

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 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP (FC).No. 449 of 2015 (R)

IA. 794/2014 IN OP 398/2014 OF THE FAMILY COURT,TRIVANDRUM.

PETITIONER(S): 1ST RESPONDENT IN IA

P.J.JOHNSON, S/O.JOSEPH AGED 60 YEARS
PARASSERIL HOUSE, ERUMAPARA, MELUKAVU VILLAGE
NOW RESIDING AT HOUSE NO.29/466A, BHAGAT SINGH ROAD
VYTTILA, KOCHI-682 019.

BY ADVS.SRI.MATHEW SKARIA
SRI.JOY JOSEPH (MUNDACKAL)
SRI.TOMY PAUL MAMPILLY

RESPONDENT(S):PETITIONER & 2ND RESPONDENT IN IA

1. ANGEL MARY JOHNSON
QUARTERS NO.66, TYPE 3, CGO COMPLEX
POONKULAM, VELLAYANI P.O.
THIRUVANANTHAPURAM-695 531.

2. REGIONAL MANAGER
CENTRAL BANK OF INDIA, METRO PALACE
NEAR NORTH RAILWAY STATION
ERNAKULAM DISTRICT-682 018.

R2 BY ADV. SRI.DEVAN RAMACHANDRAN
R2 BY ADV. SRI.K.M.ANEESH
R2 BY ADV. SRI.K.SANTHOSH KUMAR (KALIYANAM)
R2 BY ADV. SRI.ADARSH KUMAR
R2 BY ADV. SRI.BIJU VARGHESE ABRAHAM
R2 BY ADV. SRI.DILEEP CHANDRAN
R1 BY ADV. SRI.S.KRISHNA KUMAR (MANGALAM)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 449 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1.TRUE PHOTOCOPY OF THE OP NO.398/2014 FILED BY THE 1ST
RESPONDENT BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
EXT.P2.TRUE PHOTOCOPY OF THE IA NO.794/2014 IN OP NO.398/2014 FILED
BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT,
THIRUVANANTHAPURAM.
EXT.P3.TRUE PHOTOCOPY OF THE ORDER DATED 9/4/2014 IA NO.794/2014 IN
OP NO.398/2014 FILED BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT,
THIRUVANANTHAPURAM.
EXT.P4.TRUE PHOTOCOPY OF THE IA NO.795/2014 IN OP NO.398/2014 FILED
BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT,
THIRUVANANTHAPURAM.
EXT.P5.TRUE PHOTOCOPY OF THE ORDER DATED 19/3/2014 ISSUED BY THE
SHERISTADAR TO THE AMIN FOR EFFECTING CONDITIONAL ATTACHMENT
ORDERED BY THE FAMILY COURT IN IA NO.795/2014.
EXT.P6.TRUE PHOTOCOPY OF THE WRITTEN STATEMENT DATED 28/2/2015
FILED BY THE PETITIONER IN OP 398/2014 BEFORE THE FAMILY COURT,
THIRUVANANTHAPURAM.
EXT.P7.TRUE PHOTOCOPY OF THE LETTER DATED 29/11/2014 ISSUED FROM
THE CHIEF MANAGER OF THE CENTRAL BANK OF INDIA TO THE PETITIONER
EXT.P8.TRUE PHOTOCOPY OF THE IA NO.359/2015 IN OP NO.398/2014 FILED
BY THE PETITIONER BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
EXT.P9.TRUE PHOTOCOPY OF THE IA NO.1355/2015 IN OP NO.398/2014 FILED
BY THE PETITIONER BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
EXT.P10.TRUE PHOTOCOPY OF THE ORDER DATED 27/5/2015 OF THE FAMILY
COURT, THIRUVANANTHAPURAM IN IA NO.1355/2015 IN OP NO.398/2014.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

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

OP(FC) No. 449 of 2015

Dated this the 19th day of October, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner herein is the 1st respondent in OP.No.398/2014 on the files of the Family Court, Thiruvananthapuram, which was instituted by the 1st respondent herein, who is the daughter of the petitioner. The case was instituted for realising a sum of Rs.23,75,000/- towards marriage expenses, Rs.7500/- per month for maintenance and a sum of Rs.2,70,000/- towards past maintenance for 3 years. Along with the original petition the 1st respondent had filed IA.No.794/14 restraining the 2nd respondent who is the Regional Manager of the Central Bank of India from disbursing service benefits due to the petitioner, till the disposal of the original petition. The Family Court had passed Ext.P3 order in the said interlocutory application restraining the 2nd respondent from disbursing the pensionary benefits, until further orders or until

the petitioner herein furnished security for Rs.25 lakhs to the satisfaction of the Family Court, within 30 days. The petitioner herein was permitted to file objection and the interim application was posted for further orders. It is stated that the 1st respondent had filed another application as IA.No.795/14 seeking attachment of the immovable property belonging to the petitioner. The court below had passed Ext.P5 order directing the 1st respondent either to furnish security for a sum of Rs.26,45,000/- and to attach immovable property conditionally. Subsequently the petitioner filed IA.No.359/2015 to set aside the order passed restraining the 2nd respondent from disbursing the benefits and seeking direction to the 2nd respondent to disburse the terminal benefits due to the petitioner. Since the said application filed as Ext.P8 was not considered, the petitioner had also filed IA.No.1355/15 seeking advancement of the posting of the case. But the court below had dismissed the application filed for advancing the case, stating that no oral instruction was issued to the 2nd respondent. It is aggrieved by Ext.P3 order of the Family Court which was issued in IA.No.794/14, this original petition is filed invoking jurisdiction vested on this court under

Article 227 of the Constitution of India.

2. Contention of the petitioner is that Ext.P3 order passed by the Family Court restraining the 2nd respondent from disbursing pensionary benefits due to the petitioner, is legally unsustainable. It is contended that the pensionary benefits due to the petitioner from the 2nd respondent cannot be attached in view of the specific provisions contained under section 60 of the Code of Civil Procedure and also on the basis of the specific bar incorporated in the relevant statutes like, the Payment of Gratuity Act, Provident Fund and Miscellaneous Provisions Act . It is pointed out that, as long as the amount of pensionary benefits due to the petitioner is not attachable, the restraintment imposed by the Family Court against disbursal of the sum by the 2nd respondent is not sustainable. The petitioner had placed reliance on various decisions of the hon'ble Supreme Court and this court including latest decision in **Radhey Shyam Gupta vs. Punjab National bank and another (2009 (KHC 4050))**.

3. It is noticed by this court that while passing Ext.P3 order the Family Court has not taken into consideration about the nature of the question of attachability of the pensionary benefits.

The order restraining the 2nd respondent from disbursing the amount was passed without considering the question as to whether the amount due from the 2nd respondent can be attached in the original petition instituted by the 1st respondent. Therefore we are of the considered opinion that the matter need to be remanded to the Family Court for a consideration of the question with respect to attachable nature of the pensionary benefits due from the 2nd respondent to the petitioner herein. The Family Court shall consider the same with opportunity afforded to the respondents and the petitioner. An early decision in this regard is highly solicited in view of the fact that by virtue of Ext.P3 order the petitioner is deprived from getting any of his pensionary benefits.

4. Under the above mentioned circumstances the above original petition is hereby allowed and Ext.P3 order passed by the Family Court in IA.No.794/14 in OP.398/14 is hereby set aside. The Family Court is directed to reconsider the matter and to pass appropriate orders taking into consideration of the objections raised by the petitioner with respect to attachability of the pensionary benefits. A decision in this regard shall be taken

afresh after affording opportunity to all parties concerned, at the earliest possible, at any rate, within a period of two weeks from the date of receipt of a copy of this judgement.

5. Till such time fresh orders are passed as directed above, the restraintment imposed on the 2nd respondent with respect to disbursement of the amounts will continue.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

