

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

OP (FC).No. 39 of 2015 (R)

AGAINST THE ORDER IN OP(GW)No.1581/2014 of FAMILY COURT,ERNAKULAM

PETITIONER:

ANILKUMAR K.B. AGED 42 YEARS,
SON OF BALAKRISHNAN K.A., KAITHAVALAPPIL HOUSE
MANJUMMAL P.O., PARAVUR TALUK.

BY ADVS.SRI.GEORGE CHERIAN
SRI.RAJESH CHERIAN

RESPONDENT:

DHANYA M.S., AGED 29 YEARS,
D/O.STALIN M.S., PF N.20, MUNDAKARAPILLIL,
UDYOGAMANDAL PO, ELOOR VILLAGE, PARAVUR TALUK
PIN - 683 501.

BY ADV. SMT.R.LEELA

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 39 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1-TRUE COPY OF REMAND REPORT FILED BY THE SI OF POLICE ELOOR
POLICE STATION.

EXT.P2- TRUE COPY OF PETITION IN OP 1581/14 FILED BY 2ND RESPONDENT.

EXT.P3- TRUE COPY OF OBJECTION FILED BY THE PETITIONER (RESPONDENT IN
OP) .

EXT.P4- TRUE COPY OF AFFIDAVIT AND PETITION IN IA.82/2015 IN
OP.1581/2014 DATED 9.1.15

EXT.P5- TRUE COPY OF ORDER IN IA.82/15 IN OP.1581/14 DATED 27.1.15 OF
FAMILY COURT, ERNAKULAM

RESPONDENT'S EXHIBITS:NIL

/TRUE COPY/

P.S. TO JUDGE

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**P.R. RAMACHANDRA MENON &
K. RAMAKRISHNAN, JJ.**

.....
O.P.(FC).No.39 of 2015

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Dated this the 19th day of June, 2015.

JUDGMENT

Ramakrishnan, J:

The respondent in I.A.No.82/2015 in O.P(G&W) No.1581/2014 has filed this petition aggrieved by Ext.P5 order passed by the Family Court, Ernakulam seeking interference by this Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner married the respondent on 3.5.2008 and a child was born to them in that wedlock. There was some matrimonial disputes between them and cases are pending between them. The respondent herein filed O.P.(G&W)No.1581/2014 for custody of the minor child and also filed I.A.No.82/2015 for protection order under section 26 of the Protection of Women from Domestic Violence Act. The application was posted on 27.1.2015 for objections. On that day, the petitioner and the counsel were absent as it was a harthal day. Learned Family Court Judge on that day passed Ext.P5 impugned order ordering interim protection

allowing her to stay in shared household with the company of minor child till this matter is heard and disposed of and the case was posted for objection and hearing to 20.2.2015. Aggrieved by the same, the present petition has been filed by the petitioner seeking the following reliefs:

1. Call for the records relating to IA.82/2015 in OP.1581/2014 on the file of the Family Court, Ernakulam and set aside Ext.P5 order passed on 27.1.2015.

2. Issue a writ of certiorari or any other writ, order or direction to the Family Court, Ernakulam to consider the objections that may be filed in the IA 82/15 in OP 1581/14 on it's file pass orders on merits.

4. Grant such other relief that may be prayed for which this Hon'ble Court deems fit and proper to grant in the facts and circumstances of the case.

3. Heard counsel for the petitioner and the respondent.

4. Counsel for the petitioner submitted that the impugned order was passed without hearing the petitioner and they could not appear as it was declared as a harthal day by the

Bharathiya Janatha Party and on account of that neither the counsel nor the petitioner could appear. Counsel for the petitioner only wants that the order to be vacated and the matter to be heard and disposed of on merit after considering the objection.

5. On the other hand, counsel for the respondent submitted that the petition has become infructuous. He can very well file objection and seek further orders from that court itself. According to the counsel for the respondent, in spite of opportunity given, the petitioner did not file objection and that was why the order happened to be passed.

6. It is an admitted fact that the petitioner and respondent are man and wife and a child was born to them in that wedlock and the respondent herein filed O.P.(G&W) No.1581/2014 for permanent custody of the child and that is pending. The respondent herein also filed I.A.No.82/2015 seeking protection under the provisions of the Protection of Woman from Domestic Violence Act, 2005. The application was posted for filing objection by the respondent therein, who is the petitioner herein on 27.1.2015. But on that day, it is

seen from the order that neither the petitioner herein nor his counsel were present. The petitioner in the lower court was present along with her counsel. So interim protection order was passed by the Family Court allowing her to stay in shared household with the company of the minor child till the matter is heard and decided and the case was posted for filing objection and hearing to 20.2.2015. Instead of appearing before court below and filing objection on 20.2.2015, the petitioner moved this Court by filing the above petition. Since the order has been passed under section 26 of the Protection of Woman from Domestic Violence Act, if any change is required, the petitioner can very well move that court for modification of the order under section 23(2) of the said Act itself and if such an application is filed, the Family Court is bound to pass orders on that application after hearing both sides. Considering the circumstances, we feel that instead of considering the matter on merit by this Court we direct the petitioner to appear before court below and file objection and also an application for modification of the order passed and if such an application is filed, then the court below is directed to consider and dispose

of that application in accordance with law as expeditiously as possible.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

Sd/-
K. RAMAKRISHNAN,
JUDGE.

cl

/true copy/

P.S to Judge

