

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

OP (FC).No. 96 of 2015 (R)

AGAINST THE ORDER IN OPGW 1062/2014 of FAMILY COURT,THRISSUR

PETITIONER/RESPONDENT:

SREEJA SANKAR, AGED 32 YEARS
D/O.SANKARANKUTTY K, MEENU BHAVAN, CHERAKKUZHI HOUSE
THIRUVENKIDAM, GURUVAYOOR.P.O., GURUVAYOOR VILLAGE
CHAVAKKAD TALUK, THRISSUR DISTRICT.

BY ADV. SRI.M.PREMCHAND

RESPONDENT/PETITIONER:

G.VISHNUPRASAD, AGED 40 YEARS
S/O.RAMAMOORTHY GURURAJAN, DOOR NO.5, 1ST STREET
6 B COLONY, COIMBATORE, TAMILNADU-641 003.

R1 BY ADV. SRI.THIYYANNOOR RAMAKRISHNAN
R1 BY ADV. SRI.ARUN KUMAR.P
R1 BY ADV. SMT.AMBIKA RADHAKRISHNAN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 96 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE COPY OF THE AGREEMENT BETWEEN THE PARTIES AND SUBMITTED
BEFORE THE FAMILY COURT, THRISSUR.

P2- TRUE COPY OF THE ORDER IN OP NO.1062/2014 OF THE FAMILY COURT
THRISSUR.

P3- TRUE COPY OF IA 874/2015 BEFORE THE FAMILY COURT THRISSUR.

P4- TRUE COPY OF THE COUNTER SUBMITTED BEFORE THE FAMILY COURT IN IA
874/2015.

P5- TRUE COPY OF IA 1036/2015 BEFORE THE FAMILY COURT THRISSUR.

P6- TRUE COPY OF IA 1035/2015 BEFORE THE FAMILY COURT THRISSUR.

RESPONDENT(S)' EXHIBITS

nil

ks.

True copy

P.S. (Hr.Gr.)To Judge

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

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O.P. (FC) No. 96 OF 2015

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Dated this the 24th day of March, 2015

JUDGMENT

K.T. Sankaran, J.

The petitioner is the wife of the respondent. G.O.P. No.1062 of 2014 was filed by the husband before the Family Court, Thrissur for custody of the child. That matter was settled between the parties evidenced by Ext.P1 agreement dated 25.11.2014. As per the agreement, the husband would be entitled to custody of the child for 10 days during every three months. There are other stipulations as to how the husband should intimate about his visit to India etc.

2. On 26.2.2015, the husband came to India. The learned counsel for the respondent submitted that the respondent/husband had intimated his wife about his arrival to India on a particular date by e-mail. Later, a lawyer notice was also sent to the petitioner/wife which was returned as unclaimed. In these circumstances, I.A. No. 874 of 2015 (Ext.P3) was filed by the husband for interim custody of the child. On 3.3.2015, the Family Court passed an order directing the wife to produce the child on 9.3.2015. On that day, the child was not produced before the court. On 10.3.2015, the Family Court directed the wife to produce the child on 11.3.2015 at 11 a.m. On that day also the wife did not produce the child and she was absent from court. Thereupon, the husband filed I.A.Nos.1064 and 1067 of 2015 before the Family Court. I.A. No. 1064 of 2015 was filed to direct the wife to furnish her address and the school address of the child. I.A.No.1067 of 2015 was filed to

execute the order passed by the Family Court and to produce the child before the court with the police help.

3. The case was posted to 13.3.2015. On that day, the court passed order in I.A.No.1067 of 2015 directing the wife to show cause as to why she should not be removed from the guardianship of the child. The case was posted to 16.3.2015. On 16.3.2015, the wife did not offer any explanation. While so, the wife filed I.A.Nos.1035 and 1036 of 2015, one of which was filed to compel the husband to be examined in Psychiatric/psychology department at Thrissur Medical College and to direct them to report about the mental condition of the husband and the other application was to modify Ext.P2 order dated 7.1.2015 passed by the Family Court decreeing the O.P. in terms of the settlement. The reliefs prayed for in this O.P. are the following:

- i. issue an appropriate order or direction, commanding the Family Court, Thrissur to grant a copy of the order passed in IA 874/2015 dated

10.3.2015 until such time this Hon'ble court may be pleased to further issue a direction permitting the petitioner to retain the custody of the child without being directed to produce the child in the court below in the interest of justice.

ii. To issue an appropriate order or direction permitting the petitioner to retain the custody of the child till the disposal of Exhibits P5 & P6 by the Family Court, Thrissur.

iii. To pass any such or further order as the petitioner may seek and this Hon'ble court deem fit to grant.

4. Learned counsel for the respondent/husband submitted that since the wife did not produce the child before the Family Court as directed and since VISA of the husband was about to expire, he left India on 23.3.2015 and, therefore, to that extent the prayer in I.A. No.874 of 2015 has become infructuous. He submitted that the Family Court has initiated other proceedings in connection with

I.A.No.874 of 2015 and the Family court may be directed to continue the proceedings.

5. From the facts narrated above, it would prima facie appear that the wife defied the orders passed by the Family Court. The contention of the learned counsel for the wife is that there was an agreement between the parties to file a joint application under Section 13B of the Hindu Marriage Act and the husband did not comply with the terms of the agreement. Ext.P1 agreement does not indicate anything about such an agreement. It is for the petitioner to establish her rights before the appropriate forum in the appropriate proceedings. We will not be justified in considering that issue in this O.P.(FC).

6. So far as the prayer for issuing a copy of the order dated 10.3.2015 in I.A. No. 874 of 2015 is concerned, there will be a direction to the Family Court to issue a certified copy of the order to the petitioner-wife provided an

application has been filed for the same. Prayer No.2 in the O.P.(FC) cannot be granted. It is for the Family Court to decide Exts.P5 and P6 applications and this Court would not be justified in issuing orders before the Family Court decides the question.

With the above directions, the O.P.(FC) is disposed of.

Sd/-

**K.T. SANKARAN
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

ks.

True copy

P.S.(Hr.Gr.)To Judge

