

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

OP (FC).No. 406 of 2015 (R)

OP.NO. 523/2012 OF FAMILY COURT,THRISSUR

PETITIONER/RESPONDENT :

ARUN
S/O.SADASIVA KURUP, AGED 34 YEARS
'SOUPARNIKA', (KAKKATTU VEEDU)
ATHIMANCHERRY MURI, CHERIYANAD VILLAGE
CHENGANNOOR TALUK.

BY ADV. SRI.C.DILIP

RESPONDENT/PETITIONER :

RACHANA
D/O.NARAYANAN KUTTY, AGED 31 YEARS
PANIKKATH VEEDU, MINALOOR VILLAGE
THALAPPILLY TALUK, THRISSUR DISTRICT,
PIN-680 581.

BY ADV. SRI.M.PREMCHAND

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Mn

...2/-

OP (FC).No. 406 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF OP NO. 523 OF 2012 DATED 14.3.2012 ON THE FILE OF FAMILY COURT, THRISSUR.
- EXT.P2 COPY OF OBJECTION DATED 11.3.2013 FILED BY THE PETITIONER IN OP NO. 523 OF 2012 ON THE FILE OF FAMILY COURT, THRISSUR.
- EXT.P3 PHOTOCOPY OF IA NO. 3697 OF 2015 IN OP NO. 523 OF 2012 ON THE FILE OF FAMILY COURT, THRISSUR.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

OP(FC) No. 406 of 2015

Dated this the 5th day of October, 2015

JUDGMENT

Abdul Rehim,J.

Respondent in OP.No.523/2012 on the files of the Family Court, Thrissur is approaching this court by invoking its supervisory jurisdiction vested under Article 227 of the Constitution of India, seeking reliefs by way of direction to the Family Court to permit him to adduce oral and documentary evidence, after setting aside the order passed by the Family Court dismissing Ext.P3 application (IA.No.3697/15).

2. The respondent herein is the petitioner before the court below who instituted the case seeking decree of divorce on the ground of physical and mental cruelty from the side of the petitioner. The original petition was resisted by the petitioner in the written statement filed, as per Ext.P2. It is stated that the trial of the case had commenced before the Family Court on 22.4.2015 and the respondent herein was examined as PW1.

Subsequently 3 witnesses were examined on behalf of the respondent, on 12.5.2015. The case was thereafter adjourned on the request of the petitioner herein to 20.8.2015, for examination of the petitioner. But in the meanwhile the petitioner got admitted in a hospital for treatment of chicken pox from 14.8.2015 to 21.8.2015. Therefore the petitioner filed IA.No.3697/2015 accompanied by a Medical Certificate seeking adjournment of the case. But when that interim application came up for consideration on 20.8.2015, counsel appearing for the petitioner had relinquished his Vakalath. The court below after recording submission made to that effect, adjourned the case to 2.9.2015 only for pronouncing the judgment . It is contended that the petitioner was denied of sufficient opportunity to adduce oral evidence. It is under such circumstances, the petitioner is seeking to set aside the order passed by the Family Court in IA.No.3697/2015 and seeking direction to the Family Court to permit him to adduce evidence.

3. Respondent entered appearance through counsel and opposed this original petition, contending that there were continuous laches and negligence from the side of the petitioner

in conducting the case. It is argued that on an earlier occasion the petitioner herein was set exparte and it was set aside only after payment of cost . It is also contended that on an earlier occasion an application to recall the respondent who was examined as PW1 was also allowed in terms of cost. Despite such situation, the petitioner was changing the counsel one after another and he had failed to adduce evidence inspite of several adjournments.

4. When the case came up for consideration this court directed the registry to call for a report from the Family Court, Thrissur regarding the history of the case with specific mention to the proceedings of the case after commencement of the trial and to illustrate the proceedings recorded by the court on different posting dates. Learned judge of the Family Court, Thrissur had submitted a report to this court on 2.9.2015. The report would indicate that the petitioner herein was set exparte during February 2015. But the same was set aside on the basis of the interim application filed by him, on terms of cost. On 25.3.2015 the petitioner requested time to engage a lawyer. Accordingly the case was adjourned to 22.4.2015. But on that day no

lawyer was engaged. On the other hand, the petitioner expressed willingness to cross examine the respondent by his own. Accordingly the petitioner had personally cross examined the respondent herein and 2 documents were also marked from his side by confronting them with the respondent. Thereafter on 12.5.2015 three other witnesses were also examined on behalf of the respondent. After the evidence of the respondent is over the petitioner again sought time to engage a lawyer, which was allowed by the court below and the case was adjourned to 23.5.2015. A further adjournment was also granted for the said purpose to 28.5.2015. On 28.5.2015 a new lawyer was engaged and PW2 to PW4 were examined on that day. Subsequently another application filed by the petitioner for recalling the respondent herein (PW1) was also allowed by the court below on 1.6.2015, subject to payment of costs. The cost was paid on 8.6.2015 and the court below directed the respondent to appear for cross examination on 23.6.2015. Accordingly the respondent was further cross examined on 23.6.2015. Thereafter the case was adjourned to 4.7.2015 for adducing evidence of the petitioner herein. On 4.7.2015 the case was again adjourned to

24.7.2015 for examination of the petitioner. But on 24.7.2015 also the petitioner was not ready to adduce evidence. Hence the court below was constrained to close the evidence and post the case on 29.7.2015. From that date the case was again adjourned to 11.8.2015 for hearing. On 11.8.2015 the petitioner was not ready for hearing. Hence the court below heard the counsel for the respondent and posted the case for pronouncing orders, to 20.8.2015. Meanwhile IA.3697/2015 was filed by the petitioner seeking for adjournment of the case for conducting final hearing . But on 20.8.2015 when the above said IA was taken up for consideration, counsel appearing for the petitioner submitted that he had relinquished vakalath for the petitioner. Therefore the said application was dismissed for default. Since the petitioner was also not present on 20.8.2015, the case was taken up for pronouncing orders to 2.9.2015.

5. From the circumstances as narrated in the report of the Family Court, it is evident that, there was callous negligence and laches on the part of the petitioner in conducting the case. Evidently the court below had examined PW1 to PW4 on behalf of the respondent herein. Thereafter several adjournments were

granted for adducing evidence on behalf of the petitioner. Since the petitioner failed to adduce oral evidence, the Family Court had closed the evidence on 24.7.2015. Thereafter the petitioner had not filed any application to reopen the evidence nor he was prepared to adduce evidence before the Family Court. From Ext.P3 it is evident that the relief sought for in IA.No.3697/2015 was only to the effect of granting 4 months time for final hearing of the case.

6. Under the above circumstances, we are inclined to hold that the Family Court has not committed any error. There is no illegality or impropriety in the proceedings before the Family Court. Hence there exist no circumstances warranting interference of this court. However, noticing the fact that the petitioner had not adduced evidence in the case, we are of the considered opinion that one more chance can be given to the petitioner, subject to imposition of compensatory cost payable to the respondent. If the petitioner is desirous of adducing any oral evidence, he can be permitted to appear before the Family Court along with the witnesses on any specific date, after filing a proper application for reopening evidence.

7. If the petitioner appears before the Family Court, Thrissur in OP.523/2012 along with witnesses if any on behalf of him, on 3.11.2015, and files any application seeking for reopening of the evidence, the Family Court shall consider the same and allow the petition subject to the petitioner paying cost of Rs.5000/- to the respondent. In such case, the Family Court shall record evidence of the respondent and witnesses on the said date itself or on any other date to which the case is adjourned, as per the convenience of that court. The petitioner herein shall co-operate to complete the evidence and hear the case at the earliest. All earnest efforts shall be taken by the Family Court to dispose of the case at the earliest.

The writ petition is disposed of subject to the above directions and observations.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

