

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

OP (FC).No. 6 of 2015 (R)

AGAINST THE ORDER IN I.A.No.4305/14 IN OP NO.390/2012 of FAMILY
COURT, ERNAKULAM DATED 20.12.2014

PETITIONER(S) :

GEORGE P.J., AGED 35 YEARS
S/O.P.V.JOSEPH, PATTUPARAMBIL HOUSE, CHALICKAVATTOM
ERNAKULAM DISTRICT.

BY ADVS.SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SRI.B.PRASANTH
SRI.T.S.SARATH
SMT.P.M.MAZNA MANSOOR

RESPONDENT(S) :

SOFIA,, AGED 31 YEARS
D/O.K.Z.SUNNY, KODIYATH VEEDU,
NARAKKAL P.O., VYPPINLING.
(CORRECTED AS PER ORDER DATED 12.1.2015 IN I.A.NO.425 OF 2015)

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
12-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 6 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE GUARDIAN AND WARD O.P.NO.390/12 DATED 21.02.2012 ON THE FILE OF FAMILY COURT, ERNAKULAM.

EXHIBIT P2. TRUE COPY OF THE ORDER IN I.A.NO.1742/12 IN GUARDIAN AND WARD O.P.NO.390/12 DATED 05.08.2012 ON THE FILE OF FAMILY COURT, ERNAKULAM.

EXHIBIT P3. TRUE COPY OF THE I.A.NO.4305/14 IN GUARDIAN AND WARD O.P.NO.390/12 TO MODIFY THE EARLIER ORDER IN I.A.NO.1742/2012.

EXHIBIT P4. TRUE COPY OF THE ORDER IN I.A.NO.4305/14 IN GUARDIAN AND WARD O.P.NO.390/12 DATED 20.12.2014 ON THE FILE OF FAMILY COURT, ERNAKULAM.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN & C.K.ABDUL REHIM, JJ.

O.P.(F.C.)No.6 of 2015

Dated this the 12th day of January, 2015.

J U D G M E N T

C.K.ABDUL REHIM, J.

This writ petition is filed under Article 227 of the Constitution of India challenging Ext.P4 order passed by the Family court, in an interlocutory application filed seeking interim custody of a minor child. The petitioner herein is the father. The original petition was filed before the Family court, Ernakulam under the Guardian and Wards Act, seeking permanent custody of his minor girl child. I.A.No.1742/12 was filed in that case seeking direction to the respondent (mother of the child) to produce the child. On 5.8.2014, the Family court passed Ext.P2 interim order permitting access of the child to the petitioner on the 3rd Saturday of every month, from 10 a.m. till 4 p.m. The respondent subsequently filed I.A.No.4305/14 seeking modification of Ext.P2 order to the extent of limiting the

access to minimum hours, that too strictly within the premises of Family court. In the affidavit filed in support of the said I.A. it is stated that, on 15.11.2014 the petitioner forcibly tried to take the child outside the premises of the court, which was objected to by the respondent herein. At that time the petitioner beat the respondent and created terror. It is alleged that the minor child was watching all the atrocities and she became frightened of the situation. Therefore it is contended that granting custody of the child with the petitioner will topple the morale and mental status of the minor child.

2. The Family court, after considering the interim application, had passed Ext.P4 order limiting the access to the child by the petitioner only for one hour within the court premises. It is aggrieved by Ext.P4, this writ petition is filed.

3. In Ext.P4 order it is specifically observed that the child expressed displeasure to go with the petitioner. Even though the Family court allowed the child to interact with

the petitioner, the child did not even come down from the arms of the mother. The Family court observed that the child is of 4 years age. Considering such circumstances, the Family court had modified the earlier order and limited the access for one hour alone, that too in the court premises.

4. We are of the considered opinion that it is not a fit case where the supervisory jurisdiction vested on this Court under Article 227 of the Constitution of India need to be invoked. It is after considering the factual circumstances prevailing and after considering interest of both the parties, that the court had issued Ext.P4 order making suitable interim arrangement, pendete lite. If the petitioner is aggrieved by the terms of such arrangement, it is left open to him to approach the same court seeking modification. In case any such approach is made, it is for the Family court to consider the request and to pass appropriate orders, taking note of the entire circumstances and the factual situations prevailing.

5. Therefore, while declining interference with the

order impugned, this Court is permitting the petitioner to approach the Family court seeking appropriate modification with respect to Ext.P4order. Needless to observe that, if any such application is filed, the Family court shall consider such application, after affording sufficient opportunity to the respondent and shall take appropriate decision thereon.

Sd/-

V.K.MOHANAN, Judge

Sd/-

C.K.ABDUL REHIM, Judge

ami/

//True copy//

P.A.to Judge