

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 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936`

Mat.Appeal.No. 792 of 2012 ()

AGAINST THE JUDGMENT IN OA 341/2012 of FAMILY COURT,
KOZHIKODE DATED 09-10-2012

APPELLANT(S)/PETITIONER:

FAISAL RAHIMAN, AGED 31 YEARS,
S/O.K.M.ABDUL RAHIMAN, KARIMALA KUZHIYIL HOUSE
ALANALLUR.P.O, ALANALLUR AMSOM DESOM, MANNARKKAD TALUK
PALAKKAD-678 601.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENT:

SHAMEENA K.K., AGED 28 YEARS
D/O.KANNOOTH KUNHAHAMMED, KANNOOTH HOUSE, PUTHUPPADY.P.O
EANGAPUZHA, KOZHIKODE-673 586.

BY ADV. SRI.C.P.MOHAMMED NIAS

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
03-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

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

Mat.Appeal.No.792 of 2012

Dated this the 3rd day of February, 2015.

J U D G M E N T

Mohanana, J.

The above appeal is directed against the order dated 9.10.2012 in O.A.No.341/12 of the Family court, Kozhikode, since the petition filed by the appellant, who is the father of a minor child, namely Aman Faisal, for granting permanent custody to the appellant/father, was allowed only in part and the respondent/mother was directed to provide access of the child to the father from 2 p.m. to 4 p.m. at the court premises on the 1st and 3rd Saturdays of every month and the appellant herein was directed to pay cost of Rs.500/- to the respondent herein/the mother, on each occasion of such access.

2. As per the averments in the said petition, the marriage between the appellant and the respondent, which is a second marriage of both the parties, was solemnised on

28.5.2009. After the marriage, they resided at Ramanattukara. According to the appellant, the respondent was not properly behaving to him and she used to ill treat the appellant. On 31.3.2012, on the birthday of the child, without the consent and information of the appellant, she went to her house with the child and the appellant was not permitted to meet his son even though he went to the house of the respondent. Thus according to the appellant, thereafter, the respondent and his son were residing in the parental home of the respondent. Thus, aggrieved by the approach of the respondent, the appellant preferred O.A.No.341/12 for custody of the child.

3. The respondent filed counter statement contending that on 31.3.2012, she went to her house with the permission of the appellant, since it was study leave for her. According to her, the appellant used to make quarrels demanding more dowry and she was subjected to cruelty and compelled to have unnatural sex. Since the

appellant is a man of bad character, she is not interested to send the child with him. It is also the case of the respondent that, on 18.4.2012, the appellant and his parents came to their house and demanded dowry of Rs.5 lakhs and subjected her to severe cruelty and threatened to kill the child. According to the respondent, the appellant approached the Family court to deter her from taking any legal steps likely to be taken by the respondent.

4. On the basis of the rival contentions and the evidence on record, the court below considered the question as to whether it is proper to entrust the custody of minor child Aman Faisal to the appellant. After having considered the evidence and age of the child, who born on 31.3.2010, the learned Judge was of the opinion that, it will not be proper to separate the child from the mother and to give custody to the father/appellant herein. However, according to the learned Judge, it is only just

and proper to direct the respondent to provide access of the child twice in a month to his father and to direct the appellant to award cost to comply with the direction issued by the court below. It is the above finding and direction that are challenged in this appeal.

5. We heard Sri.Salil Narayanan K.A., learned counsel for the appellant and Sri.C.P.Mohamed Nias, learned counsel for the respondent.

6. It is an admitted case that the appellant and the respondent are husband and wife and the child namely Aman Faisal was born to them on 31.3.2010. By 31.3.2015, the child will attain the age of 5 years. It is also admitted that the said child is now studying in LKG class in T.K.Trust Public School, Eangapuzha in Thamarassery in Kozhikode District. When the impugned order was passed, the child was aged only 2 years. The paternity of the child is not disputed and therefore we are of the view that, with slight modification with respect to

the custody of the child, this appeal can be disposed of, and thereby the interest of both the father and mother of the child can be saved and consequently, the welfare of the child can be ensured, particularly when the child at this age need the attention, care and love of his father and mother.

In the result, this appeal is disposed of with slight modification with respect to the custody of the child directed as per the impugned order and the appellant/father of the minor child namely, Aman Faisal is granted weekend custody of the child after School hours on every Fridays, until 3.30 p.m. of next Sundays and he is also granted custody of the child during first half of every vacations. Accordingly, the following directions are issued.

- 1) The appellant is free to collect the minor child Aman Faisal from the T.K.Trust Public School, Eangapuzha in Thamarassery in Kozhikode District, after the school hours on every Fridays and he shall return the child to the respondent at her house at 3.30 p.m. on every Sundays.

2. The appellant is also entitled to get the custody of the child during the first half of every vacations. He is free to collect the child on the closing day of the School for the vacation and he shall return the child to the mother on the beginning of the second half of the vacation of the child, at the house of the respondent.

3. Since the appellant is directed to take the child from the School and to hand over him to the respondent at her house, the order to pay cost is deleted.

4. It is made clear that the right given to the appellant to take the child, is only for the purpose of taking the child to his parental house at Manjeri and not to any other place.

5. If either of the parties want to vary the above directions or arrangements, under any change of circumstance, either of them are free to approach the Family court, Kozhikode, and the said court is free to pass appropriate orders on merit.

Sd/-

V.K.MOHANAN, Judge

Sd/-

P.D.RAJAN, Judge

ami/

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P.A.to Judge