

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

OP (FC).No. 562 of 2014 (R)

AGAINST THE ORDER IN I.A.NO.593/14 IN OP 818/2013 of FAMILY COURT,
THRISSUR DATED 2.6.2014

PETITIONER(S)/RESPONDENT IN I.A.NO.593/14 AND PETITIONER IN
OP 818/2013:

NIRMAL, AGED 34 YEARS
S/O.BALACHANDRAN, ICHARATH HOUSE
SREE RAMAKRISHNA SADANAM, PUTHURKARA, HARISREE NAGAR
AYYANTHOLE, THRISSUR

BY ADVS.SRI.C.D.DILEEP
SMT.SHYLAJA VARGHESE

RESPONDENT(S)/PETITIONER IN I.A.NO.593/14 AND RESPONDENT IN
OP 818/2013:

DR.SANGEETHA P.K, AGED 33 YEARS
D/O.RAGHAVAN NAMBIAR, VAIDYANATHA NAGAR, ATTAWAR
MANGALORE-575 001.

BY ADV. SRI.O.RAMACHANDRAN NAMBIAR
SRI.GEEN T.MATHEW

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 562 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 : COPY OF THE ORDER OF THE FAMILY COURT, THRISSUR, IN OP 818/2013 DATED 10/1/2014.

EXHIBIT P2 : COPY OF THE IA 593/2014 IN OP 818/2013 DATED 14/2/2014.

EXHIBIT P3 : COPY OF THE ORDER OF THE FAMILY COURT, THRISSUR DATED 2/7/2014 IN IA 593/2014.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN & P.D.RAJAN, JJ.

O.P.(F.C.)No.562 of 2014

Dated this the 5th day of February, 2015.

J U D G M E N T

Mohanan, J.

The petitioner herein is the husband of the respondent herein and he approached the Family court, Thrissur, by filing a petition under section 13(1)(i-a)(i-b) of the Hindu Marriage Act for a decree of divorce. The court below passed an ex parte decree on 10.1.2014, on the basis of the affidavit filed by the petitioner. Subsequently, the respondent herein approached the Family court by filing I.A.No.593/14 in O.P.No.818/13 to set aside the ex parte decree, which was allowed by order dated 2.6.2014 and a copy of which is produced as Ext.P3. It is against Ext.P3, the respondent therein, who is the husband, preferred the above original petition praying inter alia to call for the records in O.P.No.818/13 of the Family court, Thrissur and to pass order setting aside Ext.P3 order and also prayed to

declare that Ext.P2 petition is not maintainable.

2. Heard Sri.C.D.Dileep, the learned counsel for the petitioner and Sri.O.Ramachandran Nambiar, the learned counsel appearing for the respondent.

3. Admittedly, the petitioner and the respondent are husband and wife and their marriage was solemnised on 27.4.2008 at Sree Krishna Temple, Guruvayoor, and a male child was born in the said wedlock. The petitioner is working as an Engineer, whereas the respondent is a doctor by profession. After the marriage and after the birth of the child, difference of opinion occurred among the spouses and thereafter from 9.4.2009 onwards, the parties are living separately. Thus the husband approached the court below for divorce on the ground of desertion and cruelty, which was allowed in the absence of any contra evidence, because the respondent in that proceedings was set ex parte.

4. On knowing about the ex parte decree in the above

proceedings, the wife/respondent therein preferred I.A.No.593/14 in O.P.No.818/13. We have perused the affidavit filed in support of Ext.P2 petition. As per the affidavit, the case of the wife/the respondent therein is that she was not served with the summons in the said case and she came to know about the proceedings and the ex parte order and ex parte decree, only subsequently through a third party and immediately thereafter, she contacted her advocate and applied for a certified copy of the order and decree and other documents. In the said affidavit, she asserted that no notice was served on her either through ordinary court process or by way of registered post or through any other means to her residence or to her place of work. According to her, in the cause title, her residential address was shown wrongly and she was not residing at Kozhikode. According to her, after completing Post Graduation in DNB from Calicut Government Medical College on 19.9.2013, she was

residing at Mangalore. So, according to the deponent, the wife/respondent herein, her address was wrongly shown in the cause title and it is for that reason, no notice was served on her residential address. In the impugned order, the learned Judge, on going through the proceedings, specifically found that on the basis of the intimation given at the address of the petition, the service was presumed and consequently found that no direct service of summons or notice was effected on the petitioner. Accordingly held that, the petitioner is entitled to get an order to set aside the decree. Thus, the said I.A. was allowed.

5. We find no illegality or impropriety in the said order so as to interfere and exercise the jurisdiction under Article 227 of the Constitution of India. The learned counsel for the petitioner vehemently submitted that the respondent has not mentioned the date on which she came to know about the ex parte decree. In reply to the above submission, the learned counsel for the respondent, citing

a decision in **Unniraman v. Padmanabhan (1987(2) KLT 1023)** has submitted that, even in an application to set aside ex parte decree, separate application for condoning delay is not necessary. According to the learned counsel, the respondent approached the court within the time and the court below itself satisfied that no notice or summons was served on the respondent. It is also relevant to note that the contention now put forward by the learned counsel for the petitioner has not been raised before the court below and as such, there is no finding to that effect. However, it can be seen that the order passed in favour of the petitioner, was initially obtained without hearing the respondent and in the absence of any contra evidence, we are of the view that, instead of technicalities, it is only just and proper to afford sufficient opportunity to the parties to a lis to adduce evidence and there upon to have a decision on merit. After all, in pursuance of the impugned order, the result would

be that the respondent as well as the petitioner would get ample opportunity to put forward their case and to adduce evidence in support of their claim and contentions and consequently there would be an order on merit. If that be so, we find no merit to interfere with Ext.P3 order.

Accordingly this original petition is dismissed.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge