

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

UNNUMB.OPFC.No. 232 of 2015 ()

PETITIONER/PETITIONER/RESPONDENT:

**RAMESH K.B., AGED 39 YEARS, S/O.BAHULEYAN,
KOZHIPPARAMBIL HOUSE, PO. KAIPPAMANGALAM,
KODUNGALLUR, THRISSUR DISTRICT.**

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS/RESPONDENTS/PETITIONER:

- 1. SARITHA E.R., AGED 31 YEARS, D/O.RAVI,
ERANAPURAKKAL HOUSE, CHAMAKKALA PO,
EDATHURUTHI VILLAGE, KODUNGALLUR, THRISSUR DISTRICT.**
- 2. MINOR DIYA, AGED 8 YEARS,
REP. BY MOTHER AND GUARDIAN, 1ST RESPONDENT SARITHA E.R.**
- 3. BAHULEYAN, AGED 78 YEARS,
KOZHIPPARAMBIL HOUSE, PO. KAIPPAMANGALAM,
KODUNGALLUR, THRISSUR DISTRICT.**

**THIS UNNUMBERED OPFC HAVING BEEN FINALLY HEARD ON 30-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: A TRUE COPY OF THE ORIGINAL PETITION IN O.P.NO.982/2009.
- EXT.P2: A TRUE COPY OF THE I.A.NO.2632/2013 IN O.P.NO.982/2009.
- EXT.P3: A TRUE COPY OF THE I.A.NO.2633/2013 IN O.P.NO.982/2009.
- EXT.P4: A TRUE COPY OF OBJECTION IN I.A.NO.2632/2013 IN O.P.NO.982/2009.
- EXT.P5: A TRUE COPY OF OBJECTION IN I.A.NO.2633/2013 IN O.P.NO.982/2009.
- EXT.P6: A TRUE COPY OF ORDER IN I.A.NO.2632/2013 AND I.A.NO.2633/2013 IN O.P.NO.982/2009 DATED 11.12.2014.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

VPV

P.N.RAVINDRAN & ANIL K.NARENDRA, JJ.

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Unnumbered O.P.(F.C.)No. of 2015

[Z.O.P.(F.C.)No.232 of 2015]

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Dated this the 30th day of March, 2015

JUDGMENT

P.N.Ravindran, J.

The Registry has declined to number this original petition filed under Article 227 of the Constitution of India on the ground that Ext.P6 order passed by the Family Court, Thrissur, which is impugned in the original petition is an appealable order.

2. By Ext.P6 order passed on 11.12.2014, the Family Court, Thrissur dismissed I.A.No.2632 of 2013, an application filed by the petitioner herein under section 5 of the Limitation Act, 1963 to condone the delay of 675 days in filing I.A.No.2633 of 2013, wherein the relief sought was to set aside an ex parte order passed on 27.8.2011 in O.P.No.982 of 2009. By the impugned order, the Family Court held that the petitioner has not shown sufficient cause to condone the delay of 675 days in filing I.A.No.2633 of 2013. Consequently both the applications were dismissed. A Division Bench of this Court has in **Abdul Lathif v. Saheeda** [1997 (1) KLT 734] held that an appeal would lie under section 19(1) of the Family

Courts Act, 1984 from an order passed by the Family Court as regards its jurisdiction to entertain the dispute. The same view was reiterated by another Division Bench of this Court in **Madhavan v. Chellamma** [2004 (1) KLT 908]. The Division Bench held that an order passed by the Family Court as regards its jurisdiction to entertain a petition filed before it, will affect the rights of parties and is therefore appealable. The Division Bench also held that correctness of such an order has to be decided in an appeal filed under section 19(1) of the Family Courts Act, 1984 and not in an appeal filed under Order XLIII Rule 1 of the Code of Civil Procedure.

3. The order impugned in the instant original petition is an order passed by the Family Court dismissing an application filed by the petitioner to set aside an exparte order passed against him, as barred by limitation. Such an order which has the effect of finally deciding the rights of parties cannot in our opinion be treated as an interlocutory order. The order if allowed to stand will conclude the rights of parties.

We accordingly uphold the objection raised by the Registry and reject the unnumbered original petition with the observation that it will be open to the petitioner to challenge the impugned order

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in other appropriate proceedings.

P.N.RAVINDRAN
JUDGE

ANIL K.NARENDRA
JUDGE

vpv