IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 10TH DAY OF JULY 2025 / 19TH ASHADHA, 1947

MAT.APPEAL NO. 399 OF 2025

AGAINST THE ORDER DATED 19.03.2025 IN IA No.3/2023 IN OP NO.1420 OF 2019 OF FAMILY COURT, KANNUR

APPELLANT/PETITIONER/PETITIONER:

SRI.P.S.BINU
SMT.K.SEENA

RESPONDENT/RESPONDENT/RESPONDENT:

SRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.V.ROHITH

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 10.07.2025, ALONG WITH Mat.Appeal.401/2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

THURSDAY, THE 10TH DAY OF JULY 2025 / 19TH ASHADHA, 1947

MAT.APPEAL NO. 401 OF 2025

AGAINST THE ORDER DATED 19.03.2025 IN IA No.4/2023 IN OP NO.420 OF 2022 OF FAMILY COURT, KANNUR

APPELLANT/PETITIONER/PETITIONER:

SRI.P.S.BINU
SMT.K.SEENA

RESPONDENT/RESPONDENT/RESPONDENT:

SRI.C.MURALIKRISHNAN (PAYYANUR)
SRI.V.ROHITH

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 10.07.2025, ALONG WITH Mat.Appeal.399/2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'CR'

JUDGMENT

[Mat.Appeal Nos.399/2025, 401/2025]

Devan Ramachandran, J.

It is not a mere desideratum but an absolute requisite that settlements and agreements between parties obtained through mediation — which are then recorded by Courts under the applicable statutory provisions, leading to judgments and decrees — require to be ensured the highest sanctity; and that efforts by parties to resile from the same — however, ingenious it may be — needs to be guarded against and strongly deprecated, lest it shatter the very edifice of trust of the people, on which the legal system rests.

2. We are considering these appeals together and are disposing of the same through this judgment because the essential underlying facts and factual factors are similar, if not identical.

3. The appellant herein filed OP Nos.1420/2019 and 420/2022 against the respondent before the learned Family Court, Kannur, seeking dissolution of marriage on the grounds of

cruelty in the first among them; and for a declaration that he is the absolute owner in possession of the petition schedule property involved in the latter Original Petition. He also made a consequential prayer in OP No.420/2022, to restrain the respondent herein from making any claim over the property in question, or from creating any charge over it.

4. While so, the respondent filed OP No.949/2020 against the appellant herein for past maintenance, return of her gold ornaments and patrimony.

5. Admittedly, both the afore Original Petitions were decreed, based on a compromise arrived at by the parties, under the provisions of Order XXIII Rule 3 of the Code of Civil Procedure (CPC), in which the terms of agreement were specifically recorded.

6. However, more than 230 days after the issuance of the decree, the appellant filed interim applications in each of the Original Petitions - as mentioned in the impugned order of the learned Family Court - seeking that the decree be set aside and for a declaration that the compromise he had entered into through his power of attorney, was without his instructions or

knowledge and hence contrary to his interests.

7. The appellant also filed application for condonation of delay in filing the above said applications; and all of them were then considered by the learned Family Court and dismissed through the impugned order.

8. The appellant challenges the order of the learned Family Court on various grounds, but primarily that it did not consider the evidence on record in its proper perspective.

9. Smt.K.Seena – appearing for the appellant, argued that the terms of the compromise, which were recorded by the learned Family Court in the judgment and decree issued under Order XXIII Rule 3 of the CPC, were agreed to and entered into by his Power of Attorney holder against her client's interests, without his consent or permission, solely to help the respondent herein; but conceded that the said power of attorney is his own brother, with whom he has no enmity. Her specific contention was that the appellant was ill at the time when his Power of Attorney had agreed to the terms of the compromise, thus establishing that he was incapacitated to give any instruction to do so to the latter – as evidenced from Exts.B4 to B6; and

consequently that the said compromise is infirm in law. She argued that, when the appellant was thus defrauded and cheated by his own power of attorney, an agreement entered into by the latter on his behalf, compromising his interests, could not have been allowed to stand by the learned Family Court. She thus prayed that the impugned order be set aside.

10. However, Sri.C.Muralikrishnan – appearing for the respondent, submitted that the learned Family Court has assessed the evidence on record - namely the oral testimony of the appellant as PW1 and that of his power of attorney/brother, as PW2; and has arrived at a correct conclusion that they appear to be colluding with each other, rather than there being any confutative arrangement between his client and PW2, as alleged. He thus prayed that this appeal be dismissed.

11. We have examined the evidence on record, which consists of the oral testimony of PW1 and PW2.

12. As rightly pointed out by Sri.Muralikrishnan, PW1 is the appellant in these cases; while PW2 is his power of attorney/brother.

13. The case of PW1, as evident from his testimony, is

that he was abroad and therefore, entrusted his brother, PW2, to act on his behalf as a power of attorney holder. He concedes unequivocally that the power of attorney was in force and was valid at the time when the compromise between the parties was entered into and the decree issued by the learned Family Court. Nevertheless, he impugns his power of attorney holder for having acted against his interests, in having entered into the compromise without his instructions. As noticed above, his case is that he was incapacitated due to cardiac disease at the time of entering into the compromise by his Power of Attorney and hence that it is evident that he could not have instructed the latter to do so. He tries to prove his disease relying on Exts.B4 to B6.

14. However, when PW2, namely the power of attorney holder/brother of the appellant, was examined, he unreservedly submitted that he has no animosity towards his brother; and that, in fact, they came to the Court together to offer deposition. He denied all suggestions in cross examination that he signed Ext.B3 compromise to help the respondent; and then went on to admit that, in the recent past (which is to say just before his

testimony was offered), he had attended the housewarming ceremony conducted by PW1 and had even given him gifts.

15. Pertinently, PW2 then gave a version contrary to that of PW1, alleging that he had signed Ext.B3 not in full volition, but under the pressure of the brother of the respondent; and that he did so because he was threatened that if he did not do so, he would be implicated in litigation.

16. It is perspicuous from the evidence on record that, though PW1 and PW2 are speaking in different voices, there is a clear underlying attempt by the latter to speak in favour of the former. This is because, the specific case of the appellant, evident from his testimony as PW1, is that his brother, namely PW2, signed Ext.B2 compromise petition without his instructions and contrary to his interests, in order to help the respondent. However, he admitted that he and PW2 are in good terms, without any enmity. His deposition, however, is silent as to why PW2 should have harmed him, in spite of their good relationship and never offered any motive for him to have done so. However, PW2 – while affirming friendly relationship with PW1, stated that he, in fact, signed Ext.B3 on account of the pressure

brought upon him by the respondent's brother; but never to the effect that he had acted without the instructions of PW1.

17. Pertinently, even when PW1 maintains that PW2 had acted without his knowledge or consent in signing Ext.B3, at a time when he was suffering a cardiac ailment, he alleges that the latter did so deliberately to help the respondent. When his evidence proves that he and PW2 had no enimity, one surely cannot accept his explanation, it being apodictically impelled only to circumvent and avoid the decree.

18. That being so concluded, we notice from the impugned order that the learned Family Court has dealt with the requirement of ensuring sanctity to agreements between parties – especially when it leads to decrees - as long as they remain without any vitiating factors, in its correct perspective. The Court has relied upon **Teena M.Ansari v. Rinoj Eappen** [2019 (4) KHC 593] and **Mohan P.K. and others v. Sudakshina Ramakrishnan and others** [2017 (3) KLT 254] in support; and we find that the ratio therein has been correctly applied. This is because, as said in the first paragraph, if we are to allow parties – who enter into agreements, based on which judgments and

decrees are issued under the ambit of Order XXIII Rule 3 of the CPC - to resile from it in a casual manner, the majesty of the judicial system would stand eroded; and the integrity of the processes severely compromised. This has been correctly noticed by the learned Family Court; and we cannot, therefore, find any error in the impugned order.

In the afore circumstances, these appeals are dismissed.

Sd/- DEVAN RAMACHANDRAN

JUDGE

Sd/-M.B. SNEHALATHA

JUDGE

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