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 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

OP (FC).No. 568 of 2014 (R)

AGAINST THE ORDER IN I.A.NO.2034/2012 IN OS 1124/2012 of FAMILY COURT,KOLLAM DATED 20.09.2012

PETITIONER(S):

BALAKRISHNA PILLAI AGED 67 YEARS
MULLIYIL VEEDU, KADAVOORCHERRY, THRIKKADAVOORVILLAGE
KOLLAM TALUK, KOLLAM DISTRICT691 601.

BY ADV. SRI.M.KANNAN

RESPONDENT(S):

RESHMA, AGED 23 YEARS
D/O.REMADEVI, RAJ BHAVAN, VADAKKENCHERRY
PANAYAM VILLAGE, KOLLAM TALUK
KOLLAM DIST.PIN - 691 601.

R1 BY ADV. SRI.B.MOHANLAL

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 568 of 2014 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF INJUNCTION ORDER IN IA 2034 OF 2012 IN OP 1124/12 OF FAMILY COURT, KOLLAM.

EXT.P-2: COPY OF MAIN PETITION IN OP 1124/2012

EXT.P-2(A): TRUE COPY OF OBJECTION

EXT.P-3: COPY OF IA 1723/2014 IN 1124/2012

ERT.P-4: TRUE COPY OF NOTICE ISSUED BY COMMISSIONER DATED 27.11.2012

RESPONDENT(S)' EXHIBITS

: NIL

TRUE COPY

PA TO JUDGE.

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

O.P.(FC) No. 568 of 2014

Dated this the 22nd day of January, 2015

JUDGMENT

V.K.Mohanan,J.

The petitioner herein is the 2nd respondent in O.P.No.1124/2012 preferred by the respondent herein under Section 26 Order VII Rule 1 of Code of Civil Procedure and under Section 7 of the Family Court Act for return of gold ornaments and money from the respondents therein. During the pendency of the above Original Petition, the petitioner therein preferred I.A.No.1763/2014 with a prayer for appointing a Commission for preparing an inventory of the movables kept in the locker of C.K.P.Vilasom Service Co-operative Bank Limited 1361. The very same petitioner has filed another I.A. i.e, 1124/2012 seeking an injunction,

restraining the respondents in the said petition from operating the locker standing in the joint names of the petitioner and the respondent herein in the very same bank. Accordingly, the Court below, as per Ext.P1 order, by issuing an order of injunction restraining, the petitioner herein from operating the above referred locker. As per the order in I.A.No.1763/2014, a Commissioner has already been appointed pursuant to which the said Commissioner issued Ext.P4 notice informing the parties to the dispute about his arrival in the bank to execute his warrant of commission. The said notice is produced along with this Original Petition (FC) as Ext.P4. According to the petitioner, as per the orders of the Court below, after preparation of the inventory, the Advocate Commissioner will handover the gold ornaments kept in the said locker,

which containing the gold ornaments belonged to the petitioner and the respondent. So, in the above Original Petition filed under Article 227 of the Constitution of India, it is prayed to call for the records leading to Exts.P1 and P4 and issue an order setting aside the impugned direction and stay all further proceedings as per Ext.P4 notice issued by the Commissioner in compliance of the order passed by the Family Court, Kollam in O.P.No.1124/2012.

2. Heard the learned counsel for the petitioner and Sri. B. Mohanlal, the learned counsel appearing for the respondent.

3. The learned counsel for the petitioner submitted that all orders are passed by the Court below behind his back and without affording an opportunity to him to raise

his contentions. According to the counsel, the gold ornaments belonged to the petitioner also kept in the locker and the same also likely to handover by the Commissioner to the respondent. The learned counsel appearing for the respondent submitted that because of the order passed by this Court, the respondent is not in a position to operate the bank locker and to take the gold ornaments, so as to enable her to pledge the same to repay the loan amount availed by her.

4. We have carefully considered the submissions made by the learned counsel for the petitioner as well as the respondent. We have also perused the available materials produced along with the Original Petition (FC). It appears that as the marital relationship became strained between the respondent and her husband, who is

the son of the present petitioner, the respondent-wife approached the Family Court by filing O.P.No.1124/2012 for return of gold ornaments and money. The above O.P. is still pending in the Court below.

5. Considering the said fact, we are of the view that this O.P.(FC) need not be retained in the file of this Court, but the same can be disposed of especially in the light of the order passed by this Court on 2.12.2014, which reads as follows:

> "There will be an interim order that the Commissioner may carry out the preparation of inventory of the movables, if any available in the locker in question, following Ext.P4 notice issued by him. However, those movables shall be placed back in the locker after preparation of the inventory. Thereafter, the locker shall not be opened until further orders. This order will bind the Bank as well as the parties. A copy of this order shall be produced before the Secretary of the Bank for information and appropriate regulation of its proceedings.
>
> Post on 5.12.2014."

6. As per the said order, this Court permitted the Commissioner to carry out the preparation of the inventory of the movables, however, directed the said Commissioner to place back the movables in the locker, after preparation of the inventory and further ordered that the locker shall not be opened until further orders. If that be so, the parties can be relegated to approach the Family Court for any modification with respect to the above referred order. The facts and circumstances involved in the case, as per the case of the parties, demand such modification of the above referred order. So, according to us, if either the petitioner or the respondent want to operate the locker and to take the movables, they can approach the Family Court, Kollam and on satisfaction of the grounds urged, the Family Court can pass appropriate orders even by imposing

sufficient conditions to safe-guard the interest of the parties. Thus it is made clear that the order dated 2.12.2014 can be modified by the learned Judge of the Family Court, if the said Court wants to pass any orders upon the request of either of the parties, otherwise the said order will be in force till the disposal of the main matter pending before the Court below.

Subject to the above direction and observation, this O.P.(FC) is closed.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd