

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

OP (FC).No. 47 of 2015 (R)

PETITIONER/PETITIONER :

SHAMEER C.P,
AGED 36 YEARS
S/O MOIDEEN KOYA, MARUVA MAHAL,
TAHAKKALATHUR POST
KOZHIKODE DISTRICT.

BY ADVS.SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENT/RESPONDENT :

JAMSHEENA, AGED 29 YEARS
D/O MOHAMMDALI, PUTHIYARAKKAL HOUSE, KALLAI POST
KOZHIKODE-673003.

R1 BY ADV. SRI.K.M.FIROZ
R1 BY ADV. SMT.M.SHAJNA
R1 BY ADV. SRI.S.KANNAN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 47 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: COPY OF THE ORDER IN I.A.NO.293 OF 2014 IN O.P.NO.276 OF 2014 OF THE FAMILY COURT, KOZHIKODE DATED 5.6.2014.

EXHIBIT P2: COPY OF THE AFFIDAVIT FILED IN SUPPORT OF THE PETITION I.A.NO.20 OF 2015 DATED 5.1.2015.

EXHIBIT P3: COPY OF THE ORDER IN I.A.NO.20 OF 2015 IN O.P.NO.276 OF 2014 DATED 23.1.2015 OF FAMILY COURT, KOZHIKODE.

RESPONDENT(S) ' EXHIBITS : NIL

//TRUE COPY//

PS TO JUDGE

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

.....
O.P(FC)No. 47 of 2015

.....
Dated 25th February, 2015

JUDGMENT

V.K.MOHANAN, J

The petitioner and the respondent were husband and wife whose marriage was solemnized 08.06.2007. Subsequently, the marital relationship was not cordial. However, a male child was born in their wed lock on 20.8.2009. The said child, Shahasin, is now aged 5 years. Due to the strained relationship between the petitioner and the respondent, the mother of the said child approached the court, by filing a petition for divorce which was allowed by order dated 14.3.2014 in O.A.No.203 of 2013 of Family Court, Kozhikode. Admittedly, it was an exparte order. However, thereafter the petitioner husband, father of the child married another lady and he is residing along with his second wife. It is also an undisputed fact that the petitioner father is not an ordinary resident of Kerala as he is employed in Kuwait.

2. That being the position, the father of the ward preferred O.P.No.276 of 2014 before Family Court, Kozhikode to declare him as the guardian of the said ward, Shahasin. In the above main O.P, learned Judge of Family Court passed various orders

in I.A.No.293 of 2014 and also in I.A.No.520 of 2014 by which the petitioner was given overnight as well as day time custody. Finally, as per Ext.P3 order, though the petitioner sought over night custody of the child, the same was closed observing that child is not willing to have over night stay with the petitioner - father. It is against the above Ext.P3 order, the present OP is preferred by the father of the said ward.

3. In terms of our order dated 19.2.2015, the child is produced before us today in the morning and as per our order passed in the morning, the custody of the child was granted to the petitioner till 3 pm today. Thereafter, the matter is taken and we heard Sri R.Sudeesh, learned counsel appearing for the petitioner and Sri Firoz.K.M, learned counsel appearing for the respondent.

4. As the main OP is pending before the Family Court,Kozhikode, we are not inclined to pass any detailed order regarding the interim custody of the child, especially in the light of the various orders passed by the court below. In the light of the facts and circumstances stated above, it is crystal clear that, as we have already indicated, the petitioner is not an ordinary resident of Kerala and he is working abroad

and he comes to Kerala occasionally as and when leave is granted to him by his employer. In his house at Kerala, as admitted by both parties, his second wife is residing. In the impugned order the learned Judge of Family Court has specifically found that the child was given to the petitioner till the after noon and thereafter the response of the child was ascertained and the child is not willing to have an over night stay with his father. The child as indicated earlier, is now at the age of 5 years and he is studying in UKG in Ayyanthan Memorial School, Jail Road, Puthiyara, Kozhikode which is situated very adjacent to the house of the respondent, whereas the petitioner's present residential house is situated 8 kms away from the said school. In the above situation, according to us, it is not proper to grant over night custody of the child with the father, who is now residing along with his second wife and who is not regularly residing in the said house. However, being the father, we are of the view that he is entitled to get visitorial right as well as custody during day time, as and when he is available in station.

In the result, the original petition is disposed of granting custody of the child to the petitioner during the day time of all

working Saturdays and accordingly the respondent is directed to produce the child at 10 am before the Registrar of Family Court, Kozhikode from where the petitioner can collect the child and thereafter by 4.30 pm, petitioner shall produce the child before the said Officer of the court below from where the respondent can collect the child back. This arrangement will commence on the next Saturday, ie on 28.02.2015 and after that in case the petitioner leave for abroad, he shall, one week in advance, intimate the said fact to the respondent and consequently she need not produce the child, while the petitioner is in abroad unless his arrival is intimated to her in advance in writing. This shall be done whenever the petitioner is available in station. The learned Judge of Family Court, Kozhikode is directed to take steps to expedite the proceedings in O.P.No.276 of 2014 and dispose of the same as expeditiously as possible.

V.K.MOHANAN, JUDGE

P.D.RAJAN, JUDGE

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