enter the house. The court below also found that, despite existence of an order passed by the Magistrate court under the protection of Domestic Violence Act, the petitioner had failed to mention anywhere in the original petition or in the interim injunction application, about such a crucial aspect. It was specifically noticed that there was no relief sought for by the petitioner to the extent of evicting the respondent from the building. But the prayer is only with respect to restraining the respondent from causing obstruction with respect to the peaceful possession and occupation of the petitioner. The court below rightly observed that, even if an interim injunction order is granted that will not in any manner violated the order of protection granted under the Domestic Violence Act. But despite the fact that there will not be any conflict between such orders, the court was persuaded to consider the relevant fact that the petitioner had not approached the court with clean

hands by divulging the factual circumstances prevailing based order passed by the Magistrate court. The court below had also noticed that if the petitioner had not violated the order of the Magistrate court, there would not have been any occasion for the learned Magistrate to direct the police to enforce such an order. Therefore it is inferred that the attempt of the petitioner is to overcome the order passed by the Magistrate court, in an indirect manner. Observing that, even if the petitioner is the absolute owner in enjoyment and possession, the respondent's right to enjoy the shared household cannot be taken away. It is found that no interim injunction could be granted which would result in overcoming the effect of the order passed by the learned Magistrate. Hence the interim injunction application was dismissed.

7. Learned counsel for the petitioner contended that the court below had omitted to take note of the fact that there is no dispute raised by the respondent with

respect to title or possession of the petitioner over the scheduled property. It is contended that, dehorse order passed under the Protection of Women from Domestic Violence Act, the right of the petitioner as the title holder and possessor of the property need to be preserved. Hence, the right of enjoyment of the property by the petitioner through peaceful residence in the building situated therein, ought to have been protected, is the contention. It is reiterated that the petitioner had no intention to violate the order of the Magistrate court or to evict the respondent from the house in question. But at the same time the court below ought to have found that the respondent has no manner of right in obstructing peaceful residence of the petitioner in the said building. Hence strenuous arguments were advanced seeking modification/clarification of the impugned order to the extent of restraining the respondent from causing any obstruction to the petitioner with respect to his peaceful enjoyment and residence in the said building. On

the other hand, learned counsel for the respondent contended that the petitioner is the person who had violated the order of protection granted by the Magistrate court. It is also contended that, despite direction issued by the Family court on 04.07.2015, there occurred trouble created by the petitioner with respect to peaceful residence of the respondent and the children, because he had removed lock of the Door and also locked the Gate in the compound wall by preventing entry to the residence.

8. While considering the rival contentions, we take note of the fact that the relief sought for in the original petition is by way of prohibitory injunction restraining the respondent from causing any obstruction to the peaceful enjoyment of the scheduled building by the petitioner and his family members. Prima facie, it is evident that the title of the property is vested on the petitioner. According to him, the building was constructed by expending his funds. Under normal circumstances, the respondent has no right to

prevent the petitioner from having peaceful enjoyment of the property and the residence. But from the manner in which the relief is moulded in the original petition itself, it would reveal that the petitioner was not residing therein as on the date of filing of the suit, presumably because of obstruction caused by the respondent. But on the other hand, evidence is to the effect that the respondent along with the children are residing in the building and the respondent has got a protection order under the Domestic Violence Act, to the extent of restraining the petitioner from forcefully evicting her from the said building. The relief sought for by way of temporary injunction is the same relief which is sought for in the original petition itself. The court below considered the factual matrix and subsequent circumstances, such as, filing of the complaint under the Protection from Domestic Violence Act, the passing of the protection order, the direction issued to the police authorities for its enforcement and also the petition filed by

the respondent alleging violation of the said order. It was considered by the court that, despite specific direction issued on 04.07.2015 to the parties to occupy the building without committing any violence, there were disturbance, threat, allegations and counter allegations with respect to violation of the said order. Hence the court below had rightly considered the balance of convenience, while dismissing the interim application and in upholding compliance of the order passed by the Magistrate court. Even though it is not specifically observed, evidently the court below had arrived at a conclusion that if the interim injunction as prayed for is allowed that will give rise to a conflict with the order of the Magistrate court and there is every chance of it being violated. Considering the fact that the interim injunction, if granted, would amounts to allowing the relief sought for in the original petition itself, it cannot be said that the court below was not justified in declining such relief.

9. It is trite law that granting of interim relief is a matter of discretion, to a greater extent. The parameters which need to be considered are the balance of convenience, irreparable injury etc. Sitting in this supervisory jurisdiction, which is visitorial in nature, we are not persuaded to find that the court below had committed any grave error of jurisdiction in declining the relief of interim injunction. Hence we are of the opinion that the above original petition could not succeed in establishing any circumstances warranting interference of this Court to reverse the findings. At the same time, considering all the aspects which are narrated above, this Court is of the opinion that interest of justice could be achieved by directing the court below to have an expeditious disposal of the original petition itself.

Therefore while declining interference on Ext.P4 order which is impugned in this original petition, this original petition is hereby disposed of by directing the Family court,

Thrissur, to take all earnest efforts to dispose of O.P.No.794/15, at the earliest possible, at any rate, within a period of 4 months from the date of receipt of a copy of this judgment.

Sd/-

C.K.ABDUL REHIM, JUDGE

Sd/-

MARY JOSEPH, JUDGE

VS