

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. 166 of 2014 (R)

I.A.NO.3080/2013 IN O.P.NO.130/2009 OF FAMILY COURT, THIRUVANANTHAPURAM

PETITIONER(S):

**SAJEEV KRISHNAN KUTTY, AGED 42 YEARS,
S/O.KRISHNAN KUTTY NAIR, RESIDING AT T.C.9/1174,
ELAMKULAM, SREEKARYAM P.O., THIRUVANANTHAPURAM-695 017.**

**BY ADVS.SRI.MOHAN JACOB GEORGE
SMT.P.V.PARVATHI
SMT.REENA THOMAS**

RESPONDENT(S):

**REKHA.P.NAIR,
PUNARTHAM, T.C.25/2832(1), PUTHEN ROAD JUNCTION,
MATHRUBHOOMI ROAD, VANCHIYOOR,
THIRUVANANTHAPURAM-695 035.**

BY ADV. SRI.D.KISHORE

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

Msd.

OP (FC).No. 166 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: COPY OF THE PETITION FILED AS O.P.NO.130/2009 BEFORE
THE FAMILY COURT, THIRUVANANTHAPURAM.**

**EXHIBIT P2: COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENT
IN EXT.P-1 PETITION.**

**EXHIBIT P3: COPY OF THE AMENDMENT PETITION FILED AS I.A.NO.3080/2013
IN O.P.NO.130/2009 BEFORE THE FAMILY COURT,
THIRUVANANTHAPURAM.**

**EXHIBIT P4: COPY OF THE OBJECTIONS FILED BY THE RESPONDENT IN
EXT.P-3 I.A.**

**EXHIBIT P5: COPY OF THE ORDER DATED 06.03.2014 IN I.A.NO.3080/2013 IN
O.P.NO.130/2009 PASSED BY THE FAMILY COURT,
THIRUVANANTHAPURAM.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

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

O.P (FC) No. 166 OF 2014

DATED THIS THE 27th DAY OF MAY, 2015

J U D G M E N T

K. Ramakrishnan, J:

The above petition was filed by the petitioner in IA No.3080/2013 in OP 130/2009 on the file of Family Court, Thiruvananthapuram against the order dismissing the application under Article 227 of the Constitution of India.

2. It is alleged in the petition that petitioner married the respondent and the relationship strained and so he filed Ext.P1 petition for divorce as OP 130/2009 before the Family Court, Thiruvananthapuram alleging grounds of adultery and cruelty. Thereafter since it was advised that there are certain defects in the pleading, he filed Ext.P3 amendment application as I.A. No.3080/2013 seeking incorporation of certain facts elaborating the grounds mentioned in the OP for divorce. The respondent filed objection to the same stating that it is highly belated and the allegations are defamatory in nature etc. After

considering, submission of both sides, learned Family Court Judge dismissed the application by Ext.P5 order which is being challenged by the petitioner before this court.

3. Heard the counsel for the petitioner and respondent.

4. Counsel for the petitioner submitted that it is settled law that delay in filing the application for amendment is not a ground for rejection of the application. Further only elaboration of the things mentioned in the earlier petition was sought to be incorporated by virtue of the amendment and that will not alter the nature of the petition as such.

5. On the other hand the counsel for the respondent opposed the application on the ground that the OP was pending for the last 5 years and earlier it was dismissed for default and later it was restored to file and with a view to harass respondent that such an allegations have been made, so there is no illegality committed by the court below in dismissing the application.

6. It is an admitted fact that the petitioner and respondent are husband and wife and their relationship strained and thereafter they started living separately and petitioner filed Ext.P1 OP 130/2009 for divorce on the ground of cruelty and adultery. It is also true that there are two other petitions pending between the parties as OP 448/2013 and OP 320/2013. It is also seen from the order that the present OP was dismissed earlier for default on 04-08-2011 and thereafter it was restored to file as per order in I.A. No.4049/2011 dated 25-11-2013. The only reason stated by the court below for dismissing the application is that it was filed after 5 years of the filing the application and it only be treated as an after thought and if an amendment allowed it will cause prejudice to the respondent. On going through the allegation in the OP and the allegations which the petitioner want to incorporate by way of amendment will go to show that it is only an elaboration of things mentioned in the earlier OP regarding the ground of adultery and it is also elaborating grounds for cruelty on the attitude of the respondent towards the

petitioner. So it cannot be said that it will alter the nature of the proceedings so as to deny the relief of amendment sought for. Further even if such an allegation is made those matters to be proved by evidence and only if the petitioner succeeds in providing the same he will be getting the relief sought for. It is true that the application was filed after 5 years. So the delay in filing the application causing inconvenience to the respondent can be cured by awarding reasonable cost for allowing the application and the court below should not have dismissed the application on the ground of delay alone, but it should have been allowed on awarding reasonable cost for compensating the inconvenience caused to the other side on account of the delay in filing the application. So we feel that the amendment sought for has to be allowed. But the application can be allowed only on the condition that petitioner shall pay cost of Rs.3,000/- within 15 days from today. If the cost is paid and proof of payment of cost is produced before the court below, then the lower court is directed to permit the petitioner to carry out the

amendment. If the cost is not paid within that date, then the order of the Family Court will be restored. With the above directions and observations the petition is allowed and disposed of accordingly.

7. Office is directed to communicate this order to the court below immediately so as to enable the petitioner to pay the cost and produce proof of payment of cost before that court to enable that court to permit the petitioner to carry out the amendment as directed by this court. Considering the fact that the case is of the year 2009, the Family Court is directed to take all earnest attempts to dispose of the case as expeditiously as possible after giving an opportunity to the respondent to file additional counter statement on the basis of the amendment made to the petition and adduce evidence by both parties in accordance with law.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge