

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 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

RP.No. 952 of 2015 () IN Mat.Appeal.210/2015

AGAINST THE JUDGMENT IN MAT. APPEAL 210/2015 of HIGH COURT OF KERALA
DATED 01-09-2015

REVIEW PETITIONERS/APPELLANTS:

1. JAYAN, AGED 41 YEARS,
S/O.PONNU, PURANATTUKARA HOUSE,
AVILISSERY VILLAGE DESOM, OLLOOR, THRISSUR.

2. AMMINI, AGED 76 YEARS,
W/O.PONNU, PURANATTUKARA HOUSE,
AVILISSERY VILLAGE DESOM, OLLOOR, THRISSUR.

BY ADV. SRI.K.MUHAMMED SALAHUDHIN

RESPONDENT/RESPONDENT:

SUJA,, AGED 33 YEARS,
D/O.GOPALAN, KURUMALI KARUVAN HOUSE, CHUNGAM DESOM
AMBALLUR VILLAGE, MUKUNDAPURAM TALUK
THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
27-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Pn

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

R.P. No. 952 OF 2015

IN

Mat. Appeal No. 210 OF 2015

DATED THIS THE 27th DAY OF OCTOBER, 2015

ORDER

C.K. Abdul Rehim, J:

The Review Petitioner is approaching this court seeking a review of the observation contained in the last paragraph of the judgment dated 01-09-2015 in Mat. Appeal No.210/2015.

2. In the Mat. Appeal the Review petitioners herein had challenged an ex-parte decree passed against them by the Family Court, Irinjalakuda in OP No.103/2012. While considering the appeal this court noticed that the court below had failed to consider the contentions raised by the appellants through a detailed counter affidavit filed before the Family Court. Hence it is held that the ex-parte decree cannot be sustained legally. This court observed that, when a written statement was available before the court below,

the court ought to have considered the contentions contained therein despite the fact that the respondent therein were declared ex-parte. Alleging that non-consideration of those contentions would vitiate the decree, this court had set aside the impugned judgment and remanded the case for passing fresh judgment, after taking note of the contentions raised in the written statement filed by the respondents. However in the last paragraph it is observed as follows:

“Needless to observe that the Family Court will be at liberty to consider application if any submitted in the meanwhile before that court seeking to set-aside the ex-parte decree, and to dispose of the same on its merits.”

3. Contention of the Review petitioners is that, there exists no ex-parte decree because the same was already set aside by this court. Hence there is no necessity to the Appellants to file an application for setting aside ex-parte decree.

4. This court takes note of the fact that, the word used “to set aside the ex-parte decree” is infact a mistake.

What was intended by this court is that the appellants will be at liberty to approach the Family Court, before passing a fresh judgment, seeking to set aside the order through which they were declared ex-parte before passing the judgment impugned. The judgment will stand clarified to that effect.

5. Accordingly the review petition is disposed of subject to the clarification mentioned as above.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge