

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

OP (FC).No. 403 of 2015 (R)

**(AGAINST THE ORDER IN IA 237/2015 IN OP No.734/2013 DATED 06-06-2015
OF THE FAMILY COURT, MALAPPURAM)**

PETITIONER:

**SHYNY GOPINATHAN NAIR,
AGED 34 YEARS, D/O.GOPINATHAN NAIR,
No.005, N.R.SPRING WOODS
MCECHS LAYOUT, RACHENAHALLI, BANGALORE, KARNATAKA-560 077.**

**BY ADVS.SRI.T.REMESH BABU
SRI.C.K.SREEJITH**

RESPONDENT:

**RANJITH MENON P.V
AGED 36 YEARS, S/O. A. CHANDRASEKHARAN MENON, NO.204
VBAA ENCLAVE 3RD MAIN, HOYSALA NAGAR
RAMAMOORTHY NAGAR EXTENSION,
BANGALORE, KARNATAKA-560078.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE DIVORCE PETITION BEFORE THE MALAPPURAM FAMILY COURT AS OP (HMA) 734/2013 DATED 10/7/2013.**
- EXT.P2. TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER DATED 6/1/2015.**
- EXT.P3. TRUE COPY OF THE PETITION IN IA 237/2015 DATED 23/2/2015.**
- EXT.P4. TRUE COPY OF THE COUNTER FILED IN IA NO.237/2015 DATED 28/3/2015.**
- EXT.P5. CERTIFIED COPY OF THE ORDER IN IA 237/2015 IN OP(HMA) 734/2013 DATED 6/6/2015.**
- EXT.P6. TRUE COPY OF THE SETTLEMENT DEED NO.4861/2007 DATED 23/11/2007.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 403 OF 2015

DATED THIS THE 2nd DAY OF SEPTEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is challenging Ext.P5 order passed by the Family Court, Malappuram in IA 237/2015 in OP (HMA) 734/2013. Original petition before the court below was filed by the respondent herein seeking dissolution of marriage existing between the petitioner and the respondent. IA 237/2015 was filed by the petitioner herein under Section 24 of the Hindu Marriage Act seeking payment of a sum of Rs.50,000/- towards meeting expenses of the proceedings. The court below found that the petitioner had received a sum of Rs.45 lakhs while settling a matrimonial dispute existed between herself and her former husband. It is evident that, in a maintenance claim filed by the petitioner herein before a court of law at Bangalore, a memorandum of agreement was entered under Section 89 of the Code of

Civil Procedure through which the respondent before that court had agreed to pay Rs.45 lakhs to the petitioner herein, towards maintenance and permanent alimony. The court below observed that the petitioner herein had not disputed receipt of the said amount. It was observed that the petitioner had failed to account the amount, much less to truthfully disclose about receipt of such huge fund. The court further observed that, even on calculation of interest on the said amount the petitioner will be getting a reasonable sum at least Rs.33,500/-. Having found that the petitioner has sufficient means to meet the litigation expenses, the claim under Section 24 was declined.

2. Contention of the petitioner is that the Family Court has not given any opportunity to establish the real fact before that court. It is stated that the amount of Rs.45 lakhs received by the petitioner from her former husband is the money which was spend by the petitioner's father for purchasing property in the joint name of the petitioner and her former husband, and the payment was

made towards consideration for relinquishment of the right of the petitioner in the said property at the time of divorce. It is also contended that the court below had failed to appreciate the fact that the petitioner is unemployed and is not getting any income and that she is dependent on her parents for her livelihood.

3. Section 24 of the Hindu Marriage Act, 1955 provides for payment of maintenance and expenses of the proceedings pendente lite. It stipulates that, if either the wife or the husband, who is party to a proceedings under the said Act, has no independent income sufficient for her or his support and for meeting the necessary expenses of the proceedings, then the other party can be directed to pay the expenses of the proceedings or a monthly sum for support of the party seeking such payment. In the case at hand, the court below had categorically found that the petitioner who had approached the court under Section 24 is having sufficient means to meet the expenses of the proceedings. Such a finding is arrived on the basis that she

had received a huge sum of Rs.45 lakhs from her former husband in a litigation pending before Karnataka court, which was settled between the parties. Evidently the receipt of such an amount was not disputed by the petitioner herein. Even accepting the contention that the said payment was made towards consideration for relinquishment of the right of the petitioner in the said property, it is evident that the petitioner had received such an amount. Based on the factual aspects the court below had arrived at a conclusion that the petitioner had sufficient means to meet the expenses of the proceedings. This court do not find any apparent error in exercise of the jurisdiction vested on that court in arriving at such a finding. Hence we find that there exists no valid ground for interference of this court that too by invoking jurisdiction vested under Article 227 of the Constitution. However, we make it clear that the impugned order may not stand in the way of the court taking a decision with respect to granting of any permanent alimony and maintenance under Section 25 of the Act, at the time of

final disposal of the original petition before that court, if found allowable.

4. Learned counsel for the petitioner submitted that if notice issued to the respondent and the respondent appears, there will be a chance for settling the issue through mediation. Needless to observe that, if any such submission is made in this regard before the Family Court, the Family Court will take necessary steps to attempt mediation settlement.

The original petition is dismissed, subject to the above observations.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge