

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 20TH DAY OF OCTOBER 2015/28TH ASWINA, 1937

OP (FC).No. 563 of 2014 (R)

AGAINST THE JUDGMENT IN OP 1279/2012 of FAMILY COURT,TRIVANDRUM

PETITIONER(S) :

1. AMMU NAIR AGED 43 YEARS
D/O. K.RAJENDRAN, RESIDING AT TC NO. 43/399(5)
KMALESWARAM, MUTTATHARA VILLAGE, MANACAUD P.O.
THIRUVANANTHAPURAM - 695 009
REPRESENTED BY MOTHER AND GUARDIAN ANITHA K.I THE THIRD
PETITIONER HEREIN

2. THANMAY R. NAIR AGED 8 YEARS
S/O. DR.K.RAJENDRAN, RESIDING AT TC NO. 43/399(5)
KMALESWARAM, MUTTATHARA VILLAGE, MANACAUD P.O.
THIRUVANANTHAPURAM - 695 009
REPRESENTED BY MOTHER AND GUARDIAN
ANITHA K.I THE THIRD PETITIONER HEREIN.

3. ANITHA K.I AGED 43 YEARS
WIFE OF DR.K.RAJENDRAN RESIDING AT TC NO. 43/399(5)
KMALESWARAM, MUTTATHARA VILLAGE, MANACAUD P.O.
THIRUVANANTHAPURAM - 695 009.

BY ADV. SRI.KAPPILLIL ANILKUMAR

RESPONDENT(S) :

DR.K.RAJENDRAN
S/O. KRISHNAN NAIR, VADAKKE VILAKAM HOUSE
MALAYINKEEZHU VILLAGE, NEYYATTINKARA TALUK
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.R.GOPAN

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 20-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 563 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 - TRUE COPY OF THE OP NO. 1279/12, DT. 06.8.12 FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P2 - TRUE COPY OF THE WRITTEN STATEMENT IN OP NO. 1279/12, DT. 17.11.12 FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P3 - TRUE COPY OF THE IA NO. 153/13 IN OP NO. 1279/12, DT. 17.1.13 FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P4 - TRUE COPY OF THE IA NO. 1099/13 IN OP NO. 1279/12 DT. 29.4.13 FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P5 - TRUE COPY OF THE IA NO. 3154/13 IN OP NO. 1279/12, DT. 17.12.13 AND THE DOCUMENTS FILED ALONG WITH THE IA BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P6 - TRUE COPY OF THE DATED ORDER DT. 09.6.14 IN IA NO. 2848/13 IN OP NO. 1279/12, PASSED BY THE HON'BLE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P7 - TRUE COPY OF THE IAN O. 2479/14 DT. 06.8.14 TO RECEIVE THE DOCUMENTARY EVIDENCE FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P8 - TRUE COPY OF THE IA NO. 2625/14 AND THE DOCUMENTS PRODUCED IN OP NO. 1279/12, DT. 29.4.13 FILED BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P9 - TRUE COPY OF THE ORDER OF THE HON'BLE FAMILY COURT, TVPM IN IA NO. 1800/14 DT. 08.7.14.

EXT.P10 - TRUE COPY OF THE JUDGMENT IN OPFC NO. 395/14 DT. 22.9.14 OF THIS HON'BLE COURT.

EXT.P11 - TRUE COPY OF THE OBJECTION FILED ON 21.10.14 BY THE RESPONDENT IN IA NO. 153/14 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P12 - TRUE COPY OF THE OBJECTIONS FILED ON 21.10.14 BY THE RESPONDENT IN IA NO. 1099/13 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P13 - TRUE COPY OF THE OBJECTION FILED ON 21.10.14 BY THE RESPONDENT IN IA NO. 3154/13 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.

EXT.P14 - TRUE COPY OF THE COMMON ORDER OF THE HON'BLE FAMILY COURT, THIRUVANANTHAPURAM DT. 28.10.14 IN IA NOS 153/2013, 1099/13, AND 2625/13 IN OP NO. 1279/12.

/TRUE COPY/

P.S. TO JUDGE.

C.K.Abdul Rehim & Mary Joseph, JJ.

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O.P.(FC)No.563 of 2014

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Dated this the 20th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. The petitioners herein are the petitioners in O.P.No.1279 of 2012 before the Family Court, Thiruvananthapuram which was instituted against the respondent herein, seeking monthly maintenance at the rate of ₹50,000/- each to the petitioners 1 and 2 and to permit the 3rd petitioner to recover it from the respondent as next friend. *Inter alia*, the petitioners sought for recovery of a sum of ₹1.5 crores from the respondent towards marital expenses to the 1st petitioner and a sum of ₹15,00,000/- as arrears of maintenance to the petitioners 1 & 2. The respondent herein had filed written statement in the case and the

original petition now stands posted for evidence before the court below.

2. During pendency of the said case, the Family Court had passed an interim order granting maintenance to petitioners 1 and 2, in I.A.No.1800 of 2014, at the rate of ₹10,000/- for petitioners 1 and 2. The said order was subjected to challenge by the petitioners in an earlier original petition filed before this Court as O.P.(FC)No.395 of 2014. This court had enhanced the rate of maintenance as ₹20,000/-, from 31.5.2014 onwards. While disposing the said original petition, this court had also directed the Family Court to consider and pass appropriate orders on the interim applications, I.A.Nos.153/13, 1099/13 and 3154/13. I.A.No.153/13 is an application filed by the petitioners for issuance of court certificate, directing various Bank officials, Income Tax authorities, Registrar of Companies and Director of

a private limited company to produce the details of Bank Accounts, FD Receipts and other Documents with respect to the Accounts and Shares held by the respondent. I.A.No.1099 of 2013 is also an identical application filed calling for production of details of the deposits with the Mini Muthoot Bank, Techno Park, Thiruvananthapuram I.A.No.3154 of 2013 is an application to accept additional documents produced, which are mainly details and statement of monthly expenses incurred with respect to maintenance of petitioners 1 and 2.

3. The court below had considered I.A.Nos.153 & 1099 of 2013 along with another interim application, I.A.No.2625 of 2014, and disposed of them through a common order passed on 28.10.2014, copy of which is produced herein as Ext.P14. I.A.No.153 of 2013 and I.A.No.1099 of 2013 were dismissed holding that the details of the Bank Accounts and Deposits with

respect to which court certificate was sought for cannot be directed to be produced, because of the provisions contained in the Banking Regulation Act, which prohibits sparing of any information regarding such accounts to any third party without concurrence of the account-holder. The court found that the only option left to the petitioners is to deliver interrogatories under Order 12 of the Code of Civil Procedure, asking the respondent to give necessary details relating to each of the Accounts. It is also observed that, if the respondent fails to answer such interrogatories satisfactorily, then the petitioners can resort to other remedies for asking the custodian to produce the relevant documents. It is aggrieved by Ext.P14 common order passed by the Family Court, to the extent it dismissed I.A.Nos.153 of 2013 and 1099 of 2013, the above original petition is filed by invoking jurisdiction vested on this court under Article 227 of

the Constitution of India.

4. On a perusal of the copy of I.A.Nos.153 of 2013 and 1099 of 2013, it is evident that the petitioners have sought for issuance of court certificate for production of certain documents with respect to the Accounts alleged to have been held by the respondent in those Banks. The reason mentioned in the impugned order that the provisions of the Banking Regulation Act would restrain divulging of details of the Bank Accounts to the third parties, may not be applicable in the case on hand. If the petitioner in a case is seeking for production of any Documents related to the Account held by the respondent in a particular Bank, for proving any issue relating to the subject-matter of the case pending before any court of law, production of such evidence cannot be disallowed under the guise of the confidentiality stipulated under the Banking Regulation Act. It is also pertinent to note that,

under provisions of the Bankers' Book Evidence Act, 1891, on application of any of the parties to a legal proceedings, the court is entitled to order production of certified copies of all such entries in a Bankers' Book, accompanied with a certificate to the effect that no other entries are to be found in the books of the Bank, relevant to the matters in issue. Therefore, if a party to a proceedings before a court of law is intending to produce any evidence and to prove any Document related to a Bank Account held by the other party, summoning of the officer of the Bank for production of such Document is not required. On the other hand, the court can require the officer of the Bank to produce certified copies of all such entries in the Bankers' Book and can direct the officer to produce such entries along with a certificate as stipulated under the said statute. Therefore, if the petitioners have sought for production of any particular document related to

any of the Bank Account of the respondent or if any relevant entries in the Bankers' Book with respect to any such account is called for, the court can issue a certificate for production of such document along with certification under the Bankers' Book Evidence Act. Hence, there is no justification in dismissing I.A.Nos.153 & 1099 of 2013 based on the contention of the respondent relying on the Banking Regulation Act.

5. But, on a perusal of the copies of the above said interim applications, it is evident that the schedule attached along with the applications specifies only very few documents. In many cases what is called for is details pertaining to the accounts held by the petitioners in each of such Banks. A court certificate can be issued only for production of a specified document. Therefore if the petitioners are seeking for issuance of any court certificate for the purpose of production of any particular

document, that should be specified in the application. Therefore, this court is of the considered opinion that the interim applications in this regard, containing relief for production of non-specified documents could not be allowed. However, it is to be noticed that the Family Court has not considered the matter on any of the above said perspectives and not considered as to whether any court certificate can be issued for production of any document, which is already specified in the interim applications.

6. Under the above mentioned circumstances the original petition is allowed by setting aside Ext.P14 order to the extent it dismissed I.A.Nos.153 and 1099 of 2013. It is made clear that the petitioners will be at liberty to file fresh applications, if so advised, seeking for issuance of court certificate for production of any document under the Bankers' Book Evidence Act, 1891 by specifying the details of such documents required.

7. The petitioners have raised a further contention that, despite specific direction contained in Ext.P10 judgment to dispose of I.A.No.3154 of 2013, the said application as well as another application submitted for seeking acceptance of additional documents, were not considered by the Family court. Needless to observe that it is for the Family Court to consider all such interim applications before proceeding with trial of the case.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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