

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR.JUSTICE K.RAMAKRISHNAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

Mat.Appeal.No. 222 of 2015 ()

APPELLANT(S):

SANITHA, AGED 27 YEARS,
D/O.KUNJUNNI, VARIYATHUVALAPPIL HOUSE,
MARATHUKUNNU DESOM, ENKAKKAT VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADVS.SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH

RESPONDENT(S):

SANTHOSH, AGED 35 YEARS,
S/O.RAGHAVAN, KUNNAMBATH HOUSE, MARNNAMANGALAM VILLAGE,
THRISSUR - 680 014.

BY ADV. SMT.ASHA CHERIAN

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
06-07-2015, ALONG WITH MA. 226/2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

SS

**C.K. ABDUL REHIM &
K. RAMAKRISHNAN, JJ.**

Mat. Appeal No.222 of 2015 &
Mat. Appeal No.226 of 2015

Dated this the 6th day of July, 2015

JUDGMENT

K. Ramakrishnan, J

Mat. Appeal No.222/2015 was filed by respondent in I.A.No.2555/2013 while Mat. Appeal No.226/2015 was filed by the petitioner in I.A.No.2317/2014, both in G.O.P. No.97/2011 of the Family Court, Thrissur, challenging the respective orders passed in those applications.

2. Appellant and respondent are wife and husband and a child was born to them in that wedlock by name 'Sayoojya'. There was an earlier proceedings as G.O.P.No.97/2011 in respect of custody of the child and as per the orders in that application, permanent custody of the child was given to the respondent/mother, who is the appellant herein with temporary custody of the child on the first and third Saturdays and Sundays to the father. It was ordered therein that, the custody of the child will have to be

given to the father at 10.00 a.m., and he will to have return the child at 4.00 p.m on Sunday in the Family Court. Since there was violation of the order, the respondent herein filed I.A.No.2555/2013 for taking action against the appellant and the appellant also filed I.A.No.2317/2014 for modification of the order. After enquiry, the Family Court dismissed the I.A.No.2317/2014 and allowed I.A.No.2555/2013, holding that, there was violation of the condition imposed by the court and found that the appellant herein is liable for punishment for three months, but instead of punishing straight away, kept the orders of punishment in abeyance for three months, giving an opportunity to the appellant to comply with the direction of giving custody of the child as per the earlier order in the earlier proceedings. Both these orders are being challenged by the appellant before this court by filing the above respective appeals.

3. When the appeals came up for hearing today,

both the counsel submitted that, there was subsequent change of circumstance and on the basis of the application filed by the appellant, a modified order has been passed by the family Court regarding the temporary custody of the child, which the respondent wants to challenge.

4. This was admitted by the counsel for the appellant in both the cases as well.

5. As regards the punishment order is concerned, on going through the order, we are satisfied that the court below was right in coming to the conclusion that there was willful violation of condition of not complying with the direction given by the court regarding custody of the child. But at the same time, court below had taken a lenient view by postponing the imposition of punishment for three months, giving an opportunity to the respondent/appellant herein to comply with the direction as per the directions of the court to hand over custody of the child. So under the

circumstances, it cannot be said that the order passed by the court below is illegal, which requires interference at the hands of this court.

6. In view of the change of circumstance, the appellant need only to comply with the direction in the modified form. So if she complies with the direction, there is no question of imposing the punishment arises. The counsel for the appellant had no case that, she had no intention to comply the modified order. So there is no necessity to interfere with the order passed by the court below in this regard.

7. In view of the fact that, a modified order has been passed by the court below on the basis of the application filed by the appellant herein subsequently, the relief in Mat. Appeal No.226/2015 loses significance and there is no necessity to pass any order modifying the earlier order passed and relief does not survive as claimed in the

appeal. However, this will not affect the right of the respondent to challenge the order passed by the court below regarding modification of the custody of the child by filing necessary application before that court or before the higher forum. In view of the above discussions, both the appeals are disposed of accordingly, as no further relief is required in these appeals, with the liberty mentioned above for the respondent to challenge the modified order before the appropriate forum in accordance with law.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge