

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 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

OP (FC).No. 383 of 2015 (R)

**ARISING FROM ORDER DATED 29-04-2014 IN OP 120/2014 of
FAMILY COURT, KOLLAM**

PETITIONER:

**IRSHAD,
AGED 52 YEARS, S/O. MUHAMMED MOOSSA
RESIDING AT MOOKKANAZHIKAM (PANAMTHODI)
THEKKUM BHAGATH CHERRY, KOTTAPPURAM VILLAGE,
PARAVOOR, KOLLAM TALUK, KOLLAM DISTRICT.**

**BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.SREEKUMAR (KOLLAM)**

RESPONDENT

**MUMTHAS,
AGED 40 YEARS, D/O. NASEEMA
RESIDING AT PANAZHIKAM VEEDU (FROM ANAS MANZIL)
THEKKUM BHAGATH CHERRY, KOTTAPPURAM VILLAGE, PARAVOOR,
KOLLAM TALUK, KOLLAM DISTRICT, PIN-691 301.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 17-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1- TRUE COPY OF THE ORDER IN O.P.NO. 120/2014 DATED 29-04-2014
OF THE FAMILY COURT, KOLLAM.**

**EXHIBIT P2- TRUE COPY OF THE I.A.NO. 2011/2015 DATED 22-07-2015 IN O.P. NO.
120/2014 FOR CONDONING THE DELAY IN FILING THE APPLICATION
FOR SETTING ASIDE THE EXPARTE ORDER, FILED BY THE
PETITIONER BEFORE THE FAMILY COURT, KOLLAM.**

**EXHIBIT P3- TRUE COPY OF THE I.A.NO. 2012/2015 DATED 22-07-2015 IN O.P.NO.
120/2014 FOR SETTING ASIDE THE EXPARTE ORDER, FILED BY THE
PETITIONER BEFORE THE FAMILY COURT, KOLLAM.**

**EXHIBIT P4- TRUE COPY OF THE EXECUTION PETITION IN E.P.NO.58/2014 IN
OP.NO. 120/2014 FILED BY THE RESPONDENT/DECREE HOLDER
BEFORE THE FAMILY COURT, KOLLAM.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 383 OF 2015

DATED THIS THE 17th DAY OF AUGUST, 2015

J U D G M E N T

K. Ramakrishnan, J:

This original petition is filed by the petitioner seeking intervention of this court to issue direction to the Family Court, Kollam to dispose of Exts.P2 & P3 applications and till then keep in abeyance all further proceedings in Ext.P4 execution petition invoking supervisory jurisdiction under Article 227 of the Constitution of India.

2. It is alleged in the petition that petitioner is the respondent in Ext.P1, OP 120/2014 which was an exparte order passed in the petition filed by the wife seeking for recovery of gold ornaments and money. The petitioner filed Exts.P2 and P3 applications for setting aside the exparte order passed along with an application for condonation of delay of 419 days in filing the application. In the meantime the respondent filed Ext.P4 execution petition as EP

58/2014 before the Family Court, Kollam and Family Court, Kollam without disposing Ext.P2 & P3 applications showing undue haste in proceeding with Ext.P4 execution petition. So the petitioner has no other remedy except to approach this court seeking the following relief.

“To direct the Family Court, Kollam to consider and pass orders in Exts.P2 & P3 applications expeditiously and within a reasonable time that this hon'ble Court may consider appropriate, pending consideration of the said applications to keep in abeyance all further proceedings in Ext.P4 execution petition.”

3. When the application came up for hearing today when we posed a question to the counsel for the petitioner as to whether he had filed any application under Order XXI Rule 26 of Code of Civil Procedure for staying the proceedings till the disposal of Exts.P2 & P3, counsel for the petitioner submitted that no such application has been filed. Since a remedy has been provided under the Code of Civil Procedure in such matters by filing application before the

execution court itself seeking stay of the execution proceedings, without resorting to that remedy approaching this court under Article 227 of the Constitution of India cannot be encouraged. So the petitioner can very well approach the family court by filing an application under Order XXI Rule 26 of Code of Civil Procedure to stay the proceedings in EP 58/2014 in OP 120/2014, pending disposal of Exts.P2 & P3 applications. If such an application is filed the family court is directed to consider and pass appropriate orders in that application.

With the above directions and observations the original petition is disposed of

Office is directed to communicate this judgment to the concerned court, immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge