

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 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

O.P. (FC).No. 337 of 2014 (R)

O.A. No. 697/2012 OF FAMILY COURT, KOZHIKODE

PETITIONER:

RATHEESH, AGED 28 YEARS,
S/O. RAJAPPAN, MOLIKKUNNEL HOUSE, AVOLI.P.O.
ANAKKAD, MOOVATTUPUZHA, PIN - 686 677
MOOVATTUPUZHA P.S.L

BY ADVS. SRI. S. RENJITH
SRI. S. UNNIKRISHNAN (NELLAD)

RESPONDENT:

TINTU THOMAS, AGED 26 YEARS,
D/O. THOMAS, KOYINILAM HOUSE, ALLI.P.O.
MALAYATTOR VILLAGE, ERNAKULAM
NOW MUKKAM P.S.L, KOZHIKODE-673 602.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 337 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1: COPY OF THE AGREEMENT DATED 30-9-2014 EXECUTED BETWEEN THE PETITIONER AND RESPONDENT.

EXT. P2: COPY OF THE MEDIATION REPORT AND TERMS OF THE SETTLEMENT SUBMITTED BY THE MEDIATOR TO THE FAMILY COURT, KOZHIKODE.

EXT. P3: COPY OF THE JUDGMENT AND DECREE DATED 19-10-2013 IN O.A. NO. 697 OF 2012 BEFORE THE FAMILY COURT, KOZHIKODE

EXT. P4: COPY OF THE JUDGMENT DATED 30-5-2014 IN ZMA NO. 697 OF 2014 IN UNNUMB. MAT. APPL OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS - **NIL**

//TRUE COPY//

P.A. TO JUDGE

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

O.P.(FC) No. 337 of 2014

Dated this the 3rd day of July, 2015

JUDGMENT

K. RAMAKRISHNAN, J.

This is an application filed by the petitioner seeking interference of this Court to quash Ext.P3 judgment under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the respondent in O.A. No. 697 of 2012 of Family Court, Kozhikode and that was filed by Section 25 of the Special Marriage Act, seeking declaration that the marriage between the appellant and the respondent is a voidable marriage.

3. During the pendency of this case, the matter has been settled between the parties and Ext.P1 entered into between the parties and Ext.P2 mediation report was submitted on the basis of Ext.P1 and on that basis Ext. P3 judgment was passed. Since, the judgment was not in tune with the Ext.P1 agreement, the petitioner filed a Mat. Appeal before this Court and this Court by

Ext.P4 order dismissed that appeal stating that the remedy of the petitioner is not to file an appeal against that order. On that basis, the present petition has been filed.

4. Though notice was served by the respondent, she did not appear. The judgment under challenge is a consent decree passed between the parties. When a consent decree has been passed and the parties are of the opinion that it was not passed in the manner in which the matter was intended to be settled and it did not reflect the real agreement entered in between parties, then, the remedy of the petitioner is to move that order for review of the judgment and not to file an application under Article 227 of the Constitution of India by this Court. There is no allegation of fraud mentioned in this so as to invoke the supervisory jurisdiction under Article 227 of the constitution of India to quash the judgment passed on consent of parties. So the remedy of petitioner is move the same court to review the judgment and get the judgment corrected in tune with the terms of the agreement that has been entered into between the parties. The period that has been taken by the petitioner to challenge the

same before this Court can be treated as a bonafide prosecution entitled to get exemption under Section 14 of the Limitation Act. If the petitioner moves to Family Court to review the order with a delay condonation application, these aspects can be considered by Family Court and pass appropriate orders in the application in accordance with law.

In the above facts and observation the petition is disposed of.

Sd/-

**C.K. ABDUL REHIM
JUDGE**

Sd/-

**K. RAMAKRISHNAN
JUDGE**