

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

OP (FC).No. 138 of 2015 (R)

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(ARISING FROM OP 2295/2013 of FAMILY COURT, ERNAKULAM)**

PETITIONER:

**AJITH ALEXANDER,
AGED 38 YEARS, S/O.LATE M.A.BABU,
SARANGAM, TENRA 116
THEVALLY, KOLLAM DISTRICT-682304.**

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT:

**JOSEPHINE NEETHU KADUDOSE @ NEETHU AJITH,
AGED 33 YEARS
(A PERSON OF UNSOUND MIND,
REPRESENTED BY HER FATHER AND NEXT FRIEND
SILVESTER KADUDOSE)
D/O.SILVESTER KADUDOSE, KUDUVASSERIL HOUSE
RADHA OIL MILLS ROAD, PACHALAM P.O., KOCHI-682012.**

**BY ADVS. SRI.K.S.MOHAMED HASHIM
SMT.CAROLIN SINDHU VAZ
SMT.P.A.JAIMOLE
A.NISSY**

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: COPY OF O.P.NO.2295/2013.**
- EXHIBIT-P2: COPY OF I.A. NO.4367/2013 FILED IN O.P.NO.2295/13 FOR INJUNCTION.**
- EXHIBIT-P3: COPY OF O.P.NO.156/2015.**
- EXHIBIT-P4: COPY OF I.A.NO.234/2014 FOR TAKING ACTION AGAINST THE RESPONDENT FOR VIOLATING THE ORDER PASSED BY THE FAMILY COURT IN I.A.NO.4513/2013.**
- EXHIBIT-P5: COPY OF I.A.NO.866/2015 IN O.P.NO.2295/2013.**
- EXHIBIT-P6: COPY OF THE COUNTER AFFIDAVIT IN I.A.NO.866/2015.**
- EXHIBIT-P7: COPY OF THE TREATMENT SUMMARY DATED 30.10.2009 ISSUED FROM SUSRUSHA NURSING HOME, KOCHI.**
- EXHIBIT-P8: COPY OF THE DOCTOR'S ORDERS FROM SUSRUSHA NURSING HOME, KOCHI.**
- EXHIBIT-P9: COPY OF THE LABORATORY TEST FROM MEDI VISION REGARDING THE RESPONDENTS DATED 30.10.2009.**
- EXHIBIT-P10: COPY OF REFERRAL LETTER ISSUED FROM CENTRAL INSTITUTE OF BEHAVIOURAL SCIENCES.**
- EXHIBIT-P11: COPY OF ORDER DATED 31-03-2015 IN IA No.866/2015 IN OP No.2295/2013 PASSED BY FAMILY COURT, ERNAKULAM.**
- EXHIBIT-P12: COPY OF ORDER DATED 20-12-2014 IN IA No.4505/2014 IN OP No.2295/2013 PASSED BY FAMILY COURT, ERNAKULAM.**
- EXHIBIT-P13: COPY OF ORDER DATED 23-12-2013 IN IA No.4513/2013.**
- EXHIBIT-P14: COPY OF ORDER DATED 08-04-2014 IN IA No.1294/2014.**
- EXHIBIT-P15: COPY OF ORDER DATED 18-09-2014 IN IA No.2314/2014.**
- EXHIBIT-P16: COPY OF ORDER DATED 20-12-2014 IN IA No.4505/2014.**

RESPONDENTS' EXHIBITS

- EXT- R1 (a) - TRUE COPY OF THE MEDICAL RECORD OF THE PETITIONER.
- EXT- R1 (b) - TRUE COPY OF THE TEST REPORTS FROM ANAND DIAGNOSTIC LABORATORY RELATES TO THE PETITIONER.
- EXT- R1 (c) - TRUE COPY OF THE ORDER IN I.A. 1294/2014 DATED 08-04-2014.
- EXT- R1 (d) - TRUE COPY OF THE ORDER IN I.A. 4505/2014.
- EXT- R1 (e) - TRUE COPY OF THE CONSULTATION CHART OF THE MINOR CHILD DATED 15-08-2014.

True copy

P.A. To Judge

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**C.K. ABDUL REHIM, J.
&
K. RAMAKRISHNAN, J.**

O.P (FC) No. 138 OF 2015

DATED THIS THE 17th DAY OF JUNE, 2015

J U D G M E N T

K. Ramakrishnan, J:

Respondent in OP 2295/2013 on the file of Family Court, Ernakulam is the petitioner herein.

2. The respondent filed the above Original Petition to declare her as Guardian of the child. Petitioner filed I.A 866/2015 for grant of interim custody of the minor child during mid summer vacation during 2015. The Family Court by order dated 31-03-2015 declined to grant interim custody of the child to the petitioner during the mid summer vacation, but permitted the petitioner and his mother to see the child on every Saturday between 10 a.m. and 1 p.m. within the court premises during summer vacation. This order is being challenged by the petitioner by filing this petition invoking the supervisory jurisdiction under Article 227 of the Constitution of India. The petitioner

also having a grievance that earlier interim orders passed by the Family Court regarding the interim custody of the child have been violated by the petitioner and so he filed I.A No.234/2014 for enforcing that order and also take action against the respondent herein. But no orders have been passed by the court below in that petition. So the petitioner had filed this petition seeking the following reliefs:

“(i) Issue appropriate direction to the Family Court, Ernakulam to issue copy of the order dated 31-03-2015 passed in I.A. No.866/2015 in OP No.2295/2013 to the petitioner.

(ii) Call for the records in OP No.2295/2013 and set aside the order dated 31-03-2015 passed by the Family Court, Ernakulam in I.A. No.866/2015 in OP No.2295/2013 to the extent it declines to grant the custody of the child to the petitioner during mid summer vacation 2015 and allow I.A. No.866/2015 in OP No.2295/2013 on the file of Family Court, Ernakulam.

(iii) Pass an order granting interim custody of the child-Alvin Ajith Marian for 45 days and nights during mid summer vacation 2015 to the petitioner.

(iv) Pass an order directing the Family Court, Ernakulam to pass orders on I.A. No.234/2014 in OP No.2295/2013 within a time limit to be fixed by this Hon'ble Court.

(v) Grant such other reliefs which this Hon'ble Court deems just and necessary and that may be prayed for by the petitioner while hearing the OP (FC).

3. During pendency of the proceedings before this court, this court made an interim order regarding interim custody of the child to be given to the petitioner between 10 a.m. to 5 p.m. on all Sundays. The counsel for the petitioner further submitted that the order is also not complied. On 07-06-2015 the child was not produced.

4. Considering the fact that the respondent appeared, we felt that the writ petition can be admitted and disposed of after hearing both sides.

5. The present petition has been filed by the petitioner challenging the order passed by the court below in I.A. No.866/2015 along with other reliefs. The period for which the interim custody has been sought for has been over. Further, according to the petitioner court below has not considered application, I.A. 234/2014 so far. But he had not come before this court at the earliest point of time for that purpose, then the main challenge in the petition has become infructuous due to expiry of the period for which the interim custody was sought for. There is nothing

survives in this petition for the time being. However, considering the fact that this court has considered the circumstances and made an interim arrangement regarding custody of the child, this court feels that the same arrangement can be continued for the time being till it was modified by Family Court on making applications by the parties before that court for that purpose till the disposal of the main case before the Family Court. If an application is filed by the petitioner or the respondent before the Family Court seeking modification regarding custody of the child showing the reasons for the same, then the Family court is directed to consider and dispose of those applications as expeditiously as possible considering the urgency of the need mentioned in the petition and dispose of the same in accordance with law. The court below is also directed to consider and pass appropriate orders in I.A 234/2014 pending before that court, if no orders have been passed in that application, as expeditiously as possible.

6. With the above directions and observations this petition is disposed of. Communicate this judgment to the court below at the earliest.

Sd/-
C.K. ABDUL REHIM, JUDGE.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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True copy

P.A. to Judge