

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 3RD DAY OF FEBRUARY 2014/14TH MAGHA, 1935

RP.No. 809 of 2014 () IN Mat.Appeal.503/2013

REVIEW PETITIONER(S)/RESPONDENT:

N.R.PRASAD

**S/O NARAYANA IYER, RESIDING AT JASPER INTERNATIONAL
A-1, JAY CHAMBERS, OFF WESTERN EXPRESS HIGHWAY
SERVICE ROAD, VILE PARLE (E) MUMBAI**

BY ADVS.SRI.SUNIL NAIR PALAKKAT

SRI.K.N.ABHILASH

SRI.R.D.SHENOY (SR.)

RESPONDENT(S)/APPELLANT:

PRAMEELA, AGED 45 YEARS

**D/O RAMACHANDRAN, RESIDING AT PRATYUSHA
PARAMESH NAGAR, OLAVAKKODE, PALAKKAD 678002**

BY SMT.A.K.PREETHA

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 18.12.2014, THE
COURT ON 03-02-2015 PASSED THE FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

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R.P.No. 809/2014

(Arising out of judgment dated 30.9.2014 in Mat. Appeal No.503/2013)

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Dated this the 3rd day of February, 2015

ORDER

ALEXANDER THOMAS, J.:

The respondent in Matrimonial Appeal No.503/2013 has filed this Review Petition seeking review of the judgment dated 30.9.2014 rendered in that Appeal.

2. The above said Matrimonial Appeal was filed by the respondent in this Review Petition, to impugn the judgment dated 27.4.2013 in O.P.No.45/2010 on the file of the Family Court, Palakkad. The appellant mother had filed the said O.P.No.45/2010 before the court below under Secs.6 and 13 of the Hindu Minority and Guardianship Act read with Sec.25 of the Guardian and Wards Act for custody of her minor son. The marriage between the parties was solemnized on 8.11.1990 and due to marital disputes, they are now living separately. The child is now studying at Mumbai. The Family Court as per the impugned judgment dated 27.4.2013 considered the preliminary issue regarding the territorial jurisdiction of the court and held that the court in Mumbai is having jurisdiction

to entertain the petition filed under the Guardians and Wards Act. The Matrimonial Appeal was admitted by this Court on 29.7.2013 and Sri.T.Krishnan Unni, learned Senior Counsel instructed by Sri.P.S.Appu, learned counsel, had appeared on behalf of the respondent in the appeal. Pending appeal, the Division Bench (in which one of us, viz., Alexander Thomas,J. was a member), made several attempts to settle the disputes between the parties. Though the learned Senior Counsel appearing the respondent in the appeal had initially made submissions regarding the aspects relating to territorial jurisdiction of this Court, later no such objections were raised before the Bench. The Bench had interacted with parties on 14.7.2014 and had passed order dated 14.7.2014, which reads as follows: "Appellant and respondent are present. Their son Master Hrithik Prasad is also present. We have interacted with all of them. The appellant is free to contact her son at least twice in a week. The appellant shall be present on 7.8.2014 at 1.30 p.m. in the chambers." Later, the appellant repeatedly attended the chambers on 7.8.2014, 18.8.2014 and 2.9.2014. After hearing both sides, the Bench had passed an order dated 3.9.2014 in I.A.No.2429/2014 in this Matrimonial Appeal, which reads as follows:

"Petitioner is the mother of the minor child aged 13 years

studying in 10th Grade in Oberoi International School, Mumbai. The petitioner submits that the school closes for autumn/Deepavali vacations on 16.10.2014 and will re-open on 27.10.2014. The father and mother of the child attended this Court on earlier occasions. We had interacted with the parties.

2. In the facts and circumstances of the case, we are inclined to grant temporary custody of the child during autumn/Deepavali vacation. Accordingly, I.A.No.2429/2014 is allowed. The respondent is directed to handover the child to the petitioner at 12:00 noon on 17.10.2014. The mother shall retain the custody till 26.10.2014. The child shall be handed over to the mother in the premises of the Family Court, Palakkad. The mother shall return the child to the father at the same premises at 10:00 am on 26.10.2014. The petitioner and respondent shall appear in person before this Court on 24.9.2014 at 10:15 am in Court."

3. In spite of the above said order dated 3.9.2014, the respondent husband did not appear before this Court on 24.9.2014. On 24.9.2014, this Court had passed an order, which reads as follows:

"The petitioner is present. The respondent is absent today also. Repeatedly, we directed the respondent to be present in Court. On 2.9.2014, this Court observed that 'in spite of the specific direction issued on 18.8.2014 directing the respondent to be present today, the respondent is repeatedly absent.'

2. The appellant and respondent are directed to be present in Court at 10:15 am on 26.9.2014.

Post on 26.9.2014."

Both the appellant wife and respondent husband had appeared on 26.9.2014 in chambers before the Division Bench.

4. In view of the discussions and the consensus arrived at in the course of such interactions in the chambers, this Court passed the judgment on 30.9.2014, whereby it was directed in paragraphs

3 and 4 thereof as follows:

“3. The respondent is directed to send the passport, PAN card and other documents, which are kept in the Mumbai residence, to the petitioner immediately, at any rate, within a period of two weeks from today.

4. In the interim order dated 3rd September, 2014, we had directed the respondent-husband to hand over the child to the petitioner during Deepavali vacation for the period from 17.10.2014 child on these days as directed in the order dated 3rd September, 2014. The petitioner-appellant is entitled to temporary custody of the child during summer holidays. The respondent-father shall take the child to Palakkad during June-July every year and shall hand over the child to the mother for ten days. The right of the parties to approach this Court is reserved seeking reliefs, if circumstances warrant.”

5. The respondent husband in the appeal has filed the present Review Petition contending that this Court has no territorial jurisdiction and that this Court has not applied its mind on the preliminary issue of territorial jurisdiction and has thereby committed grave error in passing the impugned judgment, etc.

6. Heard Sri.R.D.Shenoy, learned Senior Counsel instructed by Sri.Sunil Nair Palakkat, learned counsel appearing on behalf of the review petitioner and Smt.A.K.Preetha, learned counsel appearing for the respondent in the review petition.

7. In the Matrimonial Appeal, Sri.T.Krishnan Unni, learned Senior Counsel instructed by Sri.P.S.Appu, learned counsel had appeared on behalf of the respondent husband (review petitioner

herein). Though initially the learned Senior Counsel appearing for the respondent in the appeal had made some submissions regarding the territorial jurisdiction of this Court, later no serious arguments were advanced on behalf of the respondent (husband) in the Matrimonial Appeal about the aspects relating to territorial jurisdiction. The Bench had interacted in detail with the parties concerned and their learned Advocates on various days, as above said.

8. The Bench had interacted with the parties initially on 14.7.2014 and thereafter the appellant wife had repeatedly attended the chambers on 7.8.2014, 18.8.2014 and 2.9.2014. Thereafter, the Bench had interacted with the learned Advocates appearing for the parties as well as both the parties in the chambers on 26.9.2014. A very serious and earnest attempt was made by the court to thrash out all the subsisting differences of opinion between the spouses.

9. Both the parties concerned and their respective Advocates had also fully co-operated with the efforts of the Bench in resolving the disputes between the parties to the maximum extent possible. The factual aspect regarding the posting on

26.9.2014 and the aforementioned details in that regard have been omitted to be stated in the judgment dated 30.9.2014. After the above said posting on 26.9.2014, the matter was adjourned to 30.9.2014. On 30.9.2014, the appellant (wife) was absent as she had difficulties in travelling frequently to Ernakulam from Palakkad and she was represented by her learned counsel. The respondent (husband) and his learned Advocate was present on 30.9.2014. After hearing, the Bench disposed of the appeal on 30.9.2014, based on the discussions with the parties and the consensus so arrived on 26.9.2014. As we have already stated, except during the initial days of postings in this case, the learned counsel appearing for the respondent in the appeal had not raised any disputes regarding the territorial jurisdiction in this matter and it was only in the light of the aforementioned discussions and consensus that the impugned directions were issued in the judgment rendered on 30.9.2014. We find that there are no adequate grounds for seeking review of the judgment rendered on 30.9.2014 in this matrimonial appeal.

10. There is yet another disquieting aspect in this matter. Sri.T.Krishnan Unni, learned Senior Counsel instructed by

Sri.P.S.Appu, learned counsel had appeared on behalf of the respondent (husband) in this appeal. Though the Review Petition is shown as being drafted in the chambers of the former instructing counsel, when the Review Petition came up for consideration before us, there has been change of counsel for the review petitioner (respondent in the appeal). Now Sri.R.D.Shenoy, learned Senior Counsel instructed by Sri.Sunil Nair, Palakkat, learned counsel has appeared on behalf of the review petitioner (respondent in the appeal). When the impugned judgment rendered on 30.9.2014 was passed mainly on account of the discussions and consensus arrived at in the course of the efforts made by the Bench as stated earlier hereinabove, we fail to understand as to how a different counsel can prosecute this Review Petition on the ground that the issue of territorial jurisdiction has not been considered in the appellate judgment. This is all the more so, in view of the fact that except during the initial stage of the case, no arguments were thereafter advanced on behalf of the respondent husband regarding the territorial jurisdiction of this Court and no objections were so raised either by the respondent in the appeal or his learned counsel during the stage when the Bench had made efforts for arriving at a

consensus between the parties on the basis of the discussions as stated above.

11. The Apex Court has deprecated the conduct of changing counsel at the review stage on occasions more than one. In Review Petition No.2670/1996 in Civil Appeal No.1867/1992 [referred to in para 1 of the decision reported in (1997) 9 SCC 736)], a Bench of three judges of the Apex Court held as hereunder.

“The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained ‘No Objection Certificate’ from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the ‘No Objection Certificate’ would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the ‘No Objection Certificate’ from the erstwhile counsel has disentitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits.

On these grounds, we dismiss the review petition.”

12. The Apex Court further in the case Tamil Nadu Electricity Board and Anr. v. N.Raju Reddiar and Anr. reported in (1997) 9 SCC 736) has deprecated the practice of change of Advocates at the stage of institution of clarification petitions and review petitions after the rendering of the final decision in the main

matter.

On consideration of the submissions of the learned Senior Counsel appearing for the review petitioner and on going through the averments in support of the Review Petition, we find that there are no bona fides in this Review Petition, which amounts to abuse of the process of the Court and that no grounds are made out for the invocation of the review remedy in this case. Accordingly, we dismiss this Review Petition.

Sd/-

ANTONY DOMINIC, JUDGE

Sd/-

ALEXANDER THOMAS, JUDGE

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P.S. to Judge