

Narendranath. Vs. Neethu

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Court : Kerala

Decided On : Nov-25-2010

Judge : R.Basant; K.Surendra Mohan, Jj.

Acts : [Constitution of India](#) - Article 227

Appeal No. : OP (FC).No. 864 of 2010

Appellant : Narendranath.

Respondent : Neethu.

Advocate for Pet/Ap. : SRI.P.HARIDAS, Adv.

Judgement :

1. This O.P(F.C) is filed by the petitioner/husband against Exts.P4, P5 and P6 orders passed by the Family Court.

2. Two petitions are being jointly tried by the court below. The first one filed by the wife is for return of ornaments, money etc. The other is filed by the wife claiming maintenance. There are no issues in the wedlock. The matter has reached the stage of trial. Evidence was adduced by the parties. A Commissioner was appointed to record evidence. After the Commissioner submitted the report, a request was made that summons may be issued to the witnesses shown in the additional witness list. It was prayed that the evidence may be re-opened. It was further contended that the wife may be sent to the Medical Board for examination of her mental capacity. The original petitions were filed as early as in 2008. An

earlier application for declaration of nullity of marriage on the ground of mental unsoundness of the wife was admittedly dismissed for non prosecution. The court below, by the impugned orders, rejected the prayers made in the petition. The court below obviously felt that the attempt was to protract the proceedings. Reasons have been shown in Exts.P4 to P6 as to why the said prayers were being rejected.

3. The petitioner claims to be aggrieved by the impugned orders. The counsel contends that the wife has no legal competence to sustain and maintain those applications. She is mentally unsound, it is submitted.

4. That contention was evidently not pressed till the parties went for trial. The counsel points out that the said contention was raised in the written statement.

5. We must alertly remind ourselves of the nature, quality and contours of the jurisdiction under Article 227 of the [Constitution of India](#). Anxiety of the legislature to prevent protraction of proceedings by challenge of interim orders passed during trial is reflected clearly in the bar against entertainment of revision petitions against interlocutory orders. Of course it is well settled that the bar of a revision does not fetter the constitutional powers of this Court under Article 227 of the [Constitution of India](#). Where this Court is satisfied that a stitch in time may save nine, such jurisdiction can certainly be invoked. But, we must be careful, cautious and discreet in the invocation of such extraordinary constitutional jurisdiction under Article 227.

6. We do not want to express any final opinion on the validity of Exts.P4 to P6 orders. We feel that in the facts and circumstances of this case, the petitioner must be relegated to challenge those orders if necessary along with the final orders that will be passed in the O.Ps. If found necessary, the petitioner can mount the challenge against those orders in the appeal against final orders passed in the O.Ps. We are not persuaded to invoke our extraordinary constitutional jurisdiction. In coming to this conclusion, we have alertly considered all circumstances.

7. This petition is, in these circumstances, dismissed with the above observations.