

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP (FC) .No. 436 of 2015 (R)

(AGAINST THE JUDGMENT IN OP 957/2014 of FAMILY COURT, THIRUVALLA
DATED 11-07-2014)

PETITIONER/1ST RESPONDENT:

PHILIP VARGHESE AGED 44 YEARS
S/O. GEORGE PHILIP, THUNDIYIL VEETIL, THELLIYOOR P.O
MALLAPPALLY TALUK, PATHANAMTHITTA DIST

BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.JELSON J.EDAMPADAM

RESPONDENT(/PETITIONER

TEENA TITUS
D/O. TITUS JOHN, KURUMBOLIL HOUSE, CHEPPADU P.O
ALAPPUZHA DIST

BY ADV. SRI.PIOUS JACOB

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 11-07-2014 OF THE FAMILY
COURT, THIRUVALLA IN O.P NO 957/2013
EXHIBIT P2 TRUE COPY OF THE E.P NO 70/2014 TO EXECUTE EXT.P1 JUDGMENT,
FILED BY THE RESPONDENT
EXHIBIT P3 TRUE COPY OF THE PETITION FILED BY THE PETITIONER FOR
SETTING ASIDE THE EXPARTE DECREEE DATED 11-07-2014 OF THE FAMILY COURT,
THIRUVALLA IN O.P 957/2014
EXHIBIT P4 TRUE COPY OF THE PETITIONF ILED BY THE PETITIONER TO CONDONE
THE DELAY OF 212 DAYS IN FILING EXT.P3 PETITION

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S. TO JUDGE.

**P.R. RAMACHANDRA MENON
&
ANIL K. NARENDRAN, JJ.**

.....
O.P.(FC)No. 436 OF 2015
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Dated this the 26th November, 2015

JUDGMENT

Anil K. Narendran, J.

The petitioner is the first respondent in O.P.No.957 of 2013 on the file of the Family Court, Thiruvananthapuram. In this Original Petition filed under Article 227 of the Constitution of India, the petitioner is mainly seeking an order directing the Family Court to consider and pass orders on Exts.P3 and P4 applications filed in O.P.No.957 of 2013 and also seeking for a further direction to the Family Court to keep in abeyance all proceedings in E.P.No.70 of 2014 till final orders are passed on merits in OP.No.957 of 2013.

2. From the pleadings on record, it is seen that O.P.No.957 of 2013 filed by the respondent herein was allowed ex-parte by Ext.P1 judgment dated 11.07.2014 by which, the respondent herein was allowed to realise a total sum of Rs.4,25,000/- with interest at the rate of 8% per annum from the petitioner herein

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and his mother from the date of petition till realisation. In order to execute the judgment and decree in O.P.No.957 of 2013, the respondent herein filed E.P.No.70 of 2014. When the petitioner came to know about the ex-parte decree, he filed Ext.P3 application to set aside Ext.P1 ex-parte decree passed by the Family Court, along with Ext.P4 application to condone the delay of 212 days in filing Ext.P3 application. While Exts.P3 and P4 applications are pending consideration, the Family Court is proceeding with Execution Petition . Hence this Original Petition.

3. We heard the arguments of the learned Counsel for the petitioner and also the learned Counsel appearing for the respondent.

4. Ext.P1 decree passed by the Family Court is an ex-parte decree. In order to set aside the same, the petitioner has filed Ext.P3 application along with Ext.P4 application for condonation of delay. Considering the fact that Exts.P3 and P4 applications filed by the petitioner herein are pending consideration, we deem it appropriate to dispose of this Original Petition without going into the merit of the rival contentions.

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5. In the result, the Original Petition is disposed of as follows: The respondent shall file a counter affidavit, if any, to Exts.P3 and P4 within a period of two weeks from today. Thereafter, the Family Court shall consider and pass appropriate orders on Exts.P3 and P4 applications within a further period of one month. Till final orders are passed on Exts.P3 and P4 applications, as directed above, all further proceedings in E.P.No.70 of 2014 shall be kept in abeyance.

No order as to costs.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANIL K. NARENDRA,
JUDGE**

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