



2023/KER/70774

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 6TH DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945

OP (FC) NO. 644 OF 2023

AGAINST THE ORDER DATED 15.09.2023 IN I.A.NO.15/2023 IN

O.P.NO.172/2017 OF FAMILY COURT, IRINJALAKUDA

PETITIONER(S)/RESPONDENT/PETITIONER:

JOHN,
AGED 68 YEARS,
S/O.KUNJUVAREED, KAVUNGAL HOUSE, CHATTIKKULAM
DESOM, KODASSERY VILLAGE, CHALAKKUDY TALUK,
THRISSUR DISTRICT, PIN - 680 721.

BY ADVS.
C.A.CHACKO
C.M.CHARISMA
BABU V.P.
REMYA V.A.

RESPONDENT(S)/PETITIONER/RESPONDENT:

ROSILY,
AGED 60 YEARS,
W/O.KAVUNGAL JOHN, CHALAKKUDY DESOM, KODASSERY
VILLAGE, CHALAKKUDY TALUK, THRISSUR DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
N.J.MATHAI, S/O.NETTIKKADAN JOSEPH,
AGED 68 YEARS, VALLANCHIRA DESOM,
ALLOOR VILLAGE, CHALAKKUDY TALUK,
THRISSUR DISTRICT, PIN - 680 562.

BY ADVS.
SINDHU SANTHALINGAM
A.D.SHAJAN(K/19/1997)
JESSY S.SALIM(K/742/2008)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 06.11.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



AMIT RAWAL & C.S.SUDHA, JJ.

OP(FC) No.644 of 2023

Dated this the 06th day of November, 2023

J U D G M E N T

Amit Rawal, J.

The present petition is preferred against the impugned order dated 15.09.2023 whereby an application filed by the respondent/wife in O.P.No.172/2017 was allowed and the petitioner/husband was directed to deposit an amount of ₹90 lakhs withdrawn after obtaining the *ex parte* decree dated 06/10/2021, preferably in the name of the wife. The petitioner/husband was able to obtain an *ex parte* decree dated 06/10/2021 in O.P.No.172/2017 and on the basis of the said decree, had withdrawn the amount from the joint account with the wife, i.e., a sum of ₹90 lakhs lying in the Canara Bank, Chalakkudy Branch along with the interest accrued thereon. The aforementioned *ex parte* decree was set aside by this Court in Mat. Appeal No.337 of 2023 vide judgment dated 03/07/2023. In I.A.No.15/2023, the respondent/wife sought indulgence of the trial court for restitution of the situation which was in existence at the time when the O.P.



was pending. The said application has been allowed directing the petitioner to deposit in the name of respondent the sum of ₹90 lakhs and interest accrued thereon, withdrawn from the Canara Bank, Chalakkudy Branch. The learned counsel appearing on behalf of the petitioner submitted that the application submitted on behalf of the respondent/wife by invoking the provisions of Section 151 of the Code of Civil Procedure was not maintainable and in fact it should have been filed under Section 144 of CPC since it is the accepted procedure and remedy and therefore it ought to have been dismissed at the threshold itself.

2. We have heard the learned counsel for the petitioner and appraised the paper book and of the view that there is no force on merit in the aforementioned submissions for the reason that wrong mentioning of the provisions of law would not entail into rejection of the application when the relief was one sought under the provisions of the CPC, i.e., under Section 144. Petitioner/husband was clever enough to obtain an *ex parte* decree as mentioned above in the O.P. and had withdrawn ₹90 lakhs along with the interest accrued thereon from the Canara Bank, Chalakkudy Branch, which was in the joint account of the respondent/wife. The said amount has been ordered to be returned, subject to the outcome of the O.P. as



respondent/wife has been given a chance to contest the same on merits. We do not find any illegality or irregularity in the order calling for an interference by this Court. Original petition stands dismissed.

Sd/-

AMIT RAWAL
JUDGE

Sd/-

C.S.SUDHA
JUDGE

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APPENDIX OF OP (FC) 644/2023

PETITIONER'S EXHIBITS:-

- Exhibit P1 TRUE COPY OF COMMON JUDGMENT DATED 6/10/2021 IN O.P.NO.172/2017 OF FAMILY COURT, IRINJALAKKUDA.
- Exhibit P2 TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT IN MAT.APPEAL NO.337/2023 DATED 3/7/2023.
- Exhibit P3 TRUE COPY OF ORDER IN IA.NO.3/2023 IN NO.337/2023 OF THIS HON'BLE COURT DATED 24/7/2023.
- Exhibit P4 TRUE COPY OF IA.NO.15/2023 IN O.P.NO.172/2017 DATED 21/8/2023 FILED BEFORE FAMILY COURT, IRINJALAKKUDA ALONG WITH ITS ENGLISH TRANSLATION.
- Exhibit P5 TRUE COPY OF OBJECTION DATED 8/9/2023 FILED IN IA.NO.15/2023 BEFORE FAMILY COURT, IRINJALAKKUDA ALONG WITH ITS ENGLISH TRANSLATION.
- Exhibit P6 TRUE COPY OF ORDER DATED 15/9/2023 IN IA.NO.15/2023 IN O.P.NO.172/2017 OF FAMILY COURT, IRINJALAKKUDA.