

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P. JOSEPH

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

OP (FC).No. 83 of 2015 (R)

AGAINST THE ORDER IN OP(G&W) NO.19/2015 OF THE FAMILY COURT,
ERNAKULAM DATED 20.2.2015

PETITIONER:

E.A. ISSAC, AGED 54 YEARS
RESIDING AT FEDERAL PARK, VENNALA, ERNAKULAM
WORKING AS ASSISTANT GENERAL MANAGER
INTEGRATED RISK MANAGEMENT DEPARTMENT
FEDERAL TOWERS, ERNAKULAM.

BY ADV. SRI. GEORGE JOHNSON

RESPONDENT:

BINDHU THOMAS, AGED 45 YEARS
D/O. THOMAS, MANATHOMALIL HOUSE,
ASAMANNOR P.O., ODAKKALY,
ERNAKULAM DISTRICT-682 301.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS

- EXT P1. TRUE COPY OF THE JUDGMENT AND DECREE OF THE HONOURABLE DISTRICT COURT, THANE IN MARRIAGE PETITION NO. 51/2005, DATED 29-12-2008.
- EXT P2. TRUE COPY OF THE ORDER OF THE DISTRICT COURT, THANE DATED 21-12-2006 GRANTING CUSTODY OF THE CHILDREN TO THE PETITIONER.
- EXT P3. TRUE COPY OF THE TERMS OF SETTLEMENT SIGNED BY THE PETITIONER AND THE RESPONDENT IN MJP NO. 51/2005 DT. 4-12-2008.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

AHZ/

**K.T.SANKARAN &
BABU MATHEW P. JOSEPH, JJ.**

O.P.(F.C.) No.83 of 2015 (R)

Dated this the 18th day of March, 2015

JUDGMENT

K.T.Sankaran, J.

This Original Petition (Family Court) is filed by Issac E.A. against Bindhu Thomas challenging the order passed by the Family Court, Ernakulam on 20.2.2015 in O.P.No.19 of 2015, directing Issac to produce his daughter Irene Issac before Court.

2. According to Issac, he has not received any notice from the Family Court, Ernakulam. In the O.P.(F.C.) itself it is stated that a petition for divorce and custody of children was filed by him before the District Court, Thane in Marriage Petition No.51 of 2005. The District Court, Thane passed Ext.P1 judgment dated 29.12.2008 dissolving the marriage between Issac and Bindhu Thomas under Section 10A of the Divorce Act. It would appear that certain applications were also filed before the District Court, Thane for the

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interim custody of the children and that Court had passed orders thereon. The petitioner has produced Ext.P3, a copy of the consent terms dated 4.12.2008, allegedly signed by both parties.

3. The learned counsel for the petitioner submitted that since the custody of the children was given to Issac by the Family Court, Thane, it was not proper for Bindhu Thomas to have filed an Original Petition before the Family Court, Ernakulam and the Family Court was not justified in passing the interim order.

4. Smt.Bindhu Thomas, who appeared in person, submitted that she has not seen her children for the last eight years and that she is entitled to approach the Family Court, Ernakulam for interim custody of the second child who is still a minor.

5. It is not necessary for us to adjudicate upon the disputes between the parties either as to the jurisdiction of the Family Court, Ernakulam or as to the validity or otherwise of the interim order passed by the Family Court. It is sufficient if the parties are directed

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to appear before the Family Court, Ernakulam and also to direct the Family Court, Ernakulam to pass orders in the application for interim custody within a time frame. The learned counsel for the petitioner submitted that the Family Court had set Issac exparte in the proceedings.

In the facts and circumstances, we dispose of the Original Petition (Family Court) with the following directions, as agreed by both parties:

- a) Issac will appear before the Family Court, Ernakulam in O.P. (G&W) No.19 of 2015 within one week from today.
- b) Bindhu Thomas shall serve a copy of O.P.(G&W) No.19 of 2015 and all the Interlocutory Applications to the learned counsel appearing for Issac within one week.
- c) Issac shall file counter statement or counter affidavit within a period of two weeks from today.
- d) The Family Court shall hear the parties and, if necessary, ascertain the wishes of Irene Issac and pass appropriate orders in the application for interim custody.

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- e) If the question of jurisdiction is raised by Issac, the Family Court shall also consider and dispose of the same on or before 30.4.2015
- f) The order passed by the Family Court shall be kept in abeyance till then..

(K.T.SANKARAN)
Judge

(BABU MATHEW P. JOSEPH)
Judge

ahz/