IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

OP (FC) NO. 162 OF 2023

(ORDER DATED 17.01.2023 IN I.A.NO.4060/2021 IN OP NO.2001 OF 2021 OF THE FAMILY COURT, ERNAKULAM)

PETITIONER/RESPONDENT/RESPONDENT:

PRAVEEN V.P., AGED 43 YEARS,
S/O.V.K. PRADEEP, VETTIYAKKAL HOUSE,
ALUVA THOTTUMUGAM P.O.,
ERNAKULAM DISTRICT, PIN - 683105.

BY ADVS.
BABU S. NAIR
SMITHA BABU

RESPONDENTS/PETITIONER/PETITIONER & RESPONDENTS 2 TO 6 IN I.A.:

1 RESHMI L.R., AGED 36 YEARS
D/O.K. RAVINDRAN, RESIDING AT FLAT NO.10B,
ASSET SYNERGY HEIGHTS, THOPPIL, KANNANKULANGARA,
THRIPPUNITHURA P.O. THEKKUMBHAGAM VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT, PIN - 682301.

2 THE BRANCH MANAGER,
KERALA STATE FINANCIAL ENTERPRISES LTD.,
TRIPUNITHURA BRANCH, MUNICIPAL SHOPPING COMPLEX,
LAYAM C BLOCK, 259/51, STATUE JUNCTION,
SANSKRIT COLLEGE ROAD, KOTTAKAKOM, THRIPPUNITHURA,
ERNAKULAM DISTRICT, PIN - 682301.

3 THE BRANCH MANAGER, MUTHOOT FINCORP LTD.,
REGISTERED OFFICE, MUTHOOT CENTRE, PUNNEN ROAD,
THIRUVANANTHAPURAM, PIN - 695039.

4 THE BRANCH MANAGER,
NADAMEL SERVICE CO-OPERATIVE BANK LTD.,
NO.123, N. FORT ROAD, VADAKEKKOTTA, KOTTAKAKAM,
THRIPPUNITHURA, KOCHI, PIN - 682301.

5 THE BRANCH MANAGER,
ESAF BANK, EAST FORT GATE,
KANNANKULANGARA, THRIPUNITHURA,
ERNAKULAM DISTRICT, PIN - 682301.

6 THE BRANCH MANAGER
IDBI BANK, THRIPPUNITHURA BRANCH,
HILL PALACE ROAD, NEAR COCHIN ARYA VYDYASALA,
EAST FORT JUNCTION, THRIPPUNITHURA,
PIN - 682301.

BY ADVS.
SAJU S
SALIL NARAYANAN K.A.
JITHIN SAJI ISAAC
KIRAN M.S.
A.V.SAJAN(K/384/2001)
ANJANADEVI.G(K/269/2014)
SWETHA.S.(K/000571/2022)
NAINA FAHIMATH M.S.(K/001521/2023)
MANJU V.(K/3188/1999)
K.J.SAJI ISAAC(S-82)
ELIZABETH VARKEY(E-25)
AJEESH EMMANUEL(K/109/2012)
SHAMSUDEEN O.K.(K/000687/2017)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J.

We propose to be very brief in our observations in this judgment because, we notice that the parties may have other efficacious alternative remedies available to them.

2. The petitioner, represented by Smt.Smitha Babu – learned counsel, argues that Ext.P4 order by the learned Family Court, Ernakulam, was unnecessary because, it has injuncted the various respondents - Financial Institutions from allowing her client to operate his accounts with them only to half of its proceeds, without noticing that a property worth much more has already been attached by it earlier, on the application of the 1st respondent – Wife.

3. Smt.Smitha Babu vehemently asserted that

the learned Family Court was in error in having issued Ext.P4 because, even when the wife maintains that the proceeds of the accounts in question belong to her, his client has placed on record several materials to establish to the contrary; and that her intention is only to harass to make him accede to certain untenable demands and settlement. She then submitted that her client was always willing to offer security for the claim made by the petitioner in the Original Petition in question; but that, this was not even considered by the learned Family Court, and that it, nevertheless, proceeded to issue Ext.P4, injuncting the various Financial Institutions before it, from allowing him to operate the accounts to more than half of its proceeds. She, therefore, prayed that Ext.P4 be set aside.

4. Sri.S.Saju – learned counsel for the 1st

respondent, however, submitted that Ext.P4 is an order issued by the Trial Court noticing that his client has made a claim over the entire proceeds in the account, but granting injunction against the Financial Institutions only to half of it. He added that, if the petitioner wanted to furnish security for the amounts covered by the said order, he could have easily moved the said Court itself; and that there was no reason for him to have approached this Court, impugning Ext.P4.

5. Sri.Salil Narayanan K.A. - learned counsel for the 2nd respondent; Sri.K.J.Saji Issac for respondent No.5 and Sri.M.S.Kiran for respondent No.6, submitted that their clients have no interest in the controversy, being only Financial Institutions; and that they will abide by any directions to be issued by this Court, or by the learned Family Court.

6. We have examined Ext.P4, on the touchstone of the above rival submissions.

7. The learned Family Court has issued the impugned order, noticing the claim of the 1st respondent – wife, that she is entitled to full, or at least half, of the proceeds of the accounts maintained by the petitioner, with the various respondents - Financial Institutions.

8. Even though the petitioner filed objections, saying that he had already made fiscal arrangements for the wife in the past and had transferred properties and other assets in her name, they remain without being proved at this moment because, the trial is yet to begin. Obviously, therefore, the learned Family Court could not have acted upon the assertions of either of the parties as at present; and could have only proceeded to decide the matter as is required at the stage of Order 39 Rule 1 of the

Civil Procedure Code, evaluating the balance of convenience between the parties.

9. That being said, since Smt.Smitha Babu now says that the half proceeds in the various accounts involved in this case is only about Rs.30 lakhs and that her client is willing to furnish security for the same, obviously, his liberty to seek such a relief before the learned Family Court is fully open. We see no reason why the petitioner should have approached this Court for that purpose through this Original Petition.

10. Presumably being aware of the mind of this Court as afore, Smt.Smitha Babu submitted that her client intends to move the learned Family Court appropriately and to seek that the injunction issued against the respondents - Financial Institutions, through Ext.P4, be vacated because, the 1st respondent can only seek her claim to be fully secured - which he is

willing to do, furnishing proper security. She added that, in fact, her client's property - which already stands attached, is much more valuable than the claim in the Original Petition in which such orders have been issued; and that he will be able to offer the same as a security for this claim also, for which, she sought liberty.

11. We do not propose to speak on the afore plea of Smt.Smitha Babu because, every liberty that may be available to the parties in law is certainly open to them, including to offer the attached property as security, to the satisfaction of the learned Family Court, subject to its value being properly assessed as per law.

With the afore clarification, we close this Original Petition; however, directing the learned Family Court, Ernakulam, to take up any

application that may be filed by the petitioner on the afore lines and dispose it of without any avoidable delay, after affording necessary opportunities to both sides.

We clarify that we have not entered into the merits of the rival contentions and that they are all left open; and that it is for the learned Family Court to decide the procedure to be followed, if any security is to be offered before it by the petitioner.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

akv

APPENDIX OF OP (FC) 162/2023

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE ORIGINAL PETITION NO.2001/2021 FILED BY THE 1ST RESPONDENT HEREIN BEFORE THE FAMILY COURT, ERNAKULAM DATED, 3-9-2021
EXHIBIT P2	TRUE COPY OF THE I.A.NO.4060/2021 IN O.P.NO.2001/2021 FILED BY THE 1ST RESPONDENT BEFORE THE FAMILY COURT, ERNAKULAM DATED, 14-9-2021
EXHIBIT P3	TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER, IN O.P.NO.2001/2021 BEFORE THE FAMILY COURT, ERNAKULAM DATED, 22-8-2022
EXHIBIT P4	TRUE COPY OF THE ORDER DATED, 17-1-2023 IN I.A.NO.4060/2021 IN O.P.NO.2001/2021 OF THE FAMILY COURT, ERNAKULAM
EXHIBIT P5	TRUE COPY OF THE ATTACHMENT ORDER ALONG WITH THE SHOW CAUSE NOTICE ISSUED IN I.A.NO.3901/2021 IN O.P.NO.2001/2021 DATED, 10-9-2021