IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

OP (FC) NO. 62 OF 2024

OP NO.578 OF 2020, FAMILY COURT, ALAPPUZHA

PETITIONER/PETITIONER:

RAFI ZIAD, AGED 35 YEARS
S/O. LATE K. Y. ZIAD, BAITHULNOOR,
POONTHOPPU WARD, AVALOOKUNNU P.O, ALAPPUZHA.
REPRESENTED BY HIS MOTHER, POWER OF ATTORNEY HOLDER
KAVITHA ZIAD, AGED 52 YEARS, W/O. LATE K. Y. ZIAD,
BAITHULNOOR, POONTHOPPU WARD, AVALOOKUNNU P.O.
ALAPPUZHA., PIN - 688006.

BY ADVS.
B.PRAMOD
BIJU VIGNESWAR

RESPONDENTS/RESPONDENTS:

1 RAMLA ISMAYIL
D/O. ISMAYIL, MUSLIYARS,
CIVIL STATION WARD, ALAPPUZHA WEST VILLAGE,
ALAPPUZHA., PIN - 688001.

2 ISMAYIL,
S/O. ABDULKHADER, MUSLIYARS,
CIVIL STATION WARD,
ALAPPUZHA WEST VILLAGE,
ALAPPUZHA., PIN - 688001.

BY ADV K.K.SATHISH

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 26.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J.

The limited plea of the petitioner is that the learned Family Court, Alappuzha, be directed to dispose of Ext.P7 interim application, before proceeding with the joint trial in O.P.No.578/2020 and O.P.No.987/2018.

2. Sri.B.Pramod – learned counsel for the petitioner, submitted that his client was constrained to prefer Ext.P7 application before the learned Family Court because, a portion of the counter claim preferred by the wife is now untenable, since she has filed another Original Petition seeking identical reliefs. He, therefore, prayed that the prayers in this Original Petition be granted.

3. However, in refutation to the afore, Sri.K.K.Sathish – learned counsel for the

respondents, submitted that the afore plea is only to protract the trial of the Original Petitions; and that the prayer in Ext.P7 interim application is not maintainable. He thus prayed that this Original Petition be dismissed.

4. We do not propose to evaluate the rival contentions of the parties with respect to the maintainability of Ext.P7 on its merits. These are the matters to be decided by the learned Family Court appropriately, at their first instance.

5. However, a question arises as to whether this Court should direct the learned Family Court to dispose of Ext.P7, prior to the trial, or along with it.

6. We are certainly of the view that the afore discretion is always available to a Trial Court; and that it is not necessary for us to intervene at this stage.

In the afore circumstances, we close this Original Petition, directing the learned Family Court to decide Ext.P7, either along with the trial, or earlier, as it may deem fit.

We, however, clarify that all rival contentions of the parties are left open.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

akv

APPENDIX OF OP (FC) 62/2024

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE MEMORANDUM DATED 26.08.2020 OF O. P. 578/2020 ON THE FILE OF THE FAMILY COURT, ALAPPUZHA.
EXHIBIT P2	TRUE COPY OF THE OBJECTION DATED 02.03.2021 FILED BY THE RESPONDENTS IN O. P. 578/2020 ON THE FILE OF THE FAMILY COURT, ALAPPUZHA.
EXHIBIT P3	TRUE COPY OF THE COUNTER CLAIM DATED 02.03.2021 FILED BY THE RESPONDENTS IN O. P. 578/2020 OF THE FAMILY COURT, ALAPPUZHA.
EXHIBIT P4	TRUE COPY OF THE MEMORANDUM DATED 19.11.2018 OF O. P. NO. 987/2018 BEFORE THE FAMILY COURT, ALAPPUZHA.
EXHIBIT P5	TRUE COPY OF THE OBJECTION DATED 02.11.2022 IN O. P. NO. 987/2018 ON THE FILE OF FAMILY COURT, ALAPPUZHA FILED BY THE PETITIONER AND HIS MOTHER.
EXHIBIT P6	TRUE COPY OF THE PROCEEDINGS IN O. P. NO. 578/2020 ON THE FILE OF FAMILY COURT, ALAPPUZHA.
EXHIBIT P7	TRUE COPY OF THE I. A. NO. 6/2023 DATED 21.03.2023 IN O. P. NO. 578/2020 ON THE FILE OF FAMILY COURT, ALAPPUZHA.