

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

OP (FC).No. 432 of 2015 (R)

O.P. No. 331/2012 OF FAMILY COURT,ERNAKULAM

PETITIONER:

**TERESA FRANCIS .E.,
D/O. LATE FRANCIS, EZHUTHAIKKAL HOUSE, KANNAMALLY P.O.,
KOCHI - 682 008, ERNAKULAM DISTRICT.**

BY ADV. SRI. DINESH MATHEW J.MURICKEN

RESPONDENT(S):

**JACOB K.P.
S/O. K.K. PETER, KONNOTH HOUSE, PAWATHIL ROAD,
AYYAPAPANKAVU, ERNAKULAM DISTRICT, PIN - 682 018.**

**R1 BY ADVS. SRI. BABU CHERUKARA
SMT. ROSAMMA MATHEW
SRI. P.A.SALIM
SRI. SEVI VARGHESE
SRI. ANZAR BASHEER
SRI. PANTO THOMAS
SRI. PRATHEUSH.M.ANAND**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1: TRUE COPY OF O.P.No.2275/2011 ON THE FILE OF THE FAMILY COURT, ERNAKULAM DATED 23.11.2011.
- EXT. P2: TRUE COPY OF THE O.P.No.331/2012 ON THE FILE OF THE FAMILY COURT, ERNAKULAM DATED 14.02.2012.
- EXT. P3: TRUE COPY OF MC.NO.47/2012 ON THE FILE OF THE FAMILY COURT, ERNAKULAM DATED 14.02.2012.
- EXT. P4: TRUE COPY OF I.A.NO.3047/2015 IN O.P.No.331/2012 ON THE FILE OF THE FAMILY COURT, ERNAKULAM DATED 01.08.2015.
- EXT. P5: TRUE COPY OF I.A.NO.3048/2015 IN O.P.No.331/2012 ON THE FILE OF THE FAMILY COURT, ERNAKULAM DATED 01.08.2015.
- EXT. P6: TRUE COPY OF THE OBJECTION IN I.A.No.3047/2015 IN O.P.No.331/2012 ON THE FILE OF FAMILY COURT, ERNAKULAM DATED 07.08.2015.
- EXT. P7: TRUE COPY OF THE OBJECTION IN I.A.No.3048/2015 IN O.P.No.331/2012 ON THE FILE OF FAMILY COURT, ERNAKULAM DATED 07.08.2015.
- EXT. P8: TRUE COPY OF THE COMMON ORDER IN I.A.No.3047/2015 AND I.A.No.3048/2015 IN O.P.No.331/2012 PASSED BY THE FAMILY COURT, ERNAKULAM DATED 26.08.2015.

RESPONDENT(S)' EXHIBITS

- NIL

//TRUE COPY//

P.A. TO JUDGE

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

O.P.(FC) No. 432 of 2015

Dated this the 6th day of October, 2015

JUDGMENT

C.K. ABDUL REHIM, J.

Parties in this original petition are parties before the Family Court, Ernakulam in three cases arising out of their matrimonial disputes, which are pending as O.P.No.331/2012, O.P.No.2275/2011 and M.C.No.47/2012.

2. O.P.No.2275/2011 was filed by the respondent herein seeking dissolution of the marriage, on the ground of cruelty and desertion. The petitioner herein had filed O.P. No.331/2012 seeking return of gold ornaments and money. She had also filed M.C. No. 47/2012 claiming maintenance for herself and the minor daughter. All the cases are being tried together by the Family Court, taking O.P. No.331/2012 as the leading case. The petitioner herein was examined before the Family Court as PW1. On behalf of the

respondent, himself and five others witnesses were examined as DW1 to DW6. After examination of witnesses on behalf of the respondent herein, the petitioner had filed I.A.Nos.3047/2015 and 3048/2015 seeking to reopen the evidence and to accept an additional witness list. Ext.P4 is I.A.No.3047/2015, which is filed seeking to accept the additional witness list. Ext.P5 is I.A.No.3048/2015, which is filed seeking to reopen the evidence and to permit examination of additional witnesses on behalf of the petitioner.

3. Averments in the affidavits filed in support of the above said applications are to the effect that, due to the evidence adduced by DW2 to DW6 on behalf of the respondent, it became necessary to examine the brother of the petitioner as well as another witness named, Thomas Ouseph. It is stated that the brother of the petitioner was working in U.S.A and he got leave only now, and that he will be reaching India only on 02.08.2015.

Therefore he could not have cited as a witness in the original list and could not be examined earlier when evidence of the petitioner was recorded. So also it is stated that the witness, Thomas Ouseph was not available at the time when the evidence was recorded, because he was undergoing eye operation at that time.

4. The above said applications were stiffly opposed by the respondent herein by filing detailed counter affidavits before the Family Court, as per Ext.P6 and P7. It was contended that the stand taken by the petitioner could not be accepted because examination of the additional witnesses sought for was intended only to adduce counter evidence, to the evidence tendered by the defence witnesses, who were already cross examined by the petitioner at length. It is also contended that the intention is only to fill up the lacuna in the evidence of the petitioner, which could not be allowed. The respondent had also denied the allegation that the brother of the petitioner was

not available when the evidence was recorded. As well as he had denied the allegation that the proposed witness Sri. Thomas Ouseph was undergoing eye operation during the relevant time.

5. The court below considered I.A.No.3047/2015 and I.A.No.3048/2015 together and dismissed both the petitions through a common order, Ext.P8. It is observed that the petitioner had no case that she was denied of any opportunity to examine any witnesses from her side, at the relevant time. Finding that the prayer is only intended to fill up the lacuna in the evidence already adduced, the court below declined the request for reopening the evidence and for allowing examination of the additional witnesses. It is aggrieved by the said decision, the petitioner is approaching this court in the above original petition.

6. Contention of the petitioner is that, examination of the additional witnesses became necessary only in view of the new factual matrix brought out through evidence while

examining the witnesses on behalf of the respondent. Denial of such evidence proposed to be adduced in a case relating to matrimonial dispute, will definitely cause prejudice to the petitioner, is the contention. It is pointed out that, the court below had not arrived at any negative findings with respect to the question of non availability of the witnesses at the time when the evidence of the petitioner was recorded. Therefore it is contended that, considering the larger interest of justice, the court below ought to have allowed opportunity to the petitioner to adduce all the available and best evidence for facilitating a proper adjudication of the issues involved.

7. Per contra, learned counsel for the respondent contended that the court below was perfectly justified in declining the request, because it is revealed that the attempt is only to fill up the lacuna in evidence. It is also contended that the settled procedure to be followed in the matter of recording evidence, does not permit the petitioner

to adduce any counter evidence after examination of witnesses on behalf of the respondent.

8. Having considered the rival contentions, this court is of the opinion that parties to the litigation shall not be denied of any opportunity to adduce all the available evidence relating to the issue involved in a litigation. Shutting down opportunity to any of the parties to adduce evidence will always be detrimental to the interest of justice, because it may prevent the court from an appropriate adjudication. Hence considering the larger interest involved, the trial court ought to have permitted adduction of further evidence to the extent sought for, in order to preserve the object to meet the ends of justice.

9. In that view of the matter, the impugned order could not be sustained. However, it is evident that the petitioner had approached the Family Court seeking reopening of the evidence and seeking permission to examine additional witnesses only at a highly belated stage,

after closing of the evidence in the cases. Therefore there is also justification on the part of the Family Court in declining such an opportunity. However, considering the larger interest involved we are inclined to allow the petitioner to have an opportunity for adducing additional evidence, subject to imposition of cost.

10. Therefore, the above original petition is hereby disposed of by quashing Ext.P8 order. I.A. Nos. 3047/2015 and 3048/2015 in O.P. No.331/2012 on the files of the Family Court, Ernakulam will stand allowed subject to condition of the petitioner paying cost of ₹5,000/- to the respondent or to his counsel appearing before the court below. The above I.As are allowed subject to a further condition that the petitioner should produce both the witnesses sought to be examined, before the Family Court on the next posting date itself, which is stated to be on 27.10.2015. She shall be prepared to examine those witnesses on that day itself or on any other date to which

the case is adjourned by the Family Court for the said pupose, by recording the evidence either directly by Family Court or through the Advocate Commission.

11. It is rest assured on behalf of the petitioner that she will render all co-operation to dispose of the cases at the earliest possible and that no attempt will be made in any manner to protract the cases. Therefore, while disposing this original petition as directed above, the court also direct the Family Court to take all earnest endeavour to dispose of the cases at the earliest possible.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
MARY JOSEPH
JUDGE