

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

OP (FC).No. 578 of 2014 (R)

AGAINST THE ORDER IN I.A.NO.2947/2014 IN OP 429/2010 of FAMILY
COURT,TRIVANDRUM DATED 15-11-2014

PETITIONER(S)/PETITIONER:

SOUMYA.R. AGED 27 YEARS
D/O.MOLI, RESIDING AT AMBADI HOUSE
ASRAMAM ROAD PUNNAKKAMUKAL ARAMADA P.O
THIRUMALA VILLAGE THIRUVANANTHAPURAM.

BY ADV. SRI.RAJESH P.NAIR

RESPONDENT(S)/RESPONDENT:

ANIL KUMAR, AGED 37 YEARS
S/O.LATE KRISHNAN, RESIDING AT 'DEEPAM'
ANAVILA LANE KALADI, KARAMANA P.O
MANACAUD VILLAGE THIRUVANANTHAPURAM-695 001

R1 BY ADV. SRI.T.K.ANANDA KRISHNAN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (FC).No. 578 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 - TRUE COPY OF THE ORIGINAL PETITION NO.429/2010 FILED BY THE
PETITIONER BEFORE THE HON'BLE FAMILY COURT,
THIRUVANANTHAPURAM

EXT.P2 - TRUE COPY OF THE WITNESS SCHEDULE SUBMITTED BY THE
PETITIONER IN O.P. NO.429/2010 BEFORE THE HON'BLE FAMILY
COURT, THIRUVANANTHAPURAM.

EXT.P3 - TRUE COPY OF THE WITNESS SCHEDULE SUBMITTED BY THE
PETITIONER IN M.C.NO.272/2010

EXT.P4 - TRUE COPY OF THE I.A.NO.2947/2014 IN O.P.NO.429/2010

EXT.P5 - TRUE COPY OF THE CERTIFIED COPY OF THE ORDER DATED
15-11-2014 IN IA NO.2947/2014 IN O.P.NO.429/2010

RESPONDENT(S) ' EXHIBITS

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NIL.

TRUE COPY

PA TO JUDGE.

acd

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

O.P.(FC) No. 578 of 2014

Dated this the 24th day of February, 2015

JUDGMENT

P.D.Rajan,J.

This petition is filed under Article 227 of the Constitution of India by the petitioner against the order in IA No.2947/14 in O.P.No.429/2010 of the Family Court, Thiruvananthapuram seeking a direction to call for the records leading to Ext.P5 order and to set aside the same and also other consequential reliefs.

2. The petitioner's case is that the respondent married her on 17.10.2004 at Karthika Kalyanamandapam, Attukal as per Hindu Custom. After the birth of a child, the husband harassed her both physically and mentally. Moreover, he misappropriated her gold ornaments and money,

hence she is now residing with her parents. she filed the above O.P. 429/2010 for maintenance and recovery of gold ornaments and money and other reliefs. For substantiating the contentions of the petitioner, examined PWs 1 to 3 in the Family Court. For substantiating the claim for gold ornaments in O.P.No.429/2010, the petitioner has submitted Ext.P2 witness schedule, in which the Secretary of Kerala Vela Service Society (KVSS) was a witness. According to the petitioner, the examination of the Secretary of the said Society is very crucial especially the details of the gold ornaments can be found out from the the entries made in the records of the Marriage Register kept in the custody of the Secretary. For that, he filed Ext.P4 petition, which was rejected by the learned Judge of the Family Court by Ext.P5 order. Hence, the petitioner

approached this Court.

3. Heard both sides. The learned counsel appearing for the respondent contended that there was laches from the side of the petitioner for filing the above petition in the Family Court. After closing the evidence, Ext.P4 petition was filed in the trial Court, which is not maintainable at the end of the trial, which is only to delay the proceedings of the Court. Hence, the learned counsel prays to dismiss the petition.

4. Considering the contention put forward by the petitioner, we are of the view that there is some relevancy in the above contention. Ext.P1 petition was filed for realising 68.750 sovereigns of gold ornaments or its value and other amount from the respondent. PWs 1 to 3 were examined by the petitioner in the trial court. During trial,

the husband disputed the contentions of the petitioner wife. The 4th witness in the witness list i.e., the Secretary of the KVSS, failed to appear before the Court. Again fresh steps were taken, but summons was returned as unserved and despite coercive steps were taken against him, he failed to turn up before the Court. Finally, on enquiry, the petitioner found that the name of the Organisation has been changed from 'Kerala Vela Service Society(KVSS) to 'Kerala Manpathra Service Society (KMSS), in that situation she approached the lower Court with Ext.P4.

5. The learned counsel for the petitioner contended that due to change of name of the Organization, he could not execute the summons and therefore, failed to adduce evidence. Now, he realises the real identity of the

Organization and corrected the address. That fact was highlighted before the learned Judge of the Family Court, while passing Ext.P5 order, which was not considered by him.

6. The specific contention of the petitioner is that the gold ornaments entrusted to the respondent were recorded in the Register of the Society, which is the only piece of evidence available for her to adduce in the trial Court. If that be the position, in the interest of justice petitioner is entitled to get an opportunity to furnish her evidence in the trial Court. Considering the nature of evidence the learned Judge of the Family Court ought to have given an opportunity to the petitioner by taking fresh steps in the new address. Therefore, we approve the submission made by the learned counsel for the petitioner

and accordingly, the O.P.(FC) is allowed.

Ext.P5 order passed by the learned Judge of the Family Court, Thiruvananthapuram is set aside and Ext.P4 is remitted to the Family Court for fresh consideration, within two months from the date of receipt of a copy of this judgment.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

