

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 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

OP (FC).No. 505 of 2015 (R)  
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(I.A.NO.3981/15 IN OP 1701/15 OF THE FAMILY COURT, ERNAKULAM)

PETITIONER(S)/PETITIONER:  
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SNEHA PHILIP, AGED 31 YEARS  
W/O.GREGORY VARGHESE, F2, RUBY RESIDENCY  
BYRASANDRA MAIN ROAD, NEAR NIMHANS, JAYA NAGAR  
1ST BLOCK, BANGALORE  
HAVING PERMANENT ADDRESS AT ARRA 38, ANUGRAH  
AVITOM ROAD, MEDICAL COLLEGE.P.O, THIRUVANANTHAPURAM  
REPRESENTED BY HER POWER OF ATTORNEY HOLDER  
ANNAMMA KOSHY, W/O.PHILIP KOSHY, RESIDING AT -DO- .

BY ADVS.SRI.V.AJAKUMAR  
SRI.T.M.CHANDRAN  
SRI.SIDHARTH A.MENON

RESPONDENT(S)/RESPONDENTS:  
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1. GREGORY VARGHESE,  
S/O.P.K.VARGHESE  
HAVING PERMANENT ADDRESS AT 35/182 PEEDIKAYIL HOUSE  
PALARIVATTOM.P.O, ERNAKULAM, PIN-682025  
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER  
MRS.KEZIA VARGHESE, W/O.P.K.VARGHESE  
RESIDING AT -DO-.

2. MR.P.K.VARGHESE,  
S/O.LATE P.V.KOSHY, RESIDING AT 35/182  
PEEDIKAYIL HOUSE, PALARIIVATTOM.P.O  
ERNAKULAM DISTRICT, KERALA.

3. MRS.KEZIA VARGHESE,  
S/O.P.K.VARGHESE, RESIDING AT -DO-

BY ADV. SRI.SREELAL N.WARRIER  
BY ADV. SMT. SADHANA KUMARI.E  
BY ADV. SRI.M.S.AMAL DHARSAN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 17-11-  
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 505 of 2015 (R)

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APPENDIX

PETITIONER(S) ' EXHIBITS

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EXT.P1 TRUE COPY OF THE O.P.1701/2015 OF FAMILY COURT,ERNAKULAM

EXT.P2 TRUE COPY OF MEDIATION AGREEMENT FILED BEFORE THE HON'BLE HIGH COURT OF KERALA IN CRL.M.C.4185/2012 DATED 15/9/2015

EXT.P3 TRUE COPY OF I.A.3981/2015 (COMMISSION APPLICATION) IN O.P.1701/2015

EXT.P4 CERTIFIED COPY OF THE ORDER DATED 6/10/2015 IN I.A.3981/2015 IN OP.NO.1701/2015.

/TRUE COPY/

P.S. TO JUDGE.

s1.

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

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O.P.(FC) No.505 of 2015

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Dated this the 17<sup>th</sup> day of November, 2015.

**JUDGMENT**

**Abdul Rehim, J.**

1. The petitioner herein, who is the petitioner before the Family Court, Ernakulam in O.P.No.1701 of 2015, is approaching this court challenging Ext.P4 order passed by the Family Court in I.A.No.3981 of 2015, on 06.10.2015. Original petition before the Family Court was instituted against the respondents herein, seeking recovery of money and gold ornaments. Specific case of the petitioner is that the ornaments described under Schedule I of the petition was kept in a Bank Locker jointly operated by the petitioner and the 1<sup>st</sup> respondent. Another case filed by the 1<sup>st</sup> respondent seeking for dissolution of marriage, before the Family Court, Ernakulam as O.P.No.2304 of 2012 was transferred to the Family Court at Bangaluru and it was re-

numbered as M.C.No.4635 of 2013. There is yet another case filed by the petitioner under the Domestic Violence Act before the Metropolitan Magistrate Court, Bangaluru as M.C.No.12 of 2013. Further, a criminal case instituted by the petitioner against the 1<sup>st</sup> respondent alleging offences punishable under Section 498A of the Indian Penal Code and under the Dowry Prohibition Act is also pending disposal before the Chief Judicial Magistrate, Thiruvananthapuram as C.C.No.3099 of 2014. The respondents have filed CrI.M.C.No.4185 of 2015 before this court seeking to quash that criminal case. During pendency of the said Criminal Miscellaneous Case before this court, the parties have arrived at a compromise and Ext.P2 Mediation Agreement was executed, which was signed by both the parties and their respective counsel. It is evident from Ext.P2 that the parties have agreed to withdraw all the cases pending before the Family Courts, subject to certain conditions. Conditions incorporated with respect to the gold ornament kept in the Bank locker is as follows:

*“Parties also agree that they will cooperate in the matter of opening the locker no.25/2 in State Bank of India, Edapally branch, Ernakulam in presence of both the parties or their representatives and their counsel.*

*The petitioner no.3 will hand over to respondent no.1 Sneha Philip her gold ornaments which are taken from the locker no.25/2, after opening it, as stated above, on the day the compromise petition is filed before the Family Court, Bangalore or when the sworn statement is made before the Family Court at Ernakulam.”*

2. On the basis of the above said settlement, the petitioner had filed Ext.P3 application for appointment of an Advocate Commissioner to break open the Bank Locker based on orders to be issued by the court and to make a verification with respect to the gold ornaments kept therein in the presence of parties to the case or their duly authorised agents and a qualified Approver of the Bank, and to entrust the gold and diamond ornaments detailed under Schedule 1 to the petitioner. The said application was dismissed through Ext.P4 order finding that the application for appointment of the Commissioner is made only with an objective to collect evidence in

the case, which cannot be allowed.

3. Contention of the petitioner is that the court below ought to have allowed the application for appointment of an Advocate Commissioner on the basis of Ext.P2 compromise so as to bring the compromise into effect and for entitling the parties to withdraw the case. But we notice that the prayer in Ext.P3 interim application is to appoint an Advocate Commissioner for breaking open the Locker and to make a verification of the ornaments and to handover the ornaments to the petitioner on the basis of the schedule of ornaments attached therewith. Definitely the relief sought for is against the terms and spirit of the compromise, as rightly observed by the Family Court. First of all, it is conceded that the key of the Locker is missing from the parties and it has to be opened through other methods. It is not permissible for the court to depute an Advocate Commissioner to break open a Bank Locker, which may cause damage to the property of the Bank, who is not a party to the litigation. If the key of the Locker is lost, the parties have to

approach the authorities of the Bank to take appropriate steps to get it opened through methods available as per formalities and procedure of the Bank. The Locker can be opened only at the instance of the Bank authorities after undergoing such requisite formalities. Further, if the parties have already arrived at a settlement in accordance with the terms contained in Ext.P2, it is left open to them to approach the Family Court, Ernakulam for endorsing the compromise by producing the Memorandum of Agreement before that court or by filing any appropriate joint petition. The parties will be at liberty to incorporate the terms for implementation of the compromise if necessary by seeking assistance of the court to depute an Advocate Commissioner to handover the ornaments contained in the Locker, to the petitioner on its opening. Since there is no dispute expressed in Ext.P2 agreement with respect to the quantity or quality of the ornaments contained in the Bank Locker, it is not necessary to depute an Advocate Commissioner and to make any inventory or verification in order to ascertain as to whether it is the same

ornaments as scheduled in the petition. Since the application is not submitted in a manner as mentioned above, the Family Court was right in rejecting the application by observing that it is an attempt to create evidence in the case instituted before that court, which cannot be allowed.

4. However, if the parties are intending to abide by the terms of the compromise and is intending to settle the case accordingly, they will be left free to approach the Family Court in appropriate petition seeking appropriate reliefs.
5. Subject to liberty reserved as mentioned above, this original petition is dismissed, since we do not find any reason to interfere with the impugned order, that too by invoking the visitorial jurisdiction vested under Article 227 of the Constitution.

**C.K.Abdul Rehim, Judge.**

**Mary Joseph, Judge.**

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