

Sameer, P.K. Vs. State of Kerala and anr.

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SooperKanoon Citation : sooperkanoon.com/730766

Court : Kerala

Decided On : Oct-28-2005

Reported in : AIR2006Ker164

Judge : V. Ramkumar, J.

Acts : Family Courts (Procedure) Rules, 1989 - Rule 5, 5(1) and 5(3)

Appeal No. : W.P. (C) No. 24857 of 2005

Appellant : Sameer, P.K.

Respondent : State of Kerala and anr.

Advocate for Def. : C.P. Mohammed Nias, Adv. (for No. 2)

Advocate for Pet/Ap. : Manjeri Sunderraj, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Ramkumar, J.

1. The petitioner is the husband of the 2nd respondent herein. O.P. No. 286/2005 is filed by the 2nd respondent herein before the Family Court, Kozhikode, seeking dissolution of her marriage with the petitioner. The grievance of the petitioner is

that he is an NRI working at Dubai and that even though he has despatched through post Ext.P5 counter wherein he has also sought for a counter relief of restitution of conjugal rights, the Family Court is insisting on his personal appearance before that Court. He has entered appearance through counsel initially and thereafter in person before the Family Court, but he had to return to Gulf due to his occupational compulsions. It is the case of the petitioner that he submitted the counter to O.P. No. 286/05 filed by the 2nd respondent and the counter relief therein by sending the same through post from Dubai. He has further alleged that the Judge of the Family Court does not comply with Rule 5(3) and inform the petitioner about the posting of the case. The petitioner would have it that Ext. P5 counter to O.P. No. 286/05 sent by him through post is not received in the Family Court and this, according to him, is evidently with a view to avoid complying with Rule 5(3) of the Family Courts (Procedure) Rules, 1989 as per which there is a duty cast on the Court to notify the next hearing date and inform the sender accordingly. The petitioner, therefore, prays for a direction to the Family Court, Kozhikode, to grant leave to the petitioner to contest O.P. No. 286/05 and seek further relief of restitution of conjugal rights by submitting his pleadings through registered post from abroad and for a direction to the Family Court to give advance intimation of the date on which he has to appear in person before Court by abiding the provisions of Rules 5(1) and 5(3) of the Family Courts (Procedure) Rules.

2. This writ petition is opposed by the 2nd respondent contending inter alia that Rules 5(1) and 5(3) of the above Rules are not attracted in the case of filing of a counter to an O.P. which has already been filed before the Family Court and that Rules 5(1) and 5(3) are attracted only in cases where the institution of an application is by registered post so that the sender of the application is informed about the subsequent posting of the case.

3. I heard the learned Counsel appearing for the petitioner as well as the 2nd respondent.

4. Rule 5 of the Family Court (Procedure) Rules, 1989 reads as follows:

5. Institution of proceedings.-- Every case will be instituted in the Court of the principal Judge, or the Court of such other Judge as may be designated by the principal Judge (or by sending a plaint, petition or application by registered post acknowledgment due to such Judge).

(ii) The Court to which a case has been allocated will be indicated in the list to be displayed in the notice board of the Court where it was instituted. The list will indicate when the party instituting the case is required to appear before the Court to which the case is allocated to take further orders.

(iii) In all cases where a case has been commenced by filing a plaint, petition or application by registered post, intimation of the Court to which the case is allocated will be sent by registered post at the address given. If the party instituting a case does not appear on the first date of hearing before the Judge, he shall send a notice, both by post and in the ordinary way, to the party instituting the case intimating the next date of hearing.

(Emphasis supplied)

A reading of the said rule would indicate that filing of a counter by post is not contemplated by the said rules. The purpose of Rule 5(iii) as it stands is only to enable an applicant who instituted petition by registered post to get information regarding the date of next hearing of the case. Merely because there is a counter-relief prayed for in the counter filed by the petitioner, it cannot be treated as an application, nor could it be stated that by filing such a counter, a case has been commenced within the meaning of the above rule. Therefore, the prayer in this writ petition is misconceived and this writ petition is accordingly dismissed.