

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

OP (FC).No. 361 of 2015 (R)

**AGAINST THE ORDER IN I.A. NO. 2285/2014 IN O.P. NO. 972/2014 OF FAMILY
COURT,THRISSUR DATED 10.02.2015**

PETITIONER:

**THANVEERA THAHIR, AGED 21 YEARS,
D/O. K.M. THAHIR, KARAPPAM VEETIL HOUSE,
CHETTUVA, KUNDALIYUR, CHAVAKKAD TALUK,
THRISSUR DISTRICT - 680 506.
REPRESENTED BY HER POWER OF ATTORNEY HOLDER K. M. THAHIR.**

**BY ADVS. SRI. P.B. KRISHNAN
SRI. P.M. NEELAKANDAN
SRI. P.B. SUBRAMANYAN
SRI. SABU GEORGE
SRI. S. NITHIN (ANCHAL)**

RESPONDENT/RESPONDENT NO 2:

**SUBAIR HAJI, AGED 64 YEARS,
S/O. KUNHAHAMMED, VALIYAKATH HOUSE,
THAIKKAD P.O., GURUVAYOOR, CHAVAKKAD TALUK,
THRISSUR DISTRICT, PIN - 680 104.**

BY ADV. SRI. K.B. GANGESH

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 28-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1: TRUE COPY OF O.P. NO. 972 OF 2014 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXT. P2: TRUE COPY OF I.A NO. 2285 OF 2015 IN O.P. NO. 972 OF 2014 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXT. P3: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENTS IN O.P. NO. 972 OF 2014 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXT. P4: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN I.A. NO. 2285/2015 IN O.P. NO. 972 OF 2014 ON THE FILE OF THE FAMILY COURT, THRISSUR.
- EXT. P5: TRUE COPY OF THE ORDER DTD 10.02.2015 IN I.A NO. 2285/2014 IN O.P. NO. 972 OF 2014 ON THE FILE OF THE FAMILY COURT, THRISSUR.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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

O.P (FC) No. 361 of 2015

Dated this the 28th day of September, 2015

JUDGMENT

C.K. ABDUL REHIM, J.

The petitioner in O.P. No.972/2014 on the files of the Family Court, Thrissur is the petitioner herein, challenging Ext.P5 order passed by the said Court on 10.02.2015 in I.A. No.2285/2014 in O.P. No.972/2014.

2. Original petition before the Family Court was instituted by the petitioner against the respondent herein and three others. The respondent herein is the father-in-law of the petitioner. Other respondents before the court below are the husband, mother-in-law and sister-in-law of the petitioner herein. Case before the Family Court was for, return of 250 sovereigns of gold ornaments or a sum of ₹55 lakhs in lieu of its value, return of articles mentioned in the 'B' schedule or its value of ₹5 lakhs, payment of a sums of

₹50 lakhs towards marriage expenses, payment of compensation of ₹50 lakhs with respect to the mental agony and defamation and for maintenance at the rate of ₹50,000/- per month. Along with the original petition the petitioner herein had filed I.A. No.2285/2014 seeking attachment of certain immovable properties belonging to the respondent herein. The said interim application filed under Order XXXVIII Rule 5 was dismissed by the court below through the impugned order, finding that the petitioner had failed in making out a prima facie case for ordering interim attachment before judgment. It is aggrieved by the said order, this original petition is filed.

3. Heard; counsel appearing on both sides.

4. On a perusal of the impugned order it is evident that the Family Court had appreciated about the prima facie sustainability of each claims raised by the petitioner. Having found that, almost all the claims are highly exaggerated and made without any bonafides, the court

found that there is no prima facie case established for issuing an order of attachment before judgment. Eventhough learned counsel for the petitioner raised vehement contentions that the court below had failed in appreciating necessity for securing the claims, we are not satisfied that there is any grave error or illegality or impropriety committed by the court below while dismissing the application for attachment before judgment.

5. It is on the basis of a prima facie appreciation of the facts and circumstances, that the court below had arrived at a conclusion regarding the lack of absolute necessity for ordering attachment before judgment. It is on appreciation of materials available on record and on evaluation of the factual aspects pleaded, that the court had arrived at such prima facie conclusion. There is no materials available before this court to hold that those findings are in any manner perverse, incorrect or erroneous. The relief of attachment before judgment, being procedural

in nature, comes mostly within the discretionary powers vested on the trial court. This court is not sitting in the appellate jurisdiction against those findings. Unless any grave error in exercise of jurisdiction vested on the court is not established, invocation of supervisory jurisdiction vested on this court under Article 227 of the Constitution of India, is not possible.

6. However, learned counsel appearing for the petitioner had pointed out that, in the objection filed by the respondent herein to I.A. No.2285/2014 it is specifically mentioned that the respondent herein has no intention to sell the scheduled properties. Therefore an appeal is made before this court to record such an undertaking, in order to secure ends of justice and to secure the claims of the petitioner, to the extent if any sustainable, and which may ultimately be decreed by the court below. On the other hand, learned counsel for the respondent submitted that even though it is mentioned that there is no intention to sell

the properties at present, alienation or encumbrancing of the properties may be required in future, for the purpose of business activities of the respondent.

7. This court takes note of the fact that, it will be in the interest of justice to have secured the claims of the petitioner, at least to the extent which may be sustainable and which may be ultimately decreed, in order to ensure that decree if any passed by the court below will not be defeated. Therefore it is only just and proper to record the undertaking made by the respondent in the objections filed to the effect that he has no intention to alienate the property in question, at present. Hence, while disposing the above original petition, this court takes on record the above said undertaking.

8. It is made clear that if the respondent has any intention to alienate or to encumber in any manner the property in question during pendency of the original petition before the Family Court, it will be left open to him to

approach the Family Court and to seek specific permission in that regard. If any such motion is made before the Family Court it will be left open to the Family Court to take appropriate decision, based on the circumstances prevailing as on such time.

9. Considering the fact that the original petition is of the year 2014, the Family Court will take all earnest endeavour to dispose of the case at the earliest, at any rate, within a period of six months after completion of pleadings on both side.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
MARY JOSEPH
JUDGE