

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

OP (FC).No. 374 of 2015 (R)

(AGAINST THE ORDER/JUDGMENT IN E.P.32/2012
OF FAMILY COURT, THRISSUR)

PETITIONER(S) :

1. SHAJU, AGED 47, S/O.LATE PRESENTATION, BROTHERS NIVAS,
THAZHUTALA VILLAGE, (P.O.)KANNANALLUR, KOTTIYAM CHERY,
KOLLAM.
2. MERCY, AGED 75, W/O.LATE PRESENTATION,
BORTHERS NIVAS, THAZHUTALA VILLAGE,
(P.O.) KANNANALLUR,
KOTTIYAM CHERY, KOLLAM.

BY ADVS.SRI.JOSEPH SEBASTIAN (KOLLAM)
SRI.LIJU. M.P

RESPONDENT(S) :

TENCY, D/O.NEPPOLIAN, LALU VILASAM HOUSE,
THORAVU DESOM, PUTHUKKAD VILLAGE, MUKUNDAPURAM,
THRISSUR.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 374 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

:

EXTP1: TRUE COPY OF THE PETITION IN E.P.NO.32/2012 ON THE FILE OF
THE FAMILY COURT, THRISSUR IN O.P.NO.133.2004 ON THE FILE
OF FAMILY COURT, KOLLAM.

EXT.P2: TRUE COPY OF THE PETITION IN I.A.NO.511/2015 IN
O.P.NO.133/2004 ON THE FILE OF THE FAMILY COURT, THRISSUR.

EXT.P3: TRUE COPY OF THE PETITION IN I.A.NO.510/2015 IN
O.P.NO.133/2004.

RESPONDENT(S) ' EXHIBITS

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NIL

// True Copy//

P.A. to Judge

SS

**C.K. ABDUL REHIM &
K. RAMAKRISHNAN, JJ.**

O.P.(F.C.)No.374 of 2015

Dated this the 10th day of August, 2015

JUDGMENT

K. Ramakrishnan, J

This original petition is filed by the petitioners seeking intervention of this court, regarding the disposal of I.A.No.510/2015 and I.A.No.511/2015 in O.P.No.133/2004 of Family Court, Thrissur, under Article 227 of the Constitution of India.

2. It is alleged in the petition that the first petitioner and respondent are husband and wife and their marriage was solemnized on 20.11.2000 and due to difference of opinion, respondent left the company of the first petitioner during the year 2003 and she filed O.P.No.133/2004 before the Family Court, Thrissur, for return of gold ornaments and money. During the pendency of the proceedings, matter has been settled and she has started living with the first respondent. Though the matter

was settled and they resided together, the O.P. was not withdrawn, but it was decided exparte on 27.07.2004 which was not known to the petitioners. Thereafter there arose difference of opinion between the spouses and respondent left the matrimonial home during 2012 and filed Ext.P1 execution petition before the Family Court, which was transferred to Family Court, Kollam, for execution. When they came to know about the attachment of the property, they filed Ext.P2 and P3 applications to set aside the exparte decree along with the delay condonation application to condone the delay in filing the application. In spite of the pendency of the applications, the execution proceeding is being proceeded with. So the petitioner has no other remedy, except to approach this court, seeking the following reliefs:

- i. Direct the Family Court, Thrissur to hear and dispose of Exts.P2 and P3 petitions at the earliest and at any rate within a time limit as fixed by this Hon'ble Court;
- ii. Direct the Family Court, Kollam to keep in abeyance all further proceedings in Ext.P1, till the disposal of Exts.P2 and P3;
- iii. Such other reliefs this Hon'ble court deems fit

and proper to grant in the facts and circumstances of the case.

3. Considering the nature of reliefs claimed, this court felt that the petition can be disposed of at the admission stage itself, after hearing the counsel for the petitioner.

4. As regards the 2nd prayer is concerned, the petitioner can move the execution court under Order 21 Rule 26 of the Code of Civil Procedure for stay of proceedings stating the pendency of the application to set aside the exparte decree and if such an application is filed, it is for that court to consider and pass appropriate orders. As regards Ext.P2 and P3 petitions are concerned, this court feels that a direction can be given to the Family Court, Thrissur, to expedite disposal of those applications. When the remedy of the petitioner is to move the Family Court itself, to stay the proceedings, it is not proper for this court to entertain the application under Article 227 of the Constitution of India. The petitioner can move the Family Court, Kollam, under Order 21 Rule 26 of the Code of Civil

Procedure, for staying the proceedings, in view of the pendency of the application for setting aside the exparte decree before the Family Court, Thrissur, and if such an application is filed, the Family Court, Kollam, is directed to pass appropriate orders in that application, after hearing the counsel for the respondent as well. The Family Court, Thrissur, is also directed to expedite disposal of I.A.No.510/2015 and I.A.No.511/2015 in O.P.No.133/2004 pending before that court at the earliest possible time.

With the above direction and observation, the petition is dismissed.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge