

Suresh Kumar Vs. Swapna

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Suresh Kumar

Respondent : Swapna

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE P.D.RAJAN WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 OP (FC).No. 2637 of 2013 (R) ----- (AGAINST THE JUDGMENT IN OP 741/2008 of FAMILY COURT, NEDUMANGAD DATED 24 04-2009) PETITIONER(S): ----- SURESH KUMAR, S/O.GOPI, ROADARIKATHU VEEDU, CHEKKALAVILA, MAMBAZHAKKARA, PERUMPAZHUTHOOR VILLAGE, NEYYATTINKARA THIRUVANANTHAPURAM. BY ADV. SRI.A.RAJASIMHAN RESPONDENT(S): ----- SWAPNA, D/O.USHA, THADATHARIKATHU VEEDU, KUZHIVILA, KOLLODU CHENNIVIALA, NEYYATTINKARA, THIRUVANANTHAPURAM. THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31.07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 2637 of 2013 (R) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXT.P1: TRUE COPY THE JUDGMENT IN OP NO.741/2008. EXT.P2: TRUE COPY OF E.P. NO.58/2011 PENDING BEFORE THE FAMILY

COURT, NEDUMANGAD. EXT.P3: TRUE COPY OF THE I.A. NO. 913 OF 201.PENDING BEFORE THE FAMILY COURT, NEDUMANGAD. EXT.P3: TRUE COPY OF THE I.A NO. 914 OF 201.PENDING BEFORE THE FAMILY COURT, NEDUMANGAD. EXT.P5: TRUE COPY OF THE AUCTION NOTICE DATED NIL RESPONDENT(S)' EXHIBITS -----: NIL /TRUE COPY/ P.S. TO JUDGE. ANTONY DOMINIC & P.D.RAJAN,JJ.

----- O.P.(FC) No. 2637 OF 201.-----
----- Dated this the 31st day of July, 2013

JUDGMENT

Antony Dominic, J The petitioner and the respondent are husband and wife. It appears that the wife has filed O.P. No.741/2008 before the Family Court, Nedumangad. In that original petition, the petitioner was set ex- parte and finally on 24/4/2009 Ext.P1 ex-parte judgment was passed entitling the respondent to realise maintenance at the rate of Rs.2,000/- per month from 26/6/2008, to realise A schedule gold ornaments or in the alternative its value of Rs.2,40,000/- and cash Rs.1,25,000/- from the B schedule property of the petitioner. As the decree was not complied with , the respondent filed E.P. No. 58/2011, a copy of which is Ext.P2. According to the petitioner, the charged property is now scheduled to be sold on 3/8/2013. In the meanwhile, on 24/4/2013, the petitioner filed Exts.P3(I.A.No.913/2013) to set aside Ext.P1 ex-parte judgment and Ext.P4 (I.A.No.914/2013) to condone the delay of 1360 days in filing Ext.P3. Orders have not been O.P.(FC) No.2637/2013 2 passed on the above I.As. It is in these circumstances, the petitioner has filed this Original Petition complaining that while the above mentioned I.As are pending, the Family Court is proceeding with E.P.No.58/2011.

3. Ext.P3- I.A. can be considered only if the delay is condoned as prayed for in Ext.P4- I.A. Therefore, at present orders cannot be passed on Ext.P3. Even otherwise, the decree was passed as early as on April 2009, the Execution Petition was filed on 16/9/2010 and the petitioner filed Exts.P3 and P4 I.As only in April 2013. These facts show that there is culpable delay and laches on the part of the petitioner. In such case, this Court will not be justified in directing the Family

Court to keep the execution proceedings in abeyance until orders are passed on Exts.P3 and P4. The Original Petition fails and the same is dismissed. Sd/- ANTONY DOMINIC, Judge. Sd/- P.D.RAJAN, Judge. dpk. /True copy/ P.S to Judge. O.P.(FC) No.2637/2013 3

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