

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 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

OP (FC).No. 419 of 2014 (R)

AGAINST THE ORDER IN I.A.NOS.1180 & 1181/14 IN OP.NO.860/13 OF
FAMILY COURT, TIRUR DATED 18.8.14

PETITIONER:

JASNA BEEGUM, AGED 27 YEARS,
D/O. SIDDIQUE, ENIKKANAKATH HOUSE,
EZHAVATHIRUTHY AMSOM, ERIKKAMANNA DESOM,
C.V.JUNCTION,
PONNANI TALUK, PONNANI.

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SRI.A.K.RAJESH
SRI.VENKATESH GOPI

RESPONDENT:

SHARAFUDHEEN,
S/O. KUNHIMHAMMED, KUTTYALI KADAVATH HOUSE
EDAKKADAPURAM, TANUR P.O., TIRUR
MALAPPURAM-676 302.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
16-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 419 of 2014 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : COPY OF THE IA NO.1180/2014 IN OP NO.860/2013 DTD.7.8.2014 OF
THE FAMILY COURT, TIRUR.

EXT.P2 : COPY OF THE IA NO.1181/2014 IN OP NO.860/2013 DTD.7.8.2014 OF
THE FAMILY COURT, TIRUR.

EXT.P3 : COPY OF THE ORDER IN IA NO.1180/2014 IN OP NO.860/2013 OF THE
FAMILY COURT, TIRUR, DTD.18.8.2014.

EXT.P4 : COPY OF THE ORDER IN IA NO.1181/2014 IN OP NO.860/2013 OF THE
FAMILY COURT, TIRUR, DTD.18.8.2014.

RESPONDENT'S EXHIBITS:NIL

/TRUE COPY/

P.S. TO JUDGE

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

.....
O.P.(FC)No.419 of 2014
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Dated this the 16th day of June, 2015.

JUDGMENT

Abdul Rehim, J:

The petitioner herein is the petitioner in O.P.No.860/2013 on the files of the Family Court, Tirur. The respondent herein is the respondent before the court below. The case was filed seeking dissolution of marriage between the petitioner and the respondent, which was solemnized on 30.4.2008. The case was posted for evidence before the court below. The petitioner as well as the respondent were examined. Thereafter the petitioner herein filed Exts.P1 and P2 applications seeking to reopen the evidence and to recall the petitioner, who was examined as PW1, and also to receive additional documents and to mark the same through PW1. Ext.P1 is the copy of I.A.No.1180/2014 filed for the specific relief to reopen the evidence and to recall PW1. Whereas I.A.No.1181/2014 - Ext.P2 was filed for the relief to accept additional documents produced and to receive them in evidence by making as Exts.A1 to A6. The Family Court has dismissed both the above said interim

applications through Exts.P3 and P4 orders. In the order in I.A.No. 1180/2014 it was observed that the reason for non production of the document before commencing trial is not stated in the petition. It is further mentioned that both sides have tendered evidence and the documents are not required for a just decision in the case. In Ext.P4 order, I.A.No.1181/2014 was dismissed stating the reason that the non production of the documents before starting trial was not stated. It is aggrieved by Exts.P3 and P4, this original petition is filed by invoking the powers vested on this Court under Article 227 of the Constitution of India.

2. Notice sent from this Court to the respondent herein through registered post was returned with an endorsement as 'addressee left'. Subsequently this Court ordered notice to be sent through Family Court, Tirur and also directed to serve notice through counsel appearing for the respondent before the Family Court. Notice sent through court was returned with an endorsement "R1 not found". But the petitioner had produced memo with respect to service of a copy of this writ petition to the counsel appearing for the respondent before the

Family Court, Tirur. This Court finds that, in view of service of notice on the counsel appearing for the respondent before the subordinate court, the service against the respondent can be declared as complete, in view of Rule 59 of the Kerala High Court Rules. Therefore, it is declared that service against the respondent is complete. The respondent has not chosen to enter appearance or contest the matter.

3. It is contended by the petitioner that the additional documents which were produced along with the list, which is sought to be marked in evidence, were not available at the time when the petitioner was examined as PW1. All those documents are authenticated copies obtained from various authorities after examination of the petitioner as PW1. Therefore, it is contended that if evidence is not reopened and the petitioner is not permitted to mark those documents in evidence, it may cause severe prejudice. We notice that the court below had declined to reopen the evidence and to permit marking of the additional documents in evidence, merely on the basis that the petitioner had not properly explained as to why the documents were not produced before examination of the

witnesses. But we are convinced that, from the nature of documents specified in the interim application filed before the Family Court, it is only just and proper to permit the petitioner to adduce those documents in evidence in order to protect the interest of justice. However, it will be left open to the respondent to contradict such evidence by cross examination of the petitioner and by disputing acceptance or veracity of those documents. It will also be left open to the Family Court to permit the respondent to adduce further evidence if any required. Hence, we are of the considered opinion that the impugned orders need to be reversed and the petitioner need to be permitted to adduce additional evidence as requested in Exts.P1 and P2 interim applications.

Therefore this writ petition is allowed and Exts.P4 and P5 orders passed by the Family Court are hereby set aside. Exts.P1 and P2 interim applications are hereby allowed. The Family Court, Tirur is directed to recall PW1 and to permit to adduce evidence as requested in Ext.P2 petition with opportunity allowed to the respondent to cross examine the witness and also to allow the respondent to adduce evidence,

if any required. Considering the fact that trial of O.PNo.860/2013 has already been started, the Family Court will take all earnest endeavor to dispose of the case at the earliest possible.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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