

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

OP (FC).No. 256 of 2014 (R)

PETITIONER:

**SAJU KURIAKOSE POULOSE,
AGED 43 YEARS, S/O.KURIAKOSE
NOW RESIDING AT CHAKKAMKATTU SAJU SADAN HOUSE
NORTH PARVOOR P.O., ERNAKLAM DISTRICT.**

**BY ADVS.SRI.ANIL D. NAIR
SMT.K.N.RAJANI
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH**

RESPONDENTS:

**DR.MINI ANU ENOS,
AGED 34 YEARS, D/O.E.S.ENOS,
RESIDING AT PADINJAREPUTHANPURAYIL HOUSE
VARITHA NAGAR, KANJIKUZHI, MUTTAMBALAM P.O.
KOTTAYAM TALUK, KOTTAYAM DISTRICT.**

**BY ADVS. SRI.SIBY CHENAPPADY
SMT.ANU GEORGE
SRI.C.JOSEPH JOHNY**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 14-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE COMMON ORDER PASSED IN OP 1250/2009 AND 1251/2009 DATED 27/09/2010 BY THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR.
- EXHIBIT P2. TRUE COPY OF THE IA 2296/2012 IN OP 1250/12 TO CONDONE DELAY OF 699 DAYS FILED BY PETITIONER.
- EXHIBIT P3. TRUE COPY OF THE OBJECTION IN IA 2297/12 IN OP 1250/12 TO SET ASIDE THE EXPARTE DECREE FILED BY THE PETITIONER.
- EXHIBIT P4. TRUE COPY OF THE IA NO.2298/2012 IN OP NO.1251/212 TO CONDONE DELAY OF 699 DAYS FILED BY THE PETITIONER.
- EXHIBIT P5. TRUE COPY OF THE OBJECTION IN IA 2299/12 IN OP NO.1251/12 TO SET ASIDE THE EXPARTE DECREE FILED BY THE PETITIONER.
- EXHIBIT P6. TRUE COPY OF THE ORDER PASSED IN IA 2296/09 AND 2297/09 IN OP 1250/2009 DATED 20/3/2014 BY THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR.
- EXHIBIT P7. TRUE COPY OF THE ORDER PASSED IN IA 2298/2009 AND 2299/2009 IN OP NO.1251/09 DATED 20/3/2014 BY THE FAMILY COURT, ETTUMANOOR.
- EXHIBIT P8. TRUE COPY OF THE PASSPORT OF THE PETITIONER.
- EXHIBIT P9. TRUE COPY OF THE TREATMENT RECORDS OF PETITIONER.

RESPONDENT(S)' EXHIBITS

NIL

True copy

P.A. To Judge

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

O.P (FC) No. 256 OF 2014

DATED THIS THE 14th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

The petitioner in I.A 2298/2012 and I.A 2299/2012 on the file of Family Court, Kottayam at Ettumanoor has filed this writ petition challenging the order passed thereon under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner herein is the respondent in the petition filed by the respondent herein as OP 1250/2009 and 1251/2009. OP 1250/2009 was filed by the respondent herein against the petitioner for divorce on the ground of cruelty. OP 1251/2009 was filed by the respondent against the petitioner and his parents for return of gold ornaments and air conditioner etc. Since the petitioner did not appear the family court passed exparte decrees in both the petitions namely, OP 1250/2009 and OP 1251/2009 by a common

order dated 27-09-2010. During the period the petitioner was employed in United States of America and was undergoing treatment for injuries sustained by him in an accident. So he could not attend the case. He filed petitions to set aside the exparte decree in both the cases along with delay condonation application of 699 days and the learned Family Court Judge dismissed those applications by Exts.P6 & P7 orders. Since the respondent has already re-married the petitioner is not challenging the exparte decree for divorce granted in OP 1250/2009 of Family Court, Ettumanoor. He is only challenging the order dismissing the applications to set aside the exparte decree in OP 1251/2009 by filing the above petition.

3. Heard the counsel for the petitioner and the respondent.

4. The counsel for the petitioner submitted that in fact during the relevant time he was working abroad and he met with an accident and he was not able to move about and that was a reason why he could not come to India and

conduct the case. Though these facts were mentioned in the applications the court below had not properly appreciated the averments in the applications and dismissed the application.

5. On the other hand the counsel for the respondent submitted that the court below had passed a decree directing the petitioner to pay Rs.10,00,000/- being the value of gold ornaments and also Rs.10,000/- being the value of the air conditioner and cost of Rs.2,000/- and the decree was of the year 2009 and no amount has been paid. If at all this court is inclined to allow the application that can only on directing the parties to deposit certain amount as a condition for the same.

6. It is an admitted fact that the petitioner herein married the respondent and their relationship strained which resulted the respondent filing an application for divorce as OP 1250/2009 and also for return of gold ornaments and certain articles as OP 1251/2009 filed before the Family Court, Ettumanoor. The present petition under

challenge was filed against the petitioner and his parents on the allegation that these articles were entrusted them jointly. It is also an admitted fact in both these cases the respondent did not appear and the court below had passed an ex parte decree for divorce and also an ex parte decree for return of gold ornaments or its value of Rs.10,00,000/- and also for pay Rs.10,000/- or the air conditioner which has been given along with interest of 7% and cost of Rs.2,000/-. Though the petitioner filed applications to set aside the ex parte decree in both these cases along with delay condonation application of 699 days, the court below had dismissed both the applications by Exts.P6 & P7 orders respectively. However the petitioner is not now challenging Ext.P6 order passed by the court below dismissing the application to set aside the ex parte decree of granting divorce as respondent has already married. The order under challenge is only Ext.P7 which relates to OP 1251/2009.

7. It is an admitted fact that at the time when the OPs were filed the petitioner was working abroad. It is true

that he has knowledge about the pendency of the cases. His parents were very well available here. They have also did not appear and contest the case. However that may not be a reason for dismissing the application filed by the petitioner to set aside the exparte decree. It is settled law that if there is some cause shown for the petitioner in not appearing, then court must always be liberal in considering those applications with a view to allow the parties to meet the case on merit. It is also settled law that even if the court is not satisfied with the reasons stated, but court felt that it is not deliberate to prolong the matter that the petitioner did not appear, then also the court should allow the application on terms by awarding reasonable cost as compensation for the inconvenience caused to the other side on account of delay in filing the application to set aside the exparte decree. In this case there is a delay of 699 days in filing the application to set aside the exparte decree. So considering the circumstances and also considering the fact that huge monetary liability has to be imposed on the respondent by

virtue of exparte decree, this court feels that an opportunity has to be given to the petitioner who is 1st respondent in the lower court to meet the case on merit. But at the same time the laches on the part of the petitioner in not conducting the case diligently can be condoned only on terms. So the order passed by the court below dismissing the application to set aside the exparte decree in OP 1251/2009 is set aside on condition that the petitioner shall pay Rs.25,000/- as cost to the counsel for the petitioner who is the respondent in this case before the court below within a period of one month from today. If the petitioner pays the cost to the counsel for the respondent herein and produces the proof of payment of the same then the court below is directed to set aside the exparte decree and permit the petitioner to file objection, if not already filed and adduce evidence and then dispose of the case afresh in accordance with law. If the cost is not paid within the time specified above, then exparte decree passed against the petitioner will prevail. Since considering the fact that the case is of the year 2009,

the court below is directed to expedite disposal of the case as expeditiously as possible at any rate within 3 months from the date of setting aside the exparte decree as directed by this court on payment of cost as directed.

8. With the above directions and observations this original petition is disposed of.

9. Office is directed to communicate this judgment to the court below at the earliest.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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True copy

P.A. to Judge