

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

OP (FC).No. 414 of 2015 (R)

AGAINST THE JUDGMENT IN OP 855/2011 of FAMILY COURT, PALAKKAD

PETITIONER(S) :

BRIJESH CHANDRAN AGED 40 YEARS
S/O.CHANDRAN, D1/603, NIBM ROAD
PUNE, MAHARASHTRA NOW RESIDING AT: E2/504
SUNSHREEAPARTMENTS, NEAR IDBI BANK, NIBM ROAD
KONDHWA, PUNE, MAHARASHTRA - 411 048.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENT(S) :

JIJITHA BRIJESH
D/O.KRISHNAN, KRISHNA SADAN, NEAR N.H 47
KADAMKODE, KUNNATHURMEDU (POST), PALAKKADDISTRICT.

R1 BY ADV. SMT.T.S.MAYA (THIYADIL)
R1 BY ADV. SMT.K.A.SUNITHA

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 09-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 414 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: TRUE COPY OF THE PETITION IN OP NO.855/2011 ON THE FILE OF
FAMILY

COURT, PALAKKAD

EXT.P-2: TRUE COPY OF THE OBJECTION FILED IN OP NO.855/2011 ON THE
FILE

OF FAMILY COURT, PALAKKAD

EXT.P-3: TRUE COPY OF THE AMENDMENT APPLICATION VIZ.

I.A.NO.412/2014 IN OP

NO.855/2011 ON THE FILE OF FAMILY COURT, PALAKKAD.

EXT.P-4: TRUE COPY OF THE COMPROMISE DATED 19.10.2013 FILED IN
I.A.NO.

461/2011 ON THE FILE OF FAMILY COURT AT PUNE, COURT NO.4

EXT.P-5: TRUE COPY OF THE PETITION IN I.A.NO.341/2015 IN OP
NO.855/2011

ON THE FILE OF FAMILY COURT, PALAKKAD

EXT.P-6: TRUE COPY OF THE PETITION TO CONDONE DELAY VIZ.

I.A.NO.340/2015

IN OP NO.855/2011 ON THE FILE OF FAMILY COURT, PALAKKAD

EXT.P-7: TRUE COPY OF THE ORDER DATED 9.6.2015 PASSED IN IA
NO.340/2015

IN OP NO.855/2011 ON THE FILE OF FAMILY COURT, PALAKKAD

EXT.P-8: TRUE COPY OF THE ORDER DATED 9.6.2015 PASSED IN IA
NO.341/2015

IN OP 855/2011 ON THE FILE OF FAMILY COURT, PALAKKAD.

/true copy/

P.S. TO JUDGE.

s1.

C.K.Abdul Rehim & Mary Joseph, JJ.

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O.P.(FC)No.414 of 2015

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Dated this the 9th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. The petitioner herein is the respondent in O.P.No.855 of 2011 on the files of the Family Court, Palakkad, which is instituted by the respondent herein, claiming return of gold ornaments and money. Ext.P1 is the copy of the original petition and Ext.P2 is the written statement filed by the petitioner in the said case. Later, the respondent sought amendment of the original petition through Ext.P3 interim application seeking to incorporate an additional claim for return of half the amount out of the sale proceeds of a flat, allegedly sold by the petitioner herein for an amount of ₹20,00,000/- (twenty

lakhs) or on the alternative to return an amount of ₹1,20,000/- (one lakh twenty thousand) which the respondent had allegedly spent for purchase of the said flat, along with interest. The court below allowed the amendment on 17.7.2014 as per the order passed in I.A.No.412 of 2014. The petitioner thereafter approached the court below in I.A.No.341 of 2015 seeking review of the said order. The said application was filed along with I.A.No.340 of 2015 seeking condonation of delay of 144 days in filing the application for review. Ext.P5 is the copy of the review petition and Ext.P6 is the copy of the delay condonation petition. The court below considered both the interim applications together and passed Exts.P7 and P8 orders on 9.6.2015, dismissing those applications. It was found that the application for amendment, I.A.No.412 of 2014 was allowed without any objections. Therefore, there arises no question of reviewing the said order on the basis that the petitioner was not allowed to file counter affidavit. Hence it is found that the application for review is

not maintainable. Hence, both the applications filed, seeking review of the order as well as seeking condonation of delay, were dismissed. It is aggrieved by Exts.P7 and P8 orders, the petitioner is approaching this court by invoking its supervisory jurisdiction vested under Article 227 of the Constitution of India.

2. Respondent entered appearance and filed counter affidavit. Heard; counsel appearing on both sides. Even admitting that the amendment was allowed without affording proper opportunity to the petitioner to file counter affidavit, the question need to be considered is as to whether there exists any sustainable ground to review the said order. In other words, what is to be examined is as to whether the court below had committed any error in allowing the amendment. Going by the grounds enumerated in the review petition filed as Ext.P5, this court takes note of the fact that, the petitioner is relying on a compromise arrived between the parties, which was filed before the Family Court at Pune in a case filed between the parties herein as

P.A.No.461 of 2011. It is contended that as per the said document all the rights other than rights specifically reserved were settled between the parties and that the rights reserved are only with respect to the claims for permanent maintenance, 'stridhan', custody, access and visiting right over each other. Since the claim now sought to be incorporated through the amendment is not one falling under the rights reserved, the respondent herein is estopped from raising any such claim, is the contention. It is also contended that since the document of compromise was available before the court below, the order passed allowing the amendment without considering such document, need to be reviewed.

3. We take note of the fact that, in Ext.P4 compromise petition produced before the Family Court, Pune in P.A.No.461 of 2011, it is mentioned that both the parties have kept reserved their rights before the court at Palakkad in Kerala in their respective petitions filed by them independently, as to permanent maintenance of the respondent

and her son and with respect to 'stridhan', custody, access and visiting rights over each other, which is to be decided by the said court in Palakkad. Learned counsel for the respondent contended that the above compromise petition was filed in an application for divorce filed before the court at Pune and the compromise was arrived not with respect to any of the monetary claims between the parties and all such claims are left open for agitation before the court at Palakkad. Hence it is contended that the compromise will in no manner cover the claims with respect to the monetary aspects. It is also contended that the petitioner herein cannot validly challenge maintainability of the claim incorporated through the amendment based on any contention of *res judicata*, because the said claim was not the subject-matter of issue before the Family Court, Pune.

4. We take note of the fact that the sole ground on which a review of the order passed in I.A.412 of 2014 was sought for is based on Ext.P4 compromise. Even assuming that the petitioner herein has got a

contention that the claim incorporated through the amendment is barred by *res judicata*, it is a matter which could be contended before the court while filing the additional written statement. So also sustainability of the claim incorporated through the amendment can very well be disputed by the petitioner taking all available contentions. It cannot be said that the court below had committed any illegality, irregularity or impropriety in allowing the amendment. Hence it cannot be said that there existed any valid and legal grounds available to the petitioner to seek a review of the order through which the amendment was allowed.

5. Under the above mentioned circumstances, we are of the considered opinion that there exists no circumstances warranting interference of this court, that too by invoking the supervisory jurisdiction vested under Article 227. Hence, the original petition fails and the same is hereby dismissed.

However, it is made clear that the petitioner will be at liberty to

raise all the contentions to resist the claim, which is incorporated through the amendment, including the contentions raised in the review petition.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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