

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. 405 of 2015 (R)

**ARISING FROM I.A No.932/2015 IN OP (HMA) 698/2012 of FAMILY COURT,
THIRUVALLA, DATED 09-10-2012**

PETITIONER

**JAYADEVI,
AGED 44 YEARS, D/O.GOPALAN NAIR,
RESIDING AT CHITTOOR THALUK
NALLEPILLY VILLAGE, NALLEPILLY PO, PALAKKAD (DIST)**

**BY ADVS.SRI.M.S.UNNIKRISHNAN
SRI.JITHIN PAUL VARGHESE
SRI.K.SUNIL
SMT.CHITHRA.S.BABU
SRI.C.DHEERAJ RAJAN
SMT.T.P.SHELNA
SMT.M.PPRIYANKA**

RESPONDENT:

**SUNILKUMAR,
AGED 45 YEARS, S/O. KARUNAKARAKURUP,
RESIDING AT LAKSHMI NIVAS HOUSE
THIRUVALLA TALUK, ERAVIPEROOR VILLAGE,
VALLAMKULAM PO, PATHANAMTHITTA (DIST),PIN-689541.**

**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

- P1: TRUE COPY OF THE EX-PARTE DECREE PASSED AGAINST THE PETITIONER DATED 09-10-2012.**
- P2: TRUE COPY OF THE PETITION TO SET ASIDE EX-PARTE DECREE OF DIVORCE DATED 20-08-2015.**
- P3: TRUE COPY OF THE PETITION TO CONDONE THE DELAY DATED 14-08-2015.**
- P4: TRUE COPY OF THE PETITION TO STAY THE OPERATION OF THE DECREE DATED 14-08-2015.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 405 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 herein is the respondent in OP (HMA) No.698/2012 on the file of Family Court, Thiruvalla. Original petition before the court below was filed by the respondent herein, seeking dissolution of the marriage existing between the petitioner and the respondent. The court below allowed the said original petition through Ext.P1 judgment dated 09-10-2012, after declaring the petitioner herein as ex-parte. According to the petitioner, her non-appearance before the court below was because of the fact that the respondent herein had agreed to withdraw the original petition filed before that court. It is stated that the petitioner came to know about Ext.P1 judgment only during the last week of August 2015. It is said that, immediately thereafter she had approached the Family Court through an application

seeking to set aside the ex parte judgment, along with application for condonation of delay in filing the petition to set aside the ex-parte decree, as per Ext.P2 and P3 respectively. Those applications were numbered before the family court as IA 932/2015 & IA 933/2015. The petitioner had filed another application as IA 934/2015 seeking stay of operation of Ext.P1 ex-parte judgment, pending disposal of Exts.P2 & P3 applications.

2. According to the petitioner, the court below had considered Ext.P4 application on 20-08-2015 and ordered urgent notice to the respondent therein, and posted the I.A for further consideration on 26-08-2015. Learned counsel for the petitioner submitted that the said application was again adjourned to 04-09-2015, awaiting return of notice sent to the respondent therein. In this original petition which is filed under Article 227 of the Constitution of India, the petitioner is seeking to set aside the order passed by the Family Court on 20-08-2015 in IA No.934/2015. It is contended that, if urgent orders are not passed by the

Family Court granting stay of operation of Ext.P1 judgment, there is every chance of respondent herein getting married again. Hence the petitioner seeks direction from this court to grant interim stay of operation of Ext.P1 judgment, pending disposal of Exts.P2 & P3 applications.

3. We do not find any illegality, impropriety or error of jurisdiction committed by the Family Court while dealing with Exts.P2, P3 & P4 applications. Exhibit P1 judgment was passed as early as on 09-10-2012. The petitioner had approached the Family Court seeking to set aside the ex-parte judgment, only in the year 2015. Evidently there is inordinate delay caused in filing the applications, to the extent of 1044 days. Hence the petitioner had also filed an application seeking for condonation of delay, as per Ext.P3. In Ext.P4 application the petitioner is seeking for a stay of operation of Ext.P1 judgment which was passed as early as in the year 2012. It is not at all justifiable on the part of the Family Court in granting stay of operation of Ext.P1 judgment, even without notice to the respondent in the said

application. Therefore the court below is fully justified in issuing notice to the respondent. Under the above mentioned circumstances on a considered opinion, this court is not satisfied that there exists any circumstances warranting interference by invoking the supervisory jurisdiction vested under Article 227 of the Constitution of India.

4. However, it will be left open to the petitioner to appraise the Family Court regarding urgency of the matter, in view of the apprehension that the respondent will be getting remarried within a short time. If any such urgency is appraised to the court below, it will be appropriate on the part of that court to deal with Exts.P2 & P3 applications on an expeditious basis.

5. Therefore, considering the interest of justice, this original petition is disposed of at the time of admission itself, dispensing with notice to the respondent, by directing the Family Court to have an early disposal of Exts.P2 & P3 applications with opportunity afforded to the respondent, at

the earliest possible. At any rate the applications shall be heard and disposed of finally, within a period of 2 months from the date of receipt of a copy of this judgment.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge