

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 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

OP (FC).No. 583 of 2014 (R)

AGAINST THE ORDER IN E.A.NO.147/14 IN E.P.NO.15/13 IN
OP 1261/2009 of FAMILY COURT, KOLLAM DATED 30.1.2014.

PETITIONER(S) :

NAZIM, AGED 56 YEARS
S/O.ABDL AZIZ, OPERATOR, PUMP HOUSE
KERALA WATER AUTHORITY, VELLAYAMBALAM
THIRUVANANTHAPURAM.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH
SMT.R.S.SREEVIDYA

RESPONDENT(S) :

RUKIYA NAZIM, AGED 43 YEARS,
D/O.SAINABA, SHAH MANZIL, BEACH NORTH
KOLLAM, RESIDING AT QUARTERS NO.XLII/890
KERALA WATER AUTHORITY QUARTERS, CHINNAKKADA
KOLLAM DISTRICT-691001.

BY ADV. SRI.B.MOHANLAL

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 583 of 2014 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: A TRUE PHOTOCOPY OF THE OP NO.1261/2009 ON THE FILE OF THE FAMILY COURT, KOLLAM.

EXHIBIT P2: A TRUE PHOTOCOPY OF THE EXECUTION PETITION NO.15/2013 ON THE FILE OF THE FAMILY COURT, KOLLAM.

EXHIBIT P3: A TRUE PHOTOCOPY OF THE EA.NO.147/2014 ON THE FILE OF THE FAMILY COURT, KOLLAM.

EXHIBIT P4: A TRUE PHOTOCOPY OF THE ORDER OF THE HONOURABLE FAMILY COURT IN EA.NO.147/2014 IN EP.NO.15/2013 IN OP.NO.1261/2009 DATED 30.01.2014.

EXHIBIT P5: A TRUE PHOTOCOPY OF THE ADVANCE PETITION FILED BY THE PETITIONER.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

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

O.P.(F.C.)No.583 of 2014

Dated this the 15th day of January, 2015.

J U D G M E N T

Mohanan, J.

The judgment debtor in O.P.No.1261/09, who is the respondent in E.P.No.15/13, preferred the above original petition under Article 227 of the Constitution of India against an order dated 30.1.2014 in E.A.No.147/14 before the Family court, Kollam, seeking the following the reliefs :

"(i) To call for the records leading to Ext.P4 order of the Family court, Kollam in E.A.No.147/14 in E.P.No.15/13 in O.P.No.1261/09 dated 30.1.2014 and quash/set aside the same.

(ii) To grant such other reliefs this Hon'ble court may deem fit and proper to grant in the facts and circumstances of the case."

The petitioner herein is the husband of respondent who moved the Family court, Kollam, as O.P.No.1261/09 for realisation of value of gold ornaments and return of money, since the marital relationship between the petitioner and respondent strained. The said original petition was allowed

in favour of the petitioner therein, after setting the respondent/the petitioner herein ex parte and finally passed ex parte decree on 26.11.2011. Thereafter, the decree holder/the respondent herein approached the court below by filing Ext.P2 execution petition for the realisation of a sum of Rs.15,31,371/- being the decretal amount. No objection is filed in the execution petition. During the pendency of the execution petition, the respondent herein filed E.A.No.147/14 with a prayer to pass an order of temporary injunction, restraining the Finance officer, Kerala Water Authority, who is the garnishee, from disbursing the retirement benefits of the petitioner herein-the judgment debtor, who was working as Chief Operator, Kerala Water Authority, Water Supply Sub Division, Kollam and the judgment debtor from receiving such benefits from the garnishee or from Pension Disbursing Authority till the disposal of the execution petition. Pursuant to the notice issued in the above proceedings, the petitioner/respondent

therein entered appearance through counsel and sought time for objection. Whereas the respondent herein who is the petitioner/decreed holder insisted for an urgent order. Thus the learned Judge of the Family court passed Ext.P4 order. In Ext.P4 order it is stated by the learned Judge that, "I am satisfied with a prima facie case to grant an order of temporary injunction. I am also satisfied that if delay is caused for granting the injunction the very purpose of the EP itself will be defeated. Hence interim injunction as prayed for granted until further orders." It is the above order challenged in the above petition.

2. We heard Sri.C.Rajendran, the learned counsel appearing for the petitioner and Sri.B.Mohanlal, the learned counsel appearing for the respondent.

3. The learned counsel for the petitioner submitted that the Family court has no jurisdiction to issue such an order because of the specific bar contained under the various provisions of CPC. According to the learned

counsel, with respect to the retirement benefits/amounts, no attachment can be ordered by any court of law. But as per Ext.P4 order, the court below indirectly exceeding its jurisdiction, issued an order, which is totally barred by specific provisions in the CPC. According to the learned counsel, the said order was passed without giving opportunity to the petitioner to raise his objection.

4. Per contra, the learned counsel for the respondent vehemently submitted that there is already an order for maintenance in favour of the respondent/wife and her child against the very same petitioner, but so far no amount is paid by the petitioner. It is also pointed out by the learned counsel that though an execution petition to execute the above maintenance order is pending before the Family court, the respondent who is the petitioner herein has not appeared before that court, and the said proceedings are also being protracted. It is the further contention of the learned counsel that in the present case also, though notice

is served on the petitioner by the court below, he did not file any objection and while the execution petition is pending, he was trying to get released all his retirement benefits and therefore it was absolutely necessary to restrain the petitioner from receiving the amount, otherwise the decree could not be executed. So, according to the learned counsel, the trial court is fully justified in issuing Ext.P4 order.

5. We have carefully considered the rival contentions advanced by the learned counsel for the petitioner as well as the respondent. We have perused Ext.P4 order.

6. Having regard to the facts and circumstances involved in the case and especially considering the nature of Ext.P4 order, at this stage, we are not proposed to enter into any finding on merit, especially when the execution petition is pending before the court below. As discernible from Ext.P4 order, the said order is only an interim order and no final order is passed therein. It is equally important

to note that the prayer of the petitioner for filing objection is discarded and passed Ext.P4 order. Thus we are of the view that, whatever objection the petitioner has got against E.A.No.147/14, no opportunity was given to him to raise such objection and the court below got no opportunity to consider such objection on merit and pass order either by way of interim relief or permanently. So, we are of the view that, after setting aside Ext.P4 order, the parties can be relegated to approach the Family court, Kollam and the court below can be directed to pass a detailed order, after hearing both the parties.

In the result, this original petition is disposed of setting aside Ext.P4 order and the matter is remitted back to the trial court for fresh consideration, after giving ample opportunities to both the petitioner and the respondent, including filing of objection of the petitioner and the Family court is directed to pass appropriate orders on merit. The petitioner as well as the respondent are directed to appear

in person in the Family court, Kollam on 29.1.2015. If there is any possibility for a settlement, the learned Judge of the Family court can explore such possibilities.

Original petition is disposed of accordingly.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

//True copy//

P.A.to Judge