

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

OP (FC).No. 386 of 2015 (R)

PETITIONER:

**SWEETY K.A.
AGED 33 YEARS, W/O. MANOJ AND D/O.K.O.ANTONY,
KACHERAKKAL HOUSE
PUDUKKAD P.O., THRISSUR DISTRICT.**

**BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA**

RESPONDENT:

**MANOJ
S/O.AUGUSTINE, MULLAKKUNNEL HOUSE,
INCHAKUDU P.O., THRISSUR DISTRICT-680 312.**

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE OP NO.132/2011 BEFORE THE FAMILY COURT, THRISSUR.**
- EXT.P2. TRUE COPY OF THE ORDER DATED 9/3/2015 OF THE FAMILY COURT, IRINJALAKUDA IN IA 520/2012 AND IA NO.1108/2012 IN OP NO.312/2012.**
- EXT.P3. TRUE COPY OF THE MEDICAL BOARD EXAMINATION REPORT DATED 6/4/2015.**
- EXT.P4. TRUE COPY OF THE ORDER DATED 10/6/2015 OF THE FAMILY COURT, IRINJALAKUDA IN IA 520/2012 AND IA NO.1108/2012 IN OP NO.312/2012.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 386 OF 2015

DATED THIS THE 19th DAY OF AUGUST, 2015

J U D G M E N T

K. Ramakrishnan, J:

This petition is filed by the petitioner who is respondent in OP 312/2012 before the Family Court, Irinjalakuda, seeking intervention of this court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the legally wedded wife of the respondent and the marriage was solemnized on 22-08-2009 and thereafter they were living together for some time and after a year of marriage respondent had falsely alleged that the petitioner is suffering from mental illness and it is difficult for him to live with her and causing mental agony and fear for life and so he filed OP 312/2012 before the Family Court for declaring the marriage as null and void showing the petitioner as mentally challenged person and also filed an application, IA 520/2012 for appointing a guardian for the petitioner to represent her in the proceedings. The respondent also filed IA 1108/2012 for evaluating the mental

condition of the petitioner as part of enquiry under Order XXXII Rule 1 read with Rule 15 of Code of Civil Procedure. The petitions were earlier dismissed for default, which was challenged by the respondent by filing OP (FC) 336/2014 before the this court and this court set aside the order and remanded the matter for further consideration. Thereafter Ext.P2 order was originally passed stating that at that stage it is not possible to come to a conclusion as to whether a guardian is to be appointed for the petitioner herein or not and allowed the IA 1108/2012 for subjecting the petitioner for medical examination by Medical Board consisting of a Psychiatrist also in the Board. Thereafter Ext.P3 report of the Medical Board was obtained and on that basis passed Ext.P4 order holding that the petitioner herein is shown as respondent in the lower court is capable of conducting the case by herself and there is no necessity to appoint a guardian on behalf of her and dismissed that application instead of posting the case for counter statement of petitioner herein who is the respondent in the lower court thereafter the case was posted for evidence. The grievance of the petitioner is that without giving an opportunity for the petitioner to file an objection in the main petition, the case is posted for

evidence which according to the petitioner will cause great prejudice to her. So the petitioner is approaching this court for directing the family court to grant her an opportunity to file counter statement and then proceed with the case till that opportunity is complied with directing the family court not to proceed with the case.

3. Considering the nature of relief claimed in the petition, we felt that the petition can be disposed of at the admission stage itself, by giving a direction to the family court and also directing the petitioner to file counter statement along with a petition to receive the same as the matter is posted for evidence now and consider that application before proceeding with the case dispensing with notice to the respondent.

4. It is seen from the order produced by the petitioner that the the original petition was earlier filed by the husband for declaring the marriage as null and void on the ground of insanity showing the petitioner as a mentally challenged person incapable of defending the case through a guardian and also filed an application for appointing a guardian and the guardian appeared and contested the matter stating that there is no necessity to appoint a guardian for the petitioner herein. An

enquiry was conducted under Order XXXII Rule 15 of Code of Civil Procedure and a report from the Medical Board regarding the mental status of the petitioner was also obtained, thereafter found that the petitioner is capable of defending the case and there is no necessity to appoint a guardian to defend the case on her behalf and dismissed the application filed by the respondent herein for appointing a guardian for the petitioner herein. So under the circumstances the grievance of the petitioner appears to be genuine that she will be getting an opportunity to file counter statement to the original petition in her individual capacity only after disposal of the application. The petitioner ought to have filed an application for receiving counter statement stating the reason for the delay in not filing the same earlier before coming to this court as the order was seen passed in the month of June 2015. So in the meantime there was ample opportunity to the petitioner to file counter statement. However if the petitioner files an application before the court below to receive her counter statement to be filed in her individual capacity stating the reason for the delay in not filing the same earlier, then the family court is directed to consider and dispose of that application in accordance with law before proceeding

with the evidence of the case in the matter. The petitioner is directed to file the application within one week from today before the family court and if such an application is filed the family court is directed to consider and dispose of that application at the earliest.

With the above directions and observations this petition is disposed of.

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

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge