

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**  
**PRESENT**  
**THE HONOURABLE MR. JUSTICE AMIT RAWAL**  
**&**  
**THE HONOURABLE MRS. JUSTICE C.S. SUDHA**  
**MONDAY, THE 6<sup>TH</sup> DAY OF NOVEMBER 2023 / 15TH KARTHIKA, 1945**  
**MAT.APPEAL NO. 240 OF 2023**

**AGAINST THE ORDER IN JUDGMENT OP 800/2017 OF FAMILY COURT, THRISSUR**

**APPELLANTS/PETITIONERS/RESPONDENTS 1&2:**

- 1        RAFEEK  
          AGED 34 YEARS  
          S/O. ERACHAN VEETTIL BAVAKUNJU, ERACHAN VEETTIL, THOYAKKAVU (P.O),  
          VENKINDANGU VILLAGE, CHAVAKKAD TALUK, THRISSUR, DISTRICT, PIN -  
          680513
  
  - 2        SEFIYA  
          AGED 75 YEARS  
          W/O. ERACHAN VEETTIL BAVAKUNJU, ERACHAN VEETTIL, THOYAKKAVU (P.O),  
          VENKINDANGU VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT., PIN -  
          680513
- BY ADVS.  
K.B.ARUNKUMAR  
POOJA K.S.

**RESPONDENTS/RESPONDENTS/PETITIONERS:**

- 1        SAFEERA  
          AGED 26 YEARS  
          D/O. PUTHUVEETTIL KADAVIL UMMER, PUTHUVEETTIL KADAVIL, AKALAD P.O,  
          AKALAD VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT., PIN - 680518
  
  - 2        MINOR RABEEH  
          AGED 3 YEARS  
          REPRESENTED BY MOTHER & GUARDIAN - 1ST RESPONDENT, SAFEERA, AGED  
          26 YEARS, D/O. PUTHUVEETTIL KADAVIL UMMER, PUTHUVEETTIL KADAVIL,  
          AKALAD P.O, AKALAD VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT,  
          PIN - 680518
- BY ADVS.  
K.PAUL KURIAKOSE  
ELDO KURIAKOSE (K/1074/1993)  
T.A.RAFEEK (CHERTHALA) (K/2699/1999)  
K.A.ANISH (K/741/2007)

THIS MATRIMONIAL APPEAL HAVING COME UP FOR HEARING ON 06.11.2023, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT****Amit Rawal, J.**

1. Present petition has been directed against the order dated 24.5.2022 in IA No.01/2021 and 02/2021 in OP No.800 of 2017.

2. Parties had performed the marriage as per Muslim rights on 22.4.2015. A child was born out of the wedlock. At the time of marriage respondent wife alleged to have been given 23.5 sovereigns of gold ornaments and Rs.2 lakhs as gift to the petitioner husband. However there was a matrimonial discord and parties started living separately. We have been informed that already a divorce has been granted and the wife has already remarried and is in custody of the child but had chosen to seek the recovery of the gold articles. Husband appeared in the aforementioned proceedings through a counsel; attended the counselling and thereafter did not appear and was proceeded ex parte, resulted into an ex parte decree judgment.

3. An application filed for seeking condonation of delay of 978 days has been dismissed by the trial court along with an application for setting aside ex parte decree.

4. Counsel appearing on behalf of the petitioner submitted that the petitioner is working as an Electrician. Though he had attended the counselling, the talks of compromise were going on and therefore thought that the respondent wife would not contest the matter. In that background delay occurred which was neither intentional and wilful and prays for setting aside the impugned order subject to any terms and

conditions.

5. We have heard the learned counsel for the parties and appraised the paper book and of the view that the ex parte decree in the aforementioned OP No.800 of 2017 after the petitioner had appeared in the main case and counselling, was passed on 22.12.2018. The reason that he could not contact the lawyer due to the spread of the COVID would not be also a ground, for it was only for a limited period whereas the application for setting aside was filed only in 2021 and the delay of 978 days had occurred. The court noticed the fact that the OP was filed in 2017; at that time there was no such COVID, which occurred only in March 2020. All the reasons noticed in the order do not justify warranting different opinion than the one arrived at. No ground for interference is made out. Appeal is dismissed.

**SD/-  
AMIT RAWAL  
JUDGE**

**sab**

**SD/-  
C.S. SUDHA  
JUDGE**