

Mat.Appeal No.535 of 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

MONDAY, THE 25TH DAY OF NOVEMBER 2024 / 4TH AGRAHAYANA, 1946

MAT.APPEAL NO. 535 OF 2023

**AGAINST THE JUDGMENT DATED 23.02.2021 IN OP(DIV) NO.549 OF
2020 OF FAMILY COURT, ALAPPUZHA**

APPELLANT/PETITIONER:

**SONIA OUSEPH, AGED 28 YEARS, D/O OUSEPH VARGHESE,
KOTHERY KAYALCHIRA, PONGA P.O., ALAPPUZHA DISTRICT
KERALA, PIN - 688512, REPRESENTED BY HER POWER OF
ATTORNEY HOLDER AND MOTHER THRESYAMMA OUSEPH,
W/O OUSEPH VARGHESE, AGED 53 YEARS, KOTHERIL KAYAL
CHIRA, PONGA P.O., ALAPPUZHA DISTRICT, KERALA, PIN
- 688512**

**BY ADVS.
ARUN SAMUEL
JITHIN BABU A
SMT.ANOOD JALAL K.J**

RESPONDENTS/RESPONDENTS:

**1 JOHNSON GEORGE, AGED 32 YEARS
S/O.GEORGE C.C., CHAKKALACKAL, EDATHUA P. O.,
ALAPPUZHA DISTRICT, KERALA, PIN - 689573**

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**2 GRACY GEORGE, AGE NOT KNOWN, W/O.GEORGE C.C.,
CHAKKALACKAL, EDATHUA P. O., ALAPPUZHA DISTRICT,
KERALA, PIN - 689573**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
25.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**JUDGMENT****Devan Ramachandran, J.**

Even though this Appeal challenges the judgment and decree of the learned Family Court, Alappuzha, in O.P (Div.) No.549 of 2020, what is specifically impelled before us are not the merits of the said case; but the action of the learned Court in having closed the Original Petition on the basis of a “Not pressed Memo”; stated to have been filed by the learned Counsel for the petitioner/appellant herein.

2. Smt.Anood Jalal K.J. - learned Counsel for the appellant, argued that the learned Trial Court was misdirected by her client's Counsel before it, giving an impression that she was not pressing the Appeal, by filing a “Not pressed Memo”; but that this was done without authority and in grave transgression of all established professional ethics. She argued that, when her client did not authorise her lawyer to withdraw the Original Petition, or not to press it - particularly after great effort had been taken to obtain completion of service of notice on the respondents through repeated processes - it was improper for the Original Petition to



have been so dismissed. She thus prayed that the impugned judgment and decree be set aside.

3. When this matter was called today, the respondents were not present in person, nor represented through Counsel; though we understand from further endorsements that some Counsel had earlier appeared, saying that the parties will agree for a settlement. We are, therefore, constrained to dispose of the Appeal in their absence; but are also sure that this will not cause him any prejudice, on account of the limited relief that we propose to grant.

4. As rightly argued by Smt.Anood Jalal, the learned Family Court, Alappuzha, has dismissed O.P (Div.) No.549 of 2020 filed by the petitioner - seeking dissolution of marriage, realisation of money and gold, as also household articles - on the basis of a "Not pressed Memo" filed by her Counsel. Factually, whether this Memo was authorised by her or otherwise, are issues in the realm of facts, into which we cannot enter at this stage.

5. However, when any "Not pressed Memo" is filed, it is for the learned Court to verify, at least through a preliminary



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scrutiny, whether it has been filed correctly and if it has the support of the party, on whose instructions it is stated to have been presented.

6. In the case at hand, we cannot find fault with the learned Court at all because, normally and as per the usual procedure that even this Court follows, we trust Counsel and we go by even their oral submissions that matters are not pressed; and hence, the reliance on a “Not pressed Memo” filed by such an Advocate can surely be not found to be at fault.

7. However, when dispute arises, the problem also arises; warranting introspection.

8. In the afore perspective and since the question whether the “Not pressed Memo”, filed on behalf of the appellant, was authorised by her or otherwise, has arisen, it becomes an issue for evaluation,.

9. Resultantly, we allow this Appeal and set aside the impugned judgment and decree; with a consequential direction to the learned Family Court, Alappuzha, to reconsider the matter from the stage at which the “Not pressed Memo” had been filed



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and to verify whether it was presented as per law and on the instructions of the appellant.

10. We are persuaded to the afore view, adverting to the pleadings on record, as also the submissions of Smt.Anood Jalal, that repeated summons had been issued to the respondents at the time when the Original Petition was on the files of the learned Family Court, Alappuzha; and that they were subsequently set *ex parte*, with the Mat.Appeal posted to 27.01.2021 for the evidence of the appellant/petitioner. She also adds that, on the said date, since the learned Family Court was not sitting, it was adjourned to 18.02.2021 and because her client was not ready on that day, it was listed on 23.02.2021, when her Counsel had acted in the afore manner, without her permission. We are not saying that these assertions are true, but are to be assessed by the learned Family Court, appropriately.

Needless to say, if the learned Family Court is to find that the “Not pressed Memo” was filed validly, then it will be free to act upon it and close the matter as per law; but, if on the other hand, it is to hold that the said Memo cannot be construed to

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have been filed with such sanction, then it will proceed to dispose of the Original Petition itself on its merits, after hearing both sides.

Sd/-

**DEVAN RAMACHANDRAN
JUDGE**

Sd/-

**M.B.SNEHALATHA
JUDGE**

sp/26/11/2024