

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Mat.Appeal.No. 128 of 2006 ()

AGAINST THE ORDER/JUDGMENT IN OP 90/2004 of FAMILY COURT, ERNAKULAM
DATED 02-05-2006

APPELLANT(S)/PETITIONER:

K.PREETHY, AGED 38 YEARS,
D/O. APPUKUTTAN NAIR, KAKKANATTU MADOM, ELAMAKKARA.

BY ADVS.SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENT(S)/RESPONDENT:

PADMARAJ, S/O. ANANTHAPADMANABHAN,
EMILY ESTATE, NORTH KALPETTA, WYNAD.

R, BY ADV. SRI.C.S.ULLAS

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD
ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

acd

V.K. MOHANAN & P.D. RAJAN, JJ.

Mat.Appeal No. 128 of 2006

Dated this the 6th day of January, 2015

JUDGMENT

P.D.Rajan, J.

This appeal is preferred by the petitioner against the order in O.P.No.90/2004 of the Family Court, Ernakulam for divorce. O.P.No.91/2004 was filed for injunction restraining the respondent from entering the house of the petitioner.

2. The petitioner/appellant's case is that the respondent married her on 19-5-1991 at Ernakulam as per Hindu-Nair customary rites and two children were born to them in the wedlock. While they were residing together, there arose difference of opinion between them and thus their relationship became strained. The respondent/husband harassed the appellant. The respondent also did not have any

permanent job and most of the expenses were being met by the appellant's parents. The gold ornaments given to the appellant at the time of her marriage were also taken away by him. Subsequently, the relationship became more strained and therefore, the petitioner-wife preferred this appeal.

3. During the pendency of the above O.P., the husband suffered loss of access to the children as directed by the Family Court, on 8.4.2006 and 16.4.2006 and therefore, the respondent filed I.A.No.1444/2006 for custody of the children. There was also a specific direction to the wife to give access of the children to the respondent-husband on all Sundays commencing from 30.4.2006, till re-opening of schools from 10 a.m. to 4 p.m and thereafter the respondent was given liberty to take the children outside the court within a radius of 5 Kms.

The appellant-wife failed to comply with the above direction and accordingly, on 2.5.2006, the Family Court, Ernakulam passed an order dismissing the O.P. as follows:

"O.P. dismissed due to non-compliance of order in I.A.1444/06 dated 24.4.2006. Evidence of counter claim petitioner's witnesses 10.5.2006."

Aggrieved by that order, the petitioner approached this Court.

4. The learned counsel for the appellant submits that she had a miscarriage and she was hospitalized, therefore, she could not convey the directions issued by the Court to the appellant. The learned counsel also submits that there was no laches on the part of the appellant. But, no medical records have been produced before this Court to substantiate the above contention advanced by the learned counsel for the appellant. Even then, in the interest of justice, the dispute pending before

the Family Court is to be decided on merits. Accordingly, the order passed by the Family Court, Ernakulam in O.P.No.90/2004 is set aside and the matter is remitted to the Family Court, Ernakulam for fresh disposal as per law.

Mat. Appeal is allowed as above.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

