

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

OP (FC).No. 156 of 2015 (R)

AGAINST THE ORDER IN IA.NO.452/2014 IN GOP 202/2014 of FAMILY COURT,
IRINJALAKUDA, DATED 11.3.2014

PETITIONER:

SMITHA, AGED 34 YEARS, DOCTOR,
D/O.DINESH, THARAYIL HOUSE, NO.9,
4TH CROSS, LAKSHMI ROAD, SHANTHI NAGAR,
BANGALORE 27, PRESENTLY RESIDING AT THARAYIL HOUSE
KOORKENCHERY DESOM, KOORKENCHERY VILLAGE,
THRISSUR TALUK

BY ADVS.SRI.B.PREMNATH (E)
SRI.N.AJITH

RESPONDENTS/RESPONDENTS:

1. SUBEESH, AGED 36 YEARS,BUSINESS,
PERINJERY PLLATH HOUSE,
VARANDARAPPILLY VILLAGE AND DESOM,
MUKUNDAPURAM TALUK - 691 585.

2. GAYATHRI, AGED 3 ½ YEARS,
D/O.PETITIONER AND RESPONDENT
PRESENTLY RESIDING WITH THE RESPONDENT

3. MINOR GIRL, AGED 2 ¼ YEARS,
D/O.PETITIONER AND RESPONDENT,
PRESENTLY RESIDING WITH THE PETITIONER.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)
R1 BY ADV. SRI.N.L.BITTO

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:-TRUE COPY OF THE PETITION IN GOP 202 OF 2014 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA DTD 11/3/2015.

EXT.P2:-TRUE COPY OF THE IA 452 OF 2014 IN GOP 202 OF 2014 ON THE FILE OF THE FAMILY COURT, IRINJALAKKUDA DTD 11/3/2015.

EXT.P3:-TRUE COPY OF THE ORDER DTD 29/4/2014 IN IA NO 452 OF 2014, IN GOP 202 OF 2014.

EXT.P4:-TRUE COPY OF THE ORDER DTD 12/11/2014 IN IA 2094 OF 2014 IN GOP NO 202 OF 2014.

EXT.P5:-TRUE COPY OF THE PETITION IA NO 412 OF 2015 IN GOP 202 OF 2014 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA DTD 24/2/2015.

EXT.P6:-TRUE COPY OF THE ORDER DTD 11/3/2015 IN IA 412 OF 2015 IN GOP 202 OF 2014 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA.

EXT.P7:-TRUE COPY OF THE APPLICATION DTD NIL, IA NO NIL IN GOP 202 OF 2014.

EXT.P8:-TRUE COPY OF THE PETITION DTD 16/3/2014 IA 549 OF 2015 IN GOP 2020 OF 2014 ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA.

EXT.P9:-TRUE COPY OF THE APPLICATION DTD NIL IA NO NIL IN GOP 202 OF 2014, ON THE FILE OF THE FAMILY COURT, IRINJALAKUDA.

EXT.P10:-TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER ON 27/3/2015

RESPONDENTS' EXHIBITS:

EXT.R1(A) COPY OF THE REPORT FILED BY THE POLICE OFFICER DATED 27.3.2015.

EXT.R1(B) COPY OF WOUND CERTIFICATE ISSUED BY THE MEDICAL OFFICER, PUDUKAD TALUK HOSPITAL DATED 27.3.2015.

EXT.R1(C) A LETTER ISSUED BY THE PETITIONER DATED 20.6.2014.

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(F.C)No.156 of 2015
.....

Dated this the 2nd day of June, 2015.

JUDGMENT

Ramakrishnan, J:

This original petition is filed by the petitioner in I.A.No.452/2014 in GOP.No.202/2014 of Family Court, Irinjalakuda seeking certain directions and indulgence of this Court under Article 227 of the Constitution of India.

2. It is alleged in the petition that petitioner is the mother of a minor child Gayathri, aged 3 ½ years, who is now in the custody of the respondent father. The petitioner filed GOP.No.202/2014 for permanent custody of the child and also filed I.A.No.452/2014 for interim custody of the child and as per Ext.P6 order, the Family Court allowed the application granting interim custody of the elder daughter named Gayathri for four days from 10 a.m on 13.3.2015 till 4 p.m of 16.3.2015 and certain directions have been given as to how visitorial right has to be enjoyed. Since the respondent did not produce the child, certain petitions were filed before the court below and the grievance of the petitioner is that court below is not passing any

order and the interim order passed has not been complied with. So the petitioner has no other remedy except to approach this Court seeking the following reliefs:

1. direct the respondent to be present before this Hon'ble Court with the minor girl child Gayathry aged 3 ½ years;

2. pass an order of interim custody of the minor child Gayathri aged 3 ½ years, arrayed as 2nd respondent, to the petitioner, pending disposal of the above original petition (Family Court).

3. We have called for a report from the Family Court regarding the things transpired in the lower court after the custody was ordered.

4. Heard counsel for the petitioner and counsel for the respondent.

5. Since the petitioner wants, by filing this petition, to enforce the order passed by the court below for which the remedy of the petitioner is not to file a petition under Article 227 of the Constitution of India, but she will have to approach the Family Court for execution of the order and it is for that court to consider and pass appropriate orders in that petition,

this Court cannot grant the relief claimed in the petition invoking the supervisory jurisdiction under Article 227 of the Constitution of India. If the respondent did not produce the child or if the period that has been granted was already expired, then the petitioner is at liberty to move the Family Court for getting interim arrangement regarding custody of the child even during the pendency of the original petition. If any such application is filed, then it is for the Family Court to pass appropriate orders in that application. If the petitioner has got any grievance regarding non compliance of the interim order, that also has to be agitated by filing an appropriate application before the court below and the Family Court can consider and pass appropriate orders in that application in accordance with law.

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

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

Sd/-
K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

