IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 1ST DAY OF AUGUST 2024 / 10TH SRAVANA, 1946

OP (FC) NO. 301 OF 2024

ORDER DATED 18.04.2024 IN IA 11/2023 IN

OP NO.752 OF 2021, FAMILY COURT, THALASSERY

PETITIONER/RESPONDENT/PETITIONER:

MUHAMMED RIYAS, AGED 40 YEARS,
S/O ABOOBAKER HAJI, RAHMATH MANZIL,
KEECHERI MATTANNUR, KANNUR DISTRICT., PIN - 670702.

BY ADVS.
G.RANJITA
ASHITHA PAULY

RESPONDENT/PETITIONER/RESPONDENT:

JASEELA, AGED 43 YEARS,
D/O ABDULLA KANIYARAKKANDI
KOORAN EDAYILE PURAYIL HOUSE
PATTANNUR AMSOM, IRIKKUR DESOM,
KANNUR DIST., PIN - 670593.

BY ADVS.
C.ANILKUMAR KALLESSERIL
C.Y.VINOD KUMAR(K/652/2008)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 01.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J.

The petitioner challenges Ext.P5 order of the learned Family Court, Thalassery, whereby, an application preferred by the respondent for setting aside an earlier ex parte decree in O.P.No.752/2021, as also the application to condone delay of 280 days in filing it, have been allowed.

2. Smt.G.Ranjita Jaison – learned counsel for the petitioner, vehemently argued that Ext.P5 order has been issued by the learned Family Court in a mechanical manner, without considering any of the germane aspects, even though all factual factors had been brought to its notice by her client. She explained that the judgment is dated 17.12.2022; and that subsequent to it, her client levied execution

and had the directions therein put into effect. She pointed out that, after the aforesaid decree, the records of the property in question had been altered and the transfer of its Registry had been applied for and allowed in his name, which was done with notice to the respondent herein.

3. Smt.G.Ranjita Jaison then explained that, thereafter, her client has been paying tax on the property; and that, in fact, he spent more than Rs.3 lakhs for renovating the building, which has now been rented out to tenants. She asserted that none of these factors had been looked into by the learned Family Court, particularly that the decree in question had been subjected to execution; and hence that Ext.P5 is forensically incorrect.

4. In response, Sri.C.Y.Vinod Kumar – learned counsel for the respondent, submitted

that the afore factors stated by Smt.G.Ranjitha Jaison were not relevant for the learned Family Court in deciding whether his client had made out sufficient cause to seek that the *ex parte* decree against her be set aside. He pointed out that all the facts were considered by the learned Family Court, to conclude that the *ex parte* decree against his client causes her great prejudice; and thus that the applications were allowed, consequently giving her an opportunity to contest the Original Petition on its merits. He thus prayed that this Original Petition be dismissed.

5. We have considered the afore rival submissions on the touchstone of the pleadings on record.

6. When one examines Ext.P5 order, it is ineluctable that the learned Family Court certainly took into account all the rival

contentions, as also the factual assertions by the petitioner herein; but then allowed the application in the 'interests of justice', imposing a cost of Rs.8,000/- on the respondent herein.

7. However, even a close reading of the impugned order would not indicate how the learned Family Court has dealt with the contentions of Smt.G.Ranjitha Jaison, that the *ex parte* decree in question had been put into execution; and that certain actions were thereafter completed, with notice to the petitioner. Though these assertions have been recorded in the said order, we do not find a specific opinion on it, apart from saying that the *ex parte* decree is liable to be set aside in the 'interests of justice'.

8. We are hence without doubt that we cannot offer favour to Ext.P5 as it presently

stands; and that the matter will require to be reconsidered by the learned Family Court, particularly since, as we have already said above, the petitioner asserts that the decree had been subjected to execution.

In the afore circumstances, but without entering into the merits of any of the rival contentions any further, we allow this Original Petition and set aside Ext.P5; with a consequential direction to the learned Family Court, Thalassery, to reconsider the applications of the respondent, after affording necessary opportunity to both sides; thus culminating in an appropriate new order/s, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment.

We clarify that we have not entered into the merits of the rival contentions, except for the

purpose of this judgment; and that all of them are left open to be decided appropriately by the learned Family Court during the afore exercise.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B.SNEHALATHA

JUDGE

akv

APPENDIX OF OP (FC) 301/2024

PETITIONER EXHIBITS

EXHIBIT P1	TRUE COPY OF THE O.P. NO. 752/2021 DATED 6/9/2021
EXHIBIT P2	TRUE COPY OF THE JUDGEMENT OF FAMILY COURT, THALASSERY DATED 17/12/2022 OF O.P.NO.752/2021
EXHIBIT P3	TRUE COPY OF THE I.A.11/2023 DATED 11TH OCTOBER 2023 OF O.P.NO.752/2021
EXHIBIT P4	TRUE COPY OF THE I.A.12/2023 DATED 11TH OCTOBER 2023
EXHIBIT P5	ORIGINAL OF THE COMMON ORDER IN I.A.NO.11/2023 AND I.A.NO.2023 DATED 18/4/2024
EXHIBIT P6	TRUE COPY OF THE COUNTER FILED BY THE PETITIONER TO EXHIBITS P4 AND P5 DATED 18/3/2024
EXHIBIT P7	TRUE COPY OF THE DAILY MADHYAMAM DATED 2/ 1 /2022
EXHIBIT P8(A)	TRUE COPY OF THE TAX RECEIPT FOR THE YEAR 2023 DATED 13/9/2023
EXHIBIT P8(B)	TRUE COPY OF THE TAX RECEIPT FOR THE YEAR 2024 DATED 23/4/2024
EXHIBIT P9	TRUE COPY OF THE LEASE AGREEMENT BY THE PETITIONER DATED 21/11/2023