

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. 424 of 2015 (R)

**AGAINST THE ORDER DATED 19-08-2015 IN IA Nos.504 & 505/2015
of FAMILY COURT, VADAKARA**

PETITIONER:

**ABDUL LATHEEF,
AGED 46 YEARS, S/O. MAMMU,
BYTHUL SALAM, NADAKKUTHAZHA AMSOM
PUTHUPPANAM DESOM, VADAKARA TALUK.**

BY ADV. SRI.P.M.HABEEB

RESPONDENTS:

- 1. THESNI BANU
W/O. ABDUL LATHEEF,
KUNHOOS, PAZHANKAVU, VATAKARA-673513.**
- 2. KADHEEJA,,
AGED 17 YEARS, (MINOR),
D/O. THESNI BANU, -DO-**
- 3. MOHAMMED BADUSHA,
AGED 14 YEARS, MINOR,
D/O. THESNI BANU, -DO-**
- 4. MOHAMMED ARFAN,
(MINOR), S/O. THESNI BANU
-DO- (RESPONDENTS 2 TO 4 REP. BY
GUARDIAN MOTHER 1ST RESPONDENT).**

R1 BY ADV. SRI.VIJAI MATHEWS

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 09-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

OP (FC).No. 424 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1. THE CERTIFIED COPY OF THE ORDER DATED 19-08-2015 IN IA NO.
504/2015 AND IA NO. 505/2015.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 424 OF 2015

DATED THIS THE 9th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is approaching this court invoking its supervisory jurisdiction vested under Article 227 of the Constitution, to set aside Ext.P1 order passed by the Family Court, Vatakara in I.A. Nos.504 & 505/2015 in OP 76/2013. Original petition before the Family Court was filed by the respondent herein seeking past maintenance, medical expenses with respect to cancer treatment etc. The petitioner herein is the respondent in the said case. The petitioner herein was declared ex-parte in the case, since he failed to appear for undergoing counselling. The petitioner filed I.A No.505/2015 seeking to set aside the ex-parte decree, under Order IX Rule 13 of the Code of Civil Procedure, accompanied with IA No.504/2015 seeking for condonation of delay of 561 days in preferring the said

application. The above applications were disposed of through a common order as per Ext.P1. The court below arrived at a conclusion that the petitioner had left abroad without making any proper arrangements for conducting the case and there was callous negligence on the part of the petitioner in following up the proceedings before the Family Court, even by making due enquiries with his counsel at the appropriate time. It is observed by the Family Court that, high degree of negligence is reflected from the part of the petitioner in the conduct of the case. However, considering the larger interest involved, the court was inclined to condone the delay and to set aside the ex-parte decree subject to the petitioner complying with the conditions incorporated as follows;

“(1). Both the I.As will be allowed on compliance of following conditions by the petitioner therein.

(2). The petitioner shall deposit under protest a sum of Rs.1 lakh as treatment expenses of the first petitioner in the O.P.

(3). The petitioner shall pay a sum of Rs.5,000/- as cost of the O.P. petitioner's together.

(4) The petitioner shall under protest deposit in court a sum of Rs.25,000/- as maintenance and educational expenses of O.P petitioner No2 and a sum of Rs.15,000/- each as maintenance and educational expenses of O.P. petitioners 3 & 4.

(5) The petitioner shall surrender his current passport in this court till disposal of the O.P. so as to ensure his availability in the native place.

(6). The petitioner shall file his counter statement on 18-09-2015.

(7). If the petitioner intends to go abroad, he is at liberty to request to this court to expedite the trial of the proceedings pending against him which will be answered in the positive on such application being made.

(8). The petitioner shall comply with clauses 2 to 6 of this order on or before 18-09-2015 failing which both applications will stand automatically dismissed as if this is a self working order."

It is aggrieved by the stringent conditions imposed as above, this original petition is filed.

2. Heard; counsel appearing on both sides.

3. Learned counsel for the petitioner contended that, having found that the petitioner is working abroad the court below ought not have imposed a condition to surrender his passport. It is also contended that the condition incorporated directing deposit of Rs.1,00,000/- towards

treatment expenses, is also not reasonable. It is pointed out that, the claim made with respect to the treatment expenses is Rs.3,00,000/- only and imposition of such a condition without considering merits of such claim, cannot be sustained. Learned counsel appearing for the petitioner had also pointed out that the petitioner herein had left the country after filing of this original petition because his Visa was expiring and he has to report for duty abroad. Under such circumstances he seeks interference of this court to modify the conditions.

4. Per contra, learned counsel for the respondent had raised stiff objections in granting the reliefs sought for. It is contended that the petitioner is now staying abroad and if any modification in the conditions is granted, he will not make any payment and he will not be available for finalizing the proceedings before the Family Court.

5. When the above original petition came up for admission on 11-09-2015 this court passed an interim order staying further proceedings pursuant to the impugned order

subject to condition of the petitioner complying with the conditions incorporated as Sl. No.3 & 4 above. It is submitted that the amount of maintenance directed to be deposited under protest as well as the payment of cost was already effected.

6. With respect to condition No.2 mentioned above, we find that the court below had incorporated such a condition only based on a finding that the 1st respondent is continuing treatment and she is in need of money for the same. It is also on the basis that there occurred negligence and laches on the part of the petitioner in co-operating with the proceedings. Since it is made clear that the amount has to be deposited only under protest, it is evident that the liability of the petitioner will be decided in the case only after adjudication of the issues. That being so, we do not find any unreasonableness in the condition incorporated with respect to payment of Rs.1,00,000/- under protest towards the treatment expenses.

7. With respect to condition No.5 for the surrender of the current Passport of the petitioner, this court is of the opinion that restraining the petitioner from going abroad to his place of work, will result in irreparable injury, because there is every chance of petitioner losing employment abroad. Therefore we are inclined to interfere with condition No.5. It is noticed that the petitioner is working in Gulf countries. If the petitioner complies with the other conditions incorporated under item Nos.2, 3 & 4, within a time to be stipulated by this court, it will be justifiable to have a relaxation of other conditions.

8. Therefore the above original petition is hereby disposed of by modifying Ext.P1 order to the extent of permitting the petitioner to comply with condition No.2, 3 & 4 contained therein, within a period of one month from today. The petitioner shall seek appropriate permission from the court below to conduct the case through any power of attorney holder, duly authorised on that behalf. The petitioner can also seek adjournment of the case to any

reasonable date for the parties to attend the counselling. It will also be left open to the petitioner to seek permission for conduct of counselling through 'video conferencing' based on facilities to be provided in that respect, either through laptop or mobile phone. If any such approach is made it will be left open to the Family Court to consider the matter and to pass appropriate decision. The Family Court will also take all earnest endeavour to dispose of the original petition itself at the earliest possible.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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True copy

P.A. to Judge