

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. 480 of 2015 (R)

(I.A.1142/2015 IN O.P.282/14 OF THE FAMILY COURT, CHAVARA)

PETITIONER(S) :

NAZARUDHEEN AGED 46 YEARS
S/O.LATE KOCHU KUNJU, SUBINA MANZIL, KLAPPANA P.O.
KOLLAM DISTRICT, NOW AT OCHIRA PARABRAHMA ALTHARA
OCHIRA

BY ADVS.SRI.SUBHASH CYRIAC
SMTSHEEBA JOSEPH

RESPONDENT(S) :

MISRIYA
D/O.ISMAILKUNJU, SUBINA MANZIL, KLAPPANA P.O.
KOLLAM DISTRICT, PIN-690 544.

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. 480 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1- TRUE COPY OF THE MEDICAL CERTIFICATE

EXT.P2- TRUE COPY OF THE NEWS ITEM IN MALAYALA MANORAMA DAILY

EXT.P3- TRUE COPY OF THE EXECUTION PETITION IN EP NO.48/15 IN OP 282/14
OF FAMILY COURT, KOLLAM

EXT.P4- TRUE COPY OF THE IA NO.1442/15 IN OP NO.282/14 OF FAMILY COURT,
CHAVARA

EXT.P5- TRUE COPY OF THE IA NO.1143/15 IN OP NO.282/14 OF FAMILY COURT,
CHAVARA

EXT.P6- TRUE COPY OF THE EA NO.149/15 IN EP NO.48/15 OF FAMILY COURT,
KOLLAM

/TRUE COPY/

P.S. TO JUDGE.

s1.

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

=====

O.P.(FC)No.480 of 2015

=====

Dated this the 9th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. Limited relief sought for in this original petition is only for a direction to the Family court, Chavara to dispose of Exts.P4 and P5 applications on an early basis. Since we are proposing to grant only a direction for an early consideration of those applications, issuance of notice to the respondent herein is dispensed with.
2. The petitioner herein is the judgment-debtor in a decree passed by the Family Court, Chavara in O.P.No.282 of 2014, which is a case instituted by the respondent herein seeking for return of gold ornaments and money. The said original petition was decreed ex-parte by the court below on 30.6.2014. The respondent filed Ext.P3 application for execution of the decree as E.P.No.48 of 2015, before the Family Court, Kollam in July, 2015. According to the petitioner,

only when the notice in the execution application was received, he came to know about the ex-parte decree. It is stated that, immediately he had filed Ext.P4 application as I.A.1142 of 2015 before the Family Court, Chavara seeking to set aside the ex-parte decree, accompanied by Ext.P5 petition filed as I.A.No.1143 of 2015 seeking condonation of delay of 385 days in filing the application to set aside the ex-parte decree. Pending consideration of Exts.P4 and P5 applications before the Family Court, Chavara, the Family Court at Kollam had proceeded with further steps in the execution petition. Therefore the petitioner had filed Ext.P6 application before the said court as E.A.149 of 2015 in E.P.48 of 2015, seeking stay of execution of the decree, till I.A.Nos.1142 and 1143 of 2015 are disposed of by the Family Court, Chavara. Since the applications filed before the Family Court, Chavara as well as Ext.P6 application filed before the Family Court, Kollam were not considered and disposed of and since coercive steps are being threatened in the

execution petition, the petitioner is approaching this court in filing the above original petition, filed under Article 227 of the Constitution of India.

3. Without going into the merits of the grounds raised for setting aside the ex-parte decree or for condonation of delay, this court is of the opinion that a direction for an early consideration and disposal of those applications by the Family Court, Chavara will serve the ends of justice. Hence we are inclined to dispose of the above original petition by issuing such a direction, in the interest of justice. It is also felt that the Family Court, Kollam can be directed to keep in abeyance further coercive steps in the execution petition, till the disposal of the above said applications by the Family Court, Chavara.
4. Hence, the above original petition is disposed of by directing the Family Court, Chavara to consider and dispose of I.A.Nos.1142 and 1143 of 2015 in O.P.No.282 of 2014, after affording reasonable opportunity to the respondent to contest, at the earliest possible, at

any rate, within a period of one month from the date of receipt of a copy of this judgment. It will be left open to the petitioner to seek advancement of hearing date of the above said interim applications, in case those applications are not posted to any near date. The Family Court, Kollam is hereby directed to keep in abeyance all further coercive steps in E.P.No.48 of 2015 in O.P.No.282 of 2014, for a period of two months from today, in order to facilitate the Family Court, Chavara to dispose of the applications seeking to set aside the ex-parte decree and the application for condonation of delay.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

sl.