

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

OP (FC).No. 14 of 2015 (R)

AGAINST THE ORDER IN NO.812/2014 IN OP NO.376/2014 of FAMILY COURT,
KOZHIKODE DATED 22.12.2014

PETITIONER(S):

DR.NISHANTH NARAYANAN, AGED 40 YEARS,
SON OF NARAYAN SINGH, MADATHIL NISHANTH HOUSE,
P.O.ARIYALLUR - 673 312, MALAPPURAM DISTRICT.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.T.RAMPRASAD UNNI
SRI.S.M.PRASANATH
SMT.ASHA BABU
SMT.AMMU CHARLES

RESPONDENT(S):

SALIJA V., AGED 35 YEARS
D/O.SIVADASAN V, VARIYATH HOUSE, BEHIND POLICE STATION
KOZHIKODE - 673 015.

BY ADVS. SRI.B.RAMACHANDRAN
SMT.N.P.RUKSANA

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXT.P-1: TRUE COPY OF THE PETITION FILED BY THE PETITIONER IN THE FAMILY COURT DATED 7.5.2014 AS O.P NO.376 OF 2014.
- EXT.P-2: TRUE COPY OF AFFIDAVIT IN SUPPORT OF I.A. 812 OF 2014 IN O.P NO.376 OF 2014 FILED BY THE PETITIONER IN THE FAMILY COURT, KOZHIKODE.
- EXT.P-3: TRUE COPY OF ORDER DTD 13.11.2014 IN I.A.NO.812 OF 2014 IN O.P NO.376 OF 2014.
- EXT.P-4: TRUE COPY OF ORDER DTD 22.12.2014 IN I.A.NO.812 OF 2014 IN O.P NO.376 OF 2014.
- EXT.P-5: TRUE COPY OF AFFIDAVIT FILED IN SUPPORT OF THE APPLICATION IN CONTEMPT FILED BY THE PETITIONER

RESPONDENT(S) ' EXHIBITS

- ANNEXURE 1 TRUE COPY OF THE OFFER LETTER WITH ENTRY PERMIT ISSUED BY THE A1 MASARAT GENERAL MAINTENANCE COMPANY IN FAVOUR OF THE RESPONDENT.

/TRUE COPY/

P. A. TO JUDGE

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC) No. 14 OF 2015

DATED THIS THE 26th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

In this original petition filed under Article 227 of the Constitution of India, the challenge is against Ext.P4 order passed by the Family court, Kozhikode in IA No.812/2014 in OP No.376/2014. The case before the Family Court was instituted by the petitioner against the respondent herein seeking permanent custody of the minor child of the parties namely, Master. Akshath Nishanth. During pendency of the original petition the petitioner filed IA No.812/2014 seeking interim custody of the minor, during weekends. Initially the Family Court passed Ext.P3 order allowing temporary custody of the minor child to the petitioner during all 2nd Saturdays and Sundays. The respondent was directed to handover the child to the petitioner in the evening of the Fridays preceding the 2nd Saturdays and the petitioner was

directed to return the child during next Sunday evening. The petitioner was directed to take the child from the school in the evening of Friday and to return the child to the petitioner's residence in the evening of next Sunday. On passing such an order on 13-11-2014 the Family Court observed that the arrangement made therein will be valid till further orders. The interim application was thereafter taken for consideration on 22-12-2014. On that day the Family Court dismissed I.A. No.812/2014 observing that the child is not in favour of spending the vacation with the petitioner, when the court ascertained response of the child. It is observed that forcing the child to spend vacation with his father, against his wish, is not in favour of the welfare of the child. It is aggrieved by Ext.P4 order, this original petition is filed.

2. When the matter was considered by this court on 23-01-2015, interaction was made with the parties as well as with the child. This court realized that there exists no substantial difference of opinion among the couple and

that there is every possibility for an amicable settlement being arrived through mediation. When interacted with the child he said that he is prepared to go and to reside with the petitioner as well as with the respondent. This court observed that company of both the father and mother is absolutely necessary for the child and it is not proper to deny company of the child either to the father or to the mother. Hence it was ordered that custody of the child during every alternate weekends can be given to the father. Accordingly an arrangement for having temporary custody of the child with the father during alternate weekends was made through an order passed on 23-01-2015. Thereafter on two occasions this court had also passed interim orders directing to handover custody of the child to the petitioner, during vacations.

3. Today, when the case is taken up for consideration, learned counsel appearing for the respondent submitted that the original petition, OP No.376/2014 pending before the Family Court, Kozhikode

was dismissed for default, on 09-10-2015. It is contended that since the case before the Family Court is not pending, there is no circumstances warranting this court to interfere with Ext.P4 order, which impugned in this original petition. Per contra, learned counsel for the petitioner submitted that an application filed by the petitioner seeking for restoration of the original petition stands posted before the court below to 19-11-2015. This court is of the opinion that if the Family Court is allowing the application for restoration and is proceeding with the matter, it is appropriate for that court to make an interim arrangement with respect to temporary custody of the minor child to the petitioner during weekends as well as during vacations. It will be left open to the petitioner to approach the Family Court seeking relief in that respect, in case the original petition is restored. Needless to observe that it is appropriate for the Family court to make a permanent arrangement till the disposal of the case, with respect to the interim custody.

4. Leaving open liberty to the petitioner to approach the court below for the above said purpose in case of restoration of original petition, the above original petition is hereby closed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge