

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM  
&  
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

OP (FC).No. 529 of 2015 (R)  
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OP 24/2014 of FAMILY COURT,ERNAKULAM

PETITIONER(S)/PETITIONER:  
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ROBIN ROY AGED 32 YEARS  
S/O.FELIX ROY, AYYKARAPARAMBIL HOUSE  
MARKET ROAD NORTH END OLD RAILWAY STATION ROAD  
KANAYANNOOR THALUK, COCHIN-682014

BY ADVS.SRI.A.T.ANILKUMAR  
SMT.V.SHYLAJA

RESPONDENT(S):  
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ANJU ANTONY  
AGED 25 YRS, D/O.ANTONY LOUIS, MATTUMMEL HOUSE  
S.R.M.ROAD KANAYANNOOR THALUK, COCHIN - 682 018.

R1 BY ADV. SMT.JEENA JOSEPH

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 529 of 2015 (R)

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APPENDIX

PETITIONER(S)' EXHIBITS

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- P1 - THE TRUE COPY OF THE O.P.24/2014 BEFORE THE FAMILY COURT,  
ERNAKULAM  
P2 - THE TRUE COPY OF THE WRITTEN OBJECTION FILED BY THE PETITIONER  
IN O.P.24/2014 BEFORE THE FAMILY COURT, ERNAKULAM  
P3 - THE TRUE COPY OF THE I.A.4111/15 IN O.P.24/14 BEFORE THE FAMILY  
COURT ERNAKULAM  
P4 - THE TRUE COPY OF THE ORDER PASSED IN I.A.4111/15 IN O.P.24/14  
BEFORE THE FAMILY COURT ERNAKULAM.

RESPONDENT(S)' EXHIBITS

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NIL

TRUE COPY

PS TO JUDGE

C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ.

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OP(FC) No. 529 of 2015  
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Dated this the 27th day of November, 2015

JUDGMENT

K.Ramakrishnan,J.

This is a petition filed by the petitioner challenging Ext.P4 order passed by the Family Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is a respondent in Ext. P1 OP.No.24/2014 filed by the respondent seeking declaration of nullity of marriage conducted on 27.9.2013. The petitioner filed Ext.P2 objection. The petitioner also filed OP.No.911/2014 seeking decree of restitution of conjugal rights. Both cases were tried jointly treating Ext.P1 original petition as leading case.

3. Pws. 1 to 3 and Exts. A1 to A3 documents were marked on the side of the respondent who is the petitioner in Ext.P1 original petition. Petitioner herein was examined as RW1 and witness list were submitted. He produced details of the telephone calls which the respondent made to the petitioner

after solemnisation of the marriage to show that the cordial relationship continued and to disprove the case of the respondent. Though copies were marked as Ext.B2 , the same was objected by the respondent stating that no certification is there as per section 65B of the Evidence Act. So the petitioner filed IA.No.4111/2015 in OP.No.24/2014 directing the Relation Manager, Vodafone to produce the certified copy of the call details in court . No objection was filed by the respondent to the said application. The learned Family Court Judge dismissed IA.No.4111/15 as per Ext.P4 order which is being challenged in this case. .

4. Heard counsel for the petitioner and the respondent. Counsel for the petitioner submitted that without getting those documents, it is not possible for the petitioner to prove his case. On the other hand counsel for the respondent submitted that it is only an attempt on the part of the petitioner to prolong the matter and this court in OP(FC).No.146/2015 directed the Family Court to dispose of the case expeditiously.

5. Considering the nature of dispute we are of the view that this petition can be admitted and can be disposed of on

today itself.

6. The grievance of the petitioner in the petition was that without assigning any reason, the court below had dismissed the application filed by the petitioner calling for call details from the telephone authorities. It is seen from the allegations in the petition that certain questions were put to PW1 regarding this aspect and also he had produced Ext.B2 before the court below. But that was objected by the respondent on the ground that it was not properly certified as per section 65B of the Evidence Act. In such circumstances the petitioner was compelled to file the said IA.4111/2015 to produce the certified copy of the call details from the concerned authorities/service provider. The court below only stated that it is irrelevant for the disposal of the case. Whether it is relevant and whether it is required for the petitioner to prove contention etc. are matters for consideration by the court below after completion of the evidence. At this stage the court below is not expected to come to the conclusion that the document is irrelevant especially when he has also made an attempt to prove this fact by producing Ext.B2 which was not said to be certified by the authorities under section 65B of the

Evidence Act.

7. Under such circumstances this court feels that the order passed by the court below is unsustainable in law. The court below is not expected to shut down the evidence to prove his defence in the case. Ext.P4 order passed by the court below is set aside and the application is allowed. The petitioner is directed to take steps within a week from the date of receipt of a copy of this judgment and thereafter the court below is directed to dispose of the matter without causing much delay in disposal of the case.

Registry is directed to communicate this judgment by fax immediately.

C.K.ABDUL REHIM, JUDGE

K. RAMAKRISHNAN, JUDGE

Pmn/

