

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 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

OP (FC).No. 370 of 2015 (R)

MC 530/2014 of FAMILY COURT, TIRUR

PETITIONER :

ASSIANAR AGED 65 YEARS
S/O.KARATHAYAMMU, THEKKEPURATHU HOUSE, AYIROOR AMSOM
PALAPPETTY 679 580.

BY ADV. SRI.C.S.RAMANATHAN

RESPONDENTS :

1. AYISHAKUTTY, AGED 58
D/O.MOHAMMED, THEKKEPURATHU HOUSE, AYIROOR AMSOM
PALAPPETTY, 679 580.
2. FIROZ, AGED 32
S/O.ASSIANAR, THEKKEPURATHU HOUSE, AYIROOR AMSOM
PALAPPETTY, 679 580.
3. ASKAR, AGED 24
S/O.ASSIANAR, THEKKEPURATHU HOUSE, AYIROOR AMSOM
PALAPPETTY, 679 580.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 370 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE MC (DV) 293/2014 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PONNANI BY THE 1ST RESPONDENT.

EXHIBIT P2. COPY OF THE ORDER DATED 9/10/14 ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PONNANI.

EXHIBIT P3. COPY OF THE MC 530/14 FILED BY THE PETITIONER BEFORE THE HONOURABLE FAMILY COURT, TIRUR.

EXHIBIT P4. COPY OF THE STATEMENT FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PONNANI, IN MC 293/14.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A TO JUDGE

AV

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

O.P (FC) No. 370 OF 2015

DATED THIS THE 27th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner herein is the petitioner before the Family Court, Tirur in MC No.530/2014. The 1st respondent is the wife of the petitioner. Respondents 2 & 3 are his sons. The petitioner is a senior citizen and was working in Gulf countries ever since from 1976 onwards and is now aged 65 years. He is suffering from various old-age illness. According to him the petitioner is sick and could not move around without assistance of somebody. The 2nd respondent who is the elder son of the petitioner is working in the Ministry of Environment, Qatar and is drawing a handsome salary. The 3rd respondent is his 2nd son who was doing some business and is at present working as a Driver. It is stated that respondents 2 & 3 are not looking after the petitioner. The 1st respondent had filed MC No.293/2014 before the

Judicial First Class Magistrate, Ponnani under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the Domestic Violence Act, for short) seeking maintenance and other reliefs. The learned Magistrate had passed an order dated 09-10-2014 directing the petitioner to pay an amount of Rs.5,000/- to the 1st respondent as maintenance and also restrained the petitioner from alienating certain immovable properties. M.C No. 530/2014 was filed by the petitioner before the Family Court seeking maintenance from respondents 2 & 3, in order to meet his expenses for food and medical treatment. But pending disposal of the said case, the 1st respondent had approached the Magistrate's Court seeking implementation of order for payment of maintenance. It is alleged that the case before the Family Court is being protracted at the instance of the respondents on an indefinite basis. Under such circumstances the petitioner is seeking direction from this court to the Family Court, Tirur to dispose of MC No.530/2014 on an early basis. Inter alia

the petitioner is seeking direction to the Judicial First Class Magistrate, Ponnani to keep in abeyance all proceedings in MC No.293/2014 till the disposal of case pending before the Family Court as MC No.530/2014.

2. Despite service of notice from this court the respondents have not chosen to enter appearance or to contest the matter. We take note of the fact that the petitioner had filed appeal before the Sessions Court, Manjeri against the order passed by the Judicial First Class Magistrate in MC No.293/2014. Therefore it is for the appellate court to consider whether the impugned order need to be stayed or not. With respect to disposal of MC No.530/2014 by the Family Court, Tirur, this court had called for a report from the said court regarding the stage of the case. The report received from the Family Court, Tirur dated 18-08-2015 would indicate that in MC No.530/2014 the 1st respondent had already been set ex-parte and the 2nd respondent has filed counter affidavit. Eventhough the case was referred for mediation, the matter

could not be settled because of non-appearance of the 2nd respondent. It is informed that the case is now ripe for trial and if the parties are co-operating for trial, the case can be disposed of within 3 months from 20-08-2015.

3. We take note of the report submitted by the Family Court. The original petition is therefore disposed of by directing the Family Court to take all earnest efforts to dispose of MC No.530/2014, at the earliest, at any rate within the period as mentioned in the report submitted to this court.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge