

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. 89 of 2015 (R)

PETITIONER:

SAJEEV KRISHNANKUTTY, AGED 42 YEARS
S/O. KRISHNANKUTTY, RESIDING AT TC 9/1174, USHAS
ELAMKULAM, SREEKARYAM, ULLOOR
THIRUVANANTHAPURAM-695 017
REPRESENTED BY HIS POWER OF ATTORNEY KRISHNANKUTTY
S/O. RAMAN PILLAI, RESIDING AT TC 9/1174, USHAS
ELAMKULAM, SREEKARYAM, ULLOOR
THIRUVANANTHAPURAM-695 017.

BY ADVS. SRI. MOHAN JACOB GEORGE
SMT. P.V. PARVATHY
SMT. REENA THOMAS

RESPONDENTS:

1. SANJNA SAJEEV (MINOR)
REPRESENTED BY REKHA P. NAIR, D/O. PARAMESWARAN NAIR
RESIDING AT PUNARTHAM, MATHRUBHUMI ROAD, VANCHIYOOR
THIRUVANANTHAPURAM.
2. REKHA P. NAIR
D/O. PARAMESWARAN NAIR, RESIDING AT PUNARTHAM
MATHRUBHUMI ROAD, VANCHIYOOR
THIRUVANANTHAPURAM-695 035.

BY ADV. SRI. A. CHANDRA BABU

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: COPY OF THE PETITION FILED AS OP NO.448/2010 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXT.P2: COPY OF THE WRITTEN STATEMENT SUBMITTED IN OP . NO.448/2010.
- EXT.P3: COPY OF OP NO.130/2009 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXT.P4: COPY OF THE AMENDMENT PETITION FILED IN OP NO.130/2009.
- EXT.P5: COPY OF THE SCAN REPORT DATED 1.1.2009 OF THE SECOND RESPONDENT.
- EXT.P6: COPY OF THE ORDER DATED .9.11.2012 IN I.A. NO.642/2012.
- EXT.P7: COPY OF IA NO.642/2012.
- EXT.P8: COPY OF THE ORDER DATED 12.8.2013 OF THE FAMILY COURT.
- EXT.P9: COPY OF THE JUDGMENT DATED 13.2.2014 IN OP(FC) NO.72/2014.
- EXT.P10: COPY OF THE PETITION FILED AS I.A. NO.1810/2014.
- EXT.P10(a): COPY OF THE COMMON ORDER DATED 8.8.2014 OF THE FAMILY COURT IN IA NOS.1778/2014, 1809/2014 & 1810/2014.
- EXT.P11: COPY OF IA NO.3121/2014 FILED BY THE SECOND RESPONDENT IN OP NO.448/2010.
- EXT.P12: COPY OF THE ORDER DATED 6.11.2014 IN IA 3121/2014.
- EXT.P13: COPY OF THE COMMON ORDER DATED.9.10.2014.
- EXT.P14: COPY OF THE ADVANCE PETITION FILED AS IA NO.3500/2014.
- EXT.P15: COPY OF THE APPLICATION FILED AS IA NO.3502/2014 FOR EXTENSION OF TIME.
- EXT.P16: COPY OF THE ORDER DATED 1.12.2014 IN IA NO.3502/2014.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

AHZ/

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

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Dated this the 18th day of March, 2015

JUDGMENT

K.T.Sankaran, J.

The respondents filed O.P.No.448 of 2010 on the file of the Family Court, Thiruvananthapuram, claiming maintenance from the petitioner. The petitioner disputed the paternity of the first respondent. He filed application for DNA test as I.A.No.642 of 2012. On 9.11.2012, the Family Court passed the following order in I.A.No.642 of 2012:

“Heard. Both parties agree that D.N.A.test can be conducted. Respondent wants the D.N.A.test to be conducted at 2 labs and ready to meet half the expenses. Send to central molecular lab Hyderabad and also to F.S.L., Thiruvananthapuram for test. Communicate both labs reporting the direction. For report. Take further steps. To 04.01.2013.”

Thereafter, the Family Court, Thiruvananthapuram passed Ext.P8 order dated 12.8.2013, which reads as follows:

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“Petition for interim custody of ward.

Both sides represented. Heard admittedly that order dated 9.11.2012 is suo moto reviewed and parties are directed to appear before the Rajeev Gandhi centre for Biotechnology, Thiruvananthapuram on receiving notice and meet the expenses/fees sharing equally and co-operate for collecting specimen Adduce the institution and report to 25.09.2013.”

2. The order dated 12.8.2013 was set aside by this Court in O.P.(F.C.) No.72 of 2014. The Family Court was also directed to take steps to conduct the DNA test as per Ext.P6 order dated 9.11.2012.

3. It is submitted by the learned counsel for the parties that thereafter both the parties gave blood samples for DNA test at Forensic Science Laboratory, Thiruvananthapuram. The parties have to give blood samples at Centre for DNA Finger Printing and Diagnostics, Hyderabad in compliance with the order passed by the Family Court. The Family Court fixed a date for appearance of the parties before the Centre at Hyderabad. However, the petitioner did

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not appear before the Centre at Hyderabad on the date fixed. The learned counsel for the respondents submitted that the respondents appeared before the Centre at Hyderabad on the date fixed and a report to that effect was sent by the Centre at Hyderabad to the court below.

4. The petitioner filed an application for extension of the time fixed for appearance before the Centre for DNA Finger Printing and Diagnostics, Hyderabad. He also filed an application to advance the hearing of the case. The court below dismissed the application for extension of time, as per Ext.P16 order dated 1.12.2014, which is under challenge in this O.P.(F.C.).

5. Heard the learned counsel appearing for the parties. It is not in dispute that to comply with Ext.P6 order it is necessary to have the DNA test to be conducted by the Centre for DNA Finger Printing and Diagnostics, Hyderabad. The petitioner failed to comply with the order, but the respondents appeared before the Centre on the date fixed. The petitioner is prepared to comply with the order passed by the Court and he is prepared to appear before the Centre

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for DNA Finger Printing and Diagnostics, Hyderabad. His only prayer is that a date may be fixed for his appearance before the Centre at Hyderabad. It is stated by the learned counsel for the petitioner that the petitioner was in Australia and he had been in India for quite long, but the case was not taken up during that period.

6. In the facts and circumstances, we are of the view that an opportunity should be provided to the petitioner to appear before the Centre for DNA Finger Printing and Diagnostics, Hyderabad on a date fixed by this Court. It is agreed that the parties will appear before the Centre for DNA Finger Printing and Diagnostics, Hyderabad on 11.5.2015. It is also agreed that no further extension will be sought for by any of the parties. Since the respondents had appeared before the Centre for DNA Finger Printing and Diagnostics, Hyderabad in compliance of the order and spent money for that purpose, the petitioner shall pay a sum of Rupees ten thousand as costs to the respondents within a period of one month.

7. Since we have provided an opportunity to the petitioner to comply with the order passed by the Family Court and fixed

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11.5.2015 as the date for appearance before the Centre for DNA Finger Printing and Diagnostics, Hyderabad, the Family Court shall not proceed with the trial of the case till 15.5.2015.

The Original Petition (Family Court) is disposed of as above.

(K.T.SANKARAN)
Judge

(BABU MATHEW P. JOSEPH)
Judge

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