

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 5909 of 2015 (K)

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PETITIONER:

ANJU, AGED 31 YEARS, D/O. VELAYUDHAN,  
MANGALATHUKUDY HOUSE, PANIPRA P.O.,  
KOTHAMANGALAM, ERNAKULAM DISTRICT.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS:

1. THE SECRETARY, KOTTAPPADY SERVICE  
CO-OPERATIVE BANK LIMITED, KOTTAPADY P.O.,  
KOTHAMANGALAM, ERNAKULAM - 686 695.
2. SHABU, S/O. SASI, KIZHAKALAN HOUSE,  
PARAPPURAM P.O., KANJOOR VIA,  
ERNAKULAM - 686 667.
3. THE JOINT REGISTRAR OF CO-OPERATIVE  
SOCIETIES (GENERAL), ERNAKULAM - 682 020.

R2 BY ADV. SRI.T.K.RAJESHKUMAR

R1 & R3 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**APPENDIX IN WP(C).No. 5909 of 2015 (K)**

PETITIONER'S EXHIBITS:

EXHIBIT-P1-TRUE COPY OF THE DECREE OF THE FAMILY COURT,  
MUVATTUPUZHA DATED 10/08/2012 IN O.S 578/2012.

EXHIBIT-P2-TRUE COPY OF THE REPRESENTATION OF THE PETITIONER  
DATED 18/12/2014.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

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W.P.(C)No.5909 of 2015 K  
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Dated this the 17<sup>th</sup> day of July, 2015

### **JUDGMENT**

The petitioner and second respondent, being the wife and husband, had their matrimonial relationship strained. Eventually, though the matrimonial discord has lead to judicial proceedings for divorce at the behest of the second respondent, he could not succeed, inasmuch as the matrimonial petition is said to have been dismissed by the Family Court, Muvattupuzha.

2. In course of time, the petitioner, the wife, filed O.P.No.288/2009, later re-numbered as 578/2002, on the file of the same Family Court for return of money and gold ornaments and obtained Exhibit P1 decree. One of the amounts covered by Exhibit P1 decree is a fixed deposit of Rupees One lakh in the first respondent Bank in the joint names of both the petitioner and the second respondent.

3. In terms of Exhibit P1 decree, when the petitioner approached the first respondent Bank for return of the fixed deposit of Rupees One lakh along with interest, the respondent Bank is said to have insisted on the petitioner's producing the original fixed deposit receipt. Though no communication in writing has been served on the petitioner to the said effect, the insistence, according to the petitioner, is oral. Aggrieved thereby, the petitioner has filed the present writ petition.

4. None appears for the first respondent Bank despite service of notice. The learned counsel for the second respondent, soon after his entering appearance, represented that the second respondent had already filed an appeal against Exhibit P1 and that he would produce the necessary proof in that regard. Though the matter underwent nine adjournments, the learned counsel for the second respondent could not place any material before this Court.

5. Curiously, the learned counsel for the second respondent never chose to be present in person before the Court, but deputed some other counsel on every occasion merely seeking time under the pretext that second respondent would file a counter affidavit. On the previous occasions, this Court instructed the counsel who appeared for the learned counsel on record to inform the learned counsel for the second respondent to be present before the Court, if at all he seeks more time to assist the Court. Unfortunately, the learned counsel has not paid any heed to the instructions of this Court.

6. Under these circumstances, on 09.07.2015 this Court passed a detailed order making it clear that the second respondent would be given one last opportunity to come before the Court putting forward his defence to the claim of the petitioner. Today in the morning when the matter was called, once again the advocate representing the learned counsel on record for the second respondent,

without any change, reiterated the same request that the second respondent wanted more time to file counter affidavit. I asked the learned advocate to inform the learned counsel on record for the second respondent to be present before the Court in the afternoon to assist the Court and accordingly passed the matter over. Presently, when the matter is taken up, blissfully none appeared including the learned advocate who acted proxy for the learned counsel to represent in the morning.

7. In the above facts and circumstances, I cannot but deprecate the conduct of the learned counsel for the second respondent. The learned counsel has not only failed to discharge his statutory obligation towards his client, but also failed to discharge his solemn duty of assisting the court. At any rate, taking this as the first instance of unprofessional conduct on his part, this Court has decided to take a lenient view, but placing on record a word of caution, in the interest of the learned counsel himself that

he shall ensure his conduct to be not blameworthy or wanting in future.

8. Veering back to the merits of the matter, I may observe that, in terms of Exhibit P1, which is a judicial directive of binding nature, the first respondent may have honoured the request of the petitioner for refund of the fixed deposit amount. The fact, however, remains that the judgment being in personam and the first respondent having not been made a party to O.P.No.578/2012, I cannot hold that there is any gross disregard of Exhibit P1 decree by the first respondent Bank.

9. At any rate, to mitigate the hardship being faced by the petitioner, a woman who has already been battling against an estranged husband; this Court deems it appropriate that the first respondent shall, in terms of Exhibit P1 decree, pay the petitioner the fixed deposit amount along with interest after obtaining necessary indemnity from her, if the Bank desires. Needless to

observe that the first respondent shall complete the process of considering the petitioner's request in terms as stated above, as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

Subject to the above directions, the writ petition is allowed with costs against the second respondent quantified at ₹ 10,000/- to be paid to the petitioner. If the second respondent fails to pay the costs, the petitioner is at liberty to recover the same through a process of execution before the jurisdictional civil court treating this judgment as a decree executable for the purpose of recovery of money.

Dama Seshadri Naidu, Judge

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