

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

OP (FC).No. 170 of 2015 (R)

**AGAINST THE ORDER DATED 10.4.15 IN I.A NO.99/15 IN O.P NO.285/14 ON THE FILE
OF FAMILY COURT, KATTAPPANA**

PETITIONER(S):

**SARITHA S. NAIR AGED 33 YEARS
D/O.SURENDRAN NAIR, BLOCK NO.577, CHOTTUPARA P.O
IDUKKI DISTRICT, 685 552
REPRESENTED BY HER POWER OF ATTORNEY HOLDER SARASWATHIAMMA
W/O.SURENDRAN NAIR, BLOCK NO.577, CHOTTUPARA P.O
IDUKKI DISTRICT, 685 552.**

**BY ADVS.SRI.SALIM V.S.
SRI.SHANAVAS.S
SRI.H.NUJUMUDEEN
SRI.P.V.JEEVESH
SMT. G. GIJIMOL**

RESPONDENT(S):

**SHIBHUKUMAR, AGED 40 YEARS
S/O.LATE GOPINATHAN, PARIYARATH HOUSE
CHELLARCOVIL P.O, ANAKKARA, IDUKKI DISTRICT.**

R1 BY ADV. SRI.BIJU .C. ABRAHAM

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 25-05-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (FC).No. 170 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE ORDER IN IA 99/15 DATED 10.4.15.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

C.K. ABDUL REHIM, J.

&

K. RAMAKRISHNAN, J.

O.P.(F.C.)No.170 OF 2015

DATED THIS THE 25th DAY OF MAY, 2015.

J U D G M E N T

K. Ramakrishnan, J.

The petitioner had filed this petition through the power of attorney challenging Ext.P1 order passed by the Family Court in I.A.No.99/2015 in O.P.No.285/2014 of Family Court, Kattappana.

2. O.P.No.285/2014 was filed by the respondent herein seeking permanent custody of his minor children Gopika and Gokul. He filed I.A.No.99/2015 seeking interim custody of the minor children on the ground that the petitioner herein was working abroad and the children are not being properly looked after. She is living with her paramour and keeping the children with her parents and that is not in the interest of the children.

3. The petitioner herein appeared through power of attorney and filed counter denying the allegations and stated that she is looking after the children properly through her parents and the elder child is a chronic HSP patient needs

constant care and attention by her.

4. After considering the materials available on record, the Family Court allowed the application in part and interim custody of the minor children is given to the petitioner - father till mother of the minor children returns to India and directed the power of attorney holder of the respondent to produce the children before the court on 20.04.2015 and hand over minor children to the father after making necessary entries in the book kept before the C.M.O of that court. This order is being challenged by the petitioner by filing this petition through the power of attorney holder.

5. When the application came up before this Court earlier, by order of this court dated 28.04.2015, custody of minor children was directed to be given to the respondent and the children were handed over to the respondent and now, respondent is in custody of the children.

6. Heard the Counsel for the petitioner and the respondent.

7. The Counsel for the petitioner submitted that, now she has resigned her job and she will be coming to India on 20.07.2015 and she will be available in India to look after the

children. For a short duration, there is no necessity to disrupt the custody of the children.

8. On the other hand, the Counsel for the respondent submitted that, court below had considered all the aspects and only thereafter, the interim custody was given.

9. It may be mentioned here that, while passing Ext.P1 order, court below had considered all the aspects and since the mother of the children was not available, naturally the custody of the children was given to the father who is the legal guardian as well. Further, it is made clear in the order itself that the interim custody is given to the father till the mother of the minor children returns to India. So, there is no necessity to interfere with the discretion exercised by the court below in the case of interim custody of the children especially, when the mother is not available in India to look after the children and the counter statement was filed not by the petitioner, but, through the power of attorney. The right of the petitioner to apply for getting back the interim custody of the children has not been closed down by the court below also.

10. If the petitioner comes from abroad and files an application stating the facts stated before this court, then,

Family Court can consider that and pass appropriate orders in that application. Further, considering the fact that the case is of the year 2014 and also considering the number of cases pending before the Family Court, Kattappana, this Court feels that, a direction can be given to the Family Court, Kattappana to expedite the disposal of O.P.No.285/2014 itself as expeditiously as possible after the petitioner comes to India from abroad and moves for early disposal of the case.

With the above direction and observation, the petition is disposed of.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

Bb

[True copy]

P.A to Judge