

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

OP (FC).No. 164 of 2015 (R)

PETITIONER:

P.P. VIJAYAN, AGED 47 YEARS
S/O. LATE PERINGINI, PALLISSERY HOUSE,
NELLANKARA, P.O NETTISSEY, OLLUKKARA VILLAGE
THRISSUR TALUK AND DISTRICT.

BY ADV. SRI.V.R.KESAVA KAIMAL

RESPONDENT:

T.V.SOBHA, AGED 38 YEARS
D/O. LATE VELAYUDHAN, THADATHIL HOUSE,
KOOTTALA P.O
PANANCHERY VILLAGE,
THRISSUR TALUK AND DISTRICT - 680 652.

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
24-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OP (FC).No. 164 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXTR.P1: TRUE COPY OF THE JUDGMENT DATED 18.12.2014 IN O.P.(FC)
NO.601/2014.

EXT.P2: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A. NO. 722/2015
IN G.O.P. NO. 1598/2014 FILED BY THE RESPONDENT.

EXT.P3: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO EXT.P2.

EXT.P4: TRUE COPY OF THE PETITION IN IA NO.1486/2015 IN IA
NO.722/2015 IN G.O.P. NO.1598/2014.

EXT.P5: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE RAMAVARMA
DISTRICT AYURVEDA HOSPITAL IN RESPECT OF MINOR VASUDEV.

EXT.P6: TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE RAMAVARMA
DISTRICT AYURVEDA HOSPITAL IN RESPECT OF MINOR VISWANATH.

RESPONDENT(S) ' EXHIBITS

NIL

/TRUE COPY/

P.S TO JUDGE

K.VINOD CHANDRAN & P.V ASHA, JJ.

O.P(F.C) No.164 of 2015

Dated this the 24th day of April, 2015

JUDGMENT

Vinod Chandran, J.

The petitioner has filed the above Original Petition raising two grounds, which we extract below:

“A. The order dated 16.04.2015 is passed without considering Ext.P4, Ext.P5 and Ext.P6. The learned Family Court ought to have enquired into the averments in Ext.P4 petition. The minor children have undergone an operation in respect of the eye and they cannot be exposed to sun light.

B. The petitioner has applied for the carbon copy of the order. If in the meanwhile the order is implemented, the same will result in miscarriage of justice. Ext.P1 order would show that in an earlier occasion also the court below refused to grant reasonable time to the petitioner to challenge the order.”

2. The petitioner admittedly has been issued with the certified copy of the order on 20.04.2014. The learned counsel for the petitioner contended that he has to file an appeal and that the same will be filed on Monday, ie. 27.04.2015. However,

there is no explanation as to why an appeal was not filed immediately on receipt of the order, especially, since the second prayer of the petitioner is to keep in abeyance the order of the Family Court, Thrissur, for a reasonable time. This Court had already granted an order keeping the Family Court's order in abeyance. The petitioner's attempt is to desist from filing an appeal when the stay order of this Court is in force.

3. This Court had entertained the Original Petition and granted stay only to facilitate the receipt of the certified copy of the order. The petitioner cannot be allowed to take advantage of the stay order after the certified copy is received.

In such circumstances, we are not inclined to keep the Original Petition pending. The Original Petition would stand dismissed, leaving open the appellate remedy.

Sd/-

K.VINOD CHANDRAN
Judge

Sd/-

P.VASHA
Judge

rtr/

/true copy/