

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

OP (FC).No. 87 of 2014 (R)

AGAINST THE ORDER IN OP 502/2013 of FAMILY COURT,
TRIVANDRUM, DATED 17.01.2014

PETITIONER(S):

JALAJA HARSHAPPAN, AGED 30 YEARS,
D/O.HARSHAPPAN, PRESENTLY RESIDING AT A-301/302,
MAHESWARI NAGAR, MIDC MAROL, ORKAY LANE,
ANDHERI EAST, MUMBAI-400 093.

BY ADVS.SRI.P.RAVEENDRAN PILLAI
SMT.JINDIRA RAVEENDRAN

RESPONDENT(S):

1. SAM MADHAVAN BYSHIE,
(PPT NO.1, FU589773), AGED 36 YEARS, S/O.LATE MADHAVAN BYSHIE,
HAVING PERMANENT RESIDENCE AT "MADHAVAM",
KEDARAMA NAGAR, T.C. NO.2/3054(10),
NEAR COSMOPOLITAN HOSPITAL, PATTOM PALACE P.O.,
THIRUVANANTHAURAM-695 004,
PRESENTLY RESIDING AT 17,
KING FISHER WAY, LOUGH BOROUGH, LEICESTERSHIRE,
LE11 3 NF, LONDON,
REPRESENTED BY HIS P/A. HOLDER, PREMA BYSHIE, AGED 52 YEARS,
W/O. LATE MADHAVAN BYSHIE,
"MADHAVAM", KEDARAM NAGAR, T.C. NO.2/3054(10),
NEAR COSMOPOLITAN HOSPITAL, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

2. PREMA BYSHIE, AGED 52 YEARS,
W/O.LATE MADHAVAN BYSHIE, "MADHAVAM", KEDARAM NAGAR,
TC NO.2/3054(10), NEAR COSMOPOLITAN HOSPITAL,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.

R2 BY ADV. SRI.R.S.KALKURA

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 27-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 87 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1. TRUE COPY OF THE O.P. NO. 502 OF 2013 ON THE FILES OF THE FAMILY COURT, THIRUVANANTHAPURAM DATED 1-4-2013.**
- P2. TRUE COPY OF THE I.A. NO. 3039 OF 2013 IN O.P. NO. 502 OF 2013 ON THE FILES OF THE FAMILY COURT, THIRUVANANTHAPURAM.**
- P3. TRUE COPY OF THE POWER OF ATTORNEY ALLEGEDLY EXECUTED BY THE 1ST RESPONDENT IN FAVOUR OF HIS MOTHER DATED 27-5-2013.**
- P4. TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER TO EXT.P2 I.A. 17-1-2014.**
- P5. TRUE COPY OF THE ORDER IN I.A. NO. 3039 OF 2013 IN O.P. NO. 502 OF 2013 ON THE FILES OF THE FAMILY COURT, THIRUVANANTHAPURAM.**

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. to Judge

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

O.P.(F.C.) No. 87 of 2014

Dated this the 27th day of May, 2015

JUDGMENT

K. Ramakrishnan, J

This is an application filed by the petitioner in O.P.No.502/2013 challenging Ext.P5 order passed in I.A.No.3039/2013.

2. That application was filed by the first respondent herein to represent him through power of attorney and that petition was allowed. That order is being challenged by the petitioner.

3. Heard the counsel for the petitioner and respondents.

4. The grievance of the petitioner was that, if the first respondent is permitted to appear through power of attorney holder, he will not enter appearance personally so as to satisfy the mandatory provisions of counseling proceedings as provided under the Family Court Act and

Rules and that will only prolong the matter.

5. The counsel for the respondents submitted that, whenever the presence of the first respondent is required, he is ready to appear.

6. There is no provision in the Family Court Act which prevents a party from appearing through power of attorney holder. This was supported by the decision of this court in **Mukundan Naveen v. Anjalika Dinesh (2011(3) KLT 175)**. But, it may not be possible for the power of attorney holder to give evidence regarding personal matters known between the parties alone. So permitting the party to the proceedings to appear through power of attorney holder cannot be said to be an illegal order passed by the court below. So there is no illegality committed by the court below in allowing the application, permitting the first respondent to be represented through the 2nd respondent herein, who is none other than his mother on the basis of the power of attorney executed by him, but this will not

prevent the Family Court to insist for the presence of the first respondent before the court, whenever his presence is required for the purpose of sending the parties to counseling or for other purposes to explore the possibility of settlement. If the court feels that, his presence is required, then the court can insist for his presence and if such an order is passed, the first respondent is bound to appear before the court below in compliance with that order.

With the above observation, the petition is disposed of.

Sd/-

C.K. Abdul Rehim, Judge

Sd/-

K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge

SS