

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW**

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

OP (FC).No. 590 of 2014 (R)

PETITIONER/RESPONDENT:

**RESHMA SASIDHARAN AGED 27 YEARS
D/O.SASIDHARAN, RESIDING AT ANU VILAS, N H 31
NETHAJI NAGAR, KADAVANTHARA POST, KOCHI**

BY ADV. SMT.I.SHEELA DEVI

RESPONDENT/PETITIONER:

**RAJANEESH, AGED 33 YEARS
S/O.GOPALAKRISHNAN ACHARY, RESIDING AT REMYA BHAVAN
PARAKKOTTAM POST, MANAKKALA, ADOOR PIN-690 114**

BY ADV. SRI.R.KISHORE

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 23-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (FC).No. 590 of 2014 (R)

APPENDIX

PETITIONER'S EXHIBITS

P1:-COPY OF THE OP NO 617/2011 BEFORE THE FAMILY COURT, THIRUVALLA

P1(A):-COPY OF ORIGINAL PETITION NO 2068/2012 DTD 21/8/2013 BEFORE THE FAMILY COURT, ERNAKULAM

P2:-COPY OF THE COUNTER AFFIDAVIT DTD 16/2/2014 BEFORE THE FAMILY COURT, ERNAKULAM

P3:-COPY OF THE ORIGINAL PETITION NO 926/2012 DTD 21/5/2012 BEFORE THE FAMILY COURT, ERNAKULAM

P4:-COPY OF THE OBJECTION DTD 31/7/2012 BEFORE THE FAMILY COURT, ERNAKULAM

P5:-COPY OF IA NO 3811/2014 BEFORE THE FAMILY COURT, ERNAKULAM DTD.12.10.2014

P6:-COPY OF THE IA NO 3809/2014 DTD 12/10/2014 BEFORE THE FAMILY COURT, ERNAKULAM

P7:-COPY OF THE IA NO 3810/2014 DTD 12/10/2014 BEFORE THE FAMILY COURT, ERNAKULAM

P8:-TRUE COPY OF THE IA NO 4321/2014 DTD 19/11/2014 BEFORE THE FAMILY COURT, ERNAKULAM

P9:-TRUE COPY OF THE ORDER IN I.A.NO.4321/2014 IN O.P.NO.2068/2012

RESPONDENT'S EXHIBITS:

NIL

//True copy//

P.A. TO JUDGE

Shg/

K.T. SANKARAN & K. ABRAHAM MATHEW, JJ.

O.P.(F.C.) No.590 of 2014

Dated this the 23rd day of February, 2015

J U D G M E N T

K.T. Sankaran, J.

The reliefs prayed for in this O.P.(F.C.) filed by Reshma Sasidharan are the following:

- "i. call for the records leading to the order in I.A.No.4321 of 2014 and set aside the same;
- ii. stay the operation of order I.A.No.4321 of 2014;
- iii. to pass an order to issue the certified copy of the order in I.A.No.4321/2014 at once pending before the Family Court, Ernakulam.
- iv. issue such other appropriate order as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- v. Award the cost of the petitioner in these proceedings."

2. Reshma Sasidharan filed O.P.No.926/2012 on the file of the Family Court, Ernakulam against her husband Rejaneesh for return of money and gold ornaments. Rejaneesh filed O.P.No.2068/2012 against Reshma Sasidharan for divorce. The Family Court ordered joint trial of these cases. A commissioner was appointed to record the evidence of the parties and their witnesses. Evidence was

commenced in April, 2014. It is submitted that the learned counsel for the respondent that the evidence on the side of the husband was over in August, 2014 and the case was posted for the evidence of the wife. The learned counsel for the respondent also submitted that thereafter several petitions were filed by the wife to accept documents, to issue summons to witnesses and also to grant time to her till 30.01.2015 to complete evidence on her side. She also filed I.A.No.4321/2014 to re-open the evidence and to provide an opportunity to her to adduce evidence. The court below dismissed I.A.No.4321/2014 by the order dated 10th December, 2014 holding that no genuine reason is made out for granting an opportunity to adduce evidence. Even on the date on which I.A.No.4321/2014 was posted wife was absent. The main grievance of the petitioner/wife is against the order in I.A.No.4321/2014.

3. One of the reliefs prayed for in the Original Petition is to grant a certified copy of the order in I.A.No.4321/2014. A Division Bench of this Court called for

a report from the Presiding Officer, Family Court, Ernakulam to state the reason as to why the certified copy of the order in I.A.No.4321/2014 was not issued to the petitioner/wife. The Judge, Family Court, Ernakulam reported that the application was disposed of on 10.12.2014 and copy application was filed on 12.12.2014. On 17.12.2014 the copy was ready. However, the petitioner/wife did not produce the requisite stamp to get the certified copy. Nobody turned up to get the certified copy after remitting the court fee stamp and therefore the copy application could not be complied with.

4. Later, a photocopy of the order in I.A.No.4321/2014 was produced in this Original Petition by marking the same as Ext.P9. We requested the learned counsel for the petitioner to handover the certified copy of the order in I.A.No.4321/2014. It is revealed from the endorsements on the certified copy that the copy application was filed on 8.1.2015, stamp papers were called for on 13.1.2015, stamp papers were produced on

14.1.2015, the date notified to receive the copy was on 17.1.2015 and the copy was delivered on 15.1.2015. Ext.P9 was produced before this Court on 16.1.2015. From the endorsements on the certified copy it is clear that the petitioner/wife did not pursue the earlier copy application, but she filed another copy application and got the copy. It is also relevant to note that the Original Petition was filed on 15.12.2014 and the petitioner was gaining time.

5. It is clear that the petitioner was adopting dilatory tactics in the case. She did not co-operate with the commissioner. On the other hand she filed petitions after petitions to protract the trial. The Family Court could not be faulted for dismissing I.A.No.4321/2014. However, a party should not have a feeling that the court did not grant her an opportunity to adduce relevant evidence. We also contemplate a situation where the matter may be taken in appeal by the defeated party and a possible contention being raised that opportunity was not afforded to that party to adduce evidence. In order to avoid future delay in the

matter, we think that the complaint of non-granting an opportunity to adduce evidence should be remedied now itself and the petitioner/wife should not be allowed to raise that complaint again. Taking into account the facts and circumstances of the case, we dispose of the O.P.(F.C.) as follows:

- (1) The order in I.A.No.4321/2014 is set aside.
- (2) The petitioner/wife is granted an opportunity to adduce evidence and to produce documents. Such evidence should be produced on or before 31.3.2015.
- (3) The Family Court shall post the case as early as possible before court and complete the evidence before 31.3.2015.
- (4) It is not necessary to appoint a commissioner to record the evidence. The petitioner/wife and her witnesses should be examined in court itself, so that any possible attempt for protracting the trial can be effectively dealt with by the Family Court.

- (5) No request for adjournment will be made by the petitioner/wife when the case is posted for trial.
- (6) The petitioner/wife shall pay an amount of Rs.1,500/- (Rupees one thousand and five hundred only) as costs to the respondent/husband before commencing the evidence. If the petitioner/wife fails to pay the aforesaid sum of Rs.1,500/- (Rupees one thousand and five hundred only), this order will stand recalled and the order passed by the court below in I.A.No.4321/2014 shall remain in force.

Sd/-

**K.T. SANKARAN
JUDGE**

Sd/-

**K. ABRAHAM MATHEW
JUDGE**

shg/