

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

OP (FC).No. 115 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OPGW 19/2015 of FAMILY COURT,ERNAKULAM
DATED 20.2.2015

PETITIONER:

MR. ISSAC E.A, 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:

MRS. BINDHU THOMAS, AGED 45 YEARS,
D/O. THOMAS, MANOTHUMALIL HOUSE,
ASAMANNOOR P.O,
ODAKKALY, ERNAKULAM DISTRICT-683 001.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: INTERIM ORDER OF STAY RESTRIANING THE RESPONDENT HEREIN FROM TAKING AWAY THE CHILDREN TO ANY PLACE WITHOUT THE PERMISSION OF the DISTRICT COURT, THANE DATED 18.8.2005

EXT.P2: ORDER OF THE DISTRICT COURT, THANE DATED 27.4.2006 BY WHICH RESPONDENT HEREIN WAS GIVEN THE INTERIM CUSTODY OF THE CHILDREN RESERVING VISITATION RIGHTS TO THE PETITIONER HEREIN ON SUNDAYS AND HOLIDAYS.

EXT.P3 ORDER OF THE DISTRICT COURT, THANE DATED 18.7.2006 BY WHICH PETITIONER HEREIN WAS GIVEN THE LIBERTY TO TAKE THE CHILDREN, SON AND THE DAUGHTER FROM THE SCHOOL OR THE HOUSE OF THE PETITIONER HEREIN, AS THE CASE MAY BE ON EVERY SATURDAY IN THE EVENING AND RETURN THE NEXT DAY.

EXT.P4 ORDER OF DISTRICT COURT, THANE DATED 18.7.2006 BY WHICH THE CUSTODY OF THE ELDER SON OF THE PETITIONER, ICEBIN ISSAC DAPRIL WAS HANDED OVER TO THE PETITIONER.

EXT.P5 ORDER OF DISTRICT COURT, THANE DATED 17.10.2006 BY WHICH THE PETITIONER HEREIN WAS GIVEN POLICE HELPIN GETTING ACCESS TO THE DAUGHTER.

EXT.P6 ORDER OF DISTRICT COURT, THANE DATED 22.11..2006 BY WHICH THE RESPONDENT WS RESTRAINED FROM TAKING THE TRANSFER CERTIFICATE OF THE DAUGHTER IRENE ISSAC DAPRIL.

EXT.P7 ORDER OF DISTRICT COURT, THANE DATED 21.12.2006 BY WHICH THE CUSTODY OF THE DAUGHTER, IRENE ISSAC DAPRIL WAS GRANTED TO THE PETITIONER HEREIN.

EXT.P8 COPY OF THE AFFIDAVIT FILED BY THE PETITIONER BEFORE THE DISTRICT COURT, THANE DATED 22.12.2006 WHERE THE LETTER FROM THE SCHOOL WAS PRODUCED TO THE EFFECT THAT THE TRANSFER CERTIFICATE WAS NOT TAKEN.

EXT.P9 ORDER OF DISTRICT COURT, THANE DATED 20.1.2007 BY WHICH PRODUCTION WARRANT WAS ISSUED TO PRODUCE THE DAUGHTER, IRENE ISSAC DAPRIL BEFORE THE DISTRICT COURT, THANE.

EXT.P10 CONSENT TERMS AGREED BY THE PARTIES FILED BEFORE THE DISTRICT COURT, THANE DATED 4.12.2008.

EXT.P11 ORDER OF DISTRICT COURT, THANE BY WHICH THE MARRIAGE BETWEEN THE PETITIOENR AND THE RESPONDENT WAS DISSOLVED AND PERMANENT CUSTODY OF CHILDREN WERE GRANTED TO THE PETITIOENR BY JOINT PETITION FILED BY THE PARTIES DATED 29.12.2008.

EXT.P12 COPY OF THE JUDGMENT OF THIS COURT IN OP(FC)
NO.83/2015DATED 18.3.2015.

EXT.P13 COPY OF THE PRELIMINARY OBJECTION FILED BY THE PETITIONER
BEFORE THE FAMILY COURT, ERNAKULAM DATED 23.3.2015.

/TRUE COPY/

P.S TO JUDGE

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C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
O.P.(F.C)No.115 of 2015
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Dated this the 21st day of May, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner, who is the respondent in OP(G&W)No.19/2015 before the Family Court, Ernakulam, under Article 227 of the Constitution of India seeking the following reliefs:

a. Call for records in OP(G&W)No.19/2015 pending before the Family Court, Ernakulam along with all connected interlocutory applications.

b. issue an appropriate order or writ or direction setting aside the order of the Hon'ble Family Court, Ernakulam dated 24.3.2015 directing the minor daughter Irene Issac Dapril to be produced before the Hon'ble Judge of the Family Court on 28.3.2015.

c. Issue a direction to the Hon'ble Family Court, Ernakulam to pass orders on Ext.P13 petition filed by the petitioner on the question of jurisdiction, before going into the merits of the matter.

d. Grant such other reliefs as this Hon'ble Court may deem fit to grant in the interests of justice.

2. Heard learned counsel for the petitioner Sri. George Johnson and counsel for the respondent Sri. Ramkumar Nambiar

3. The main grievance in the petition is that though the petitioner had raised a preliminary issue regarding jurisdiction to entertain the original petition, that has not been considered by the court below. It is seen from Ext.P12 order that this Court has already passed an order directing the family court to consider the question of jurisdiction, if any raised and dispose of the same on or before 30.4.2015 and according to the petitioner, it is on that basis Ext.P13 objection has been filed. But it will be seen from Order XIV Rule 2(2) that “where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on

that issue”.

Mere filing an objection alone is not sufficient. If the petitioner files an application under Order XIV Rule 2(2) to hear the question of jurisdiction as a preliminary point, then the family court is directed to consider and dispose of that application after affording an opportunity of hearing the respondent, as expeditiously as possible, at any rate, within two months from the date of filing of the application.

With the above directions and observations, this petition is disposed of.

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

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

