

**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 26TH DAY OF MAY 2015/5TH JYASHTA, 1937**

**OP (FC).No. 179 of 2015 (R)**  
-----

**I.A.NO.814/2015 IN O.P(G & W) NO.686/2014 OF FAMILY COURT,  
THIRUVANANTHAPURAM**  
-----

**ORIGINAL PETITIONER(S)/PETITIONER :**  
-----

**DEENUPH KRISHNA, AGED 32 YEARS,  
S/O.KRISHNAN KUTTY NAIR, PP 7/1164, PARUMKONAM,  
MOTTAMOODU, NARUVAMOODU P.O., KERALA - 695 520.**

**BY ADVS.SRI.A.M.NASEER  
SMT.K.K.RAZIA**

**RESPONDENT(S)/COUNTER PETITIONERS :**  
-----

**1. ANUJA I.P., AGED 28 YEARS,  
D/O.PURUSHOTHAMAN NAIR, REVATHY, KARODE,  
VILAPPILSHALA P.O., VILAPPIL VILLAGE,  
NEYYATINKARA TALUK, THIRUVANANTHAPURAM -695 573.**

**2. PURUSHOTHAMAN NAIR, AGED 64 YEARS,  
REVATHY, KARODE, VILAPPILSHALA P.O.,  
VILAPPIL VILLAGE, NEYYATINKARA TALUK,  
THIRUVANANTHAPURAM -695 573.**

**BY ADVS. SRI.RAM MOHAN.G.  
SRI.G.P.SHINOD  
SRI.MANU V.  
SRI.GOVIND PADMANAABHAN  
SRI.AJIT G.ANJARLEKAR**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD  
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

**OP (FC).No. 179 of 2015 (R)**  
-----

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
-----

**EXHIBIT-P1: TRUE COPY OF THE PETITION FILED BY THE PETITIONER HEREIN  
IN I.A.NO.814/2015 IN O.P(G&W)NO.686/2014 ON THE FILES OF  
THE FAMILY COURT, THIRUVANANTHAPURAM.**

**EXHIBIT-P2: TRUE COPY OF THE ORDER DATED 10/04/2015 IN I.A.NO.814/2015  
IN O.P(G&W)NO.686/2014 ON THE FILES OF THE FAMILY COURT,  
THIRUVANANTHAPURAM.**

**RESPONDENT(S)' EXHIBITS**  
-----

**EXHIBIT R2(A): A TRUE PHOTOCOPY OF O.P.NO.684 OF 2014 ON THE FILES OF  
THE FAMILY COURT, THIRUVANANTHAPURAM.**

**//TRUE COPY//**

**P.A.TO JUDGE.**

Msd.

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

-----  
**O.P (FC) No. 179 OF 2015**  
-----

DATED THIS THE 26<sup>th</sup> DAY OF MAY, 2015

**J U D G M E N T**

Abdul Rehim, J:

This writ petition under Article 227 of the Constitution of India is filed seeking interference with respect to Ext.P2 order passed by the Family Court, Thiruvananthapuram on 10-04-2015 in I.A. No.814/2015 in OP (G&W) 686/2014. The impugned order was issued on an interim application filed by the petitioner herein seeking for interim custody of his minor girl namely Miss.Mythili, who was born out of the wedlock with the 1<sup>st</sup> respondent on 11-06-2009. The petitioner filed OP (G&W) 686/2014 against the respondents seeking for permanent custody of the minor girl. The 2<sup>nd</sup> respondent is the father of the 1<sup>st</sup> respondent. An application was filed seeking interim custody stating the reason that the petitioner wish to spend more time with the

child to show his love and affection. It was also alleged that the respondents are not properly caring the child. The application was objected by the respondents contending that the interim arrangement already made in IA No.1404/2014 is being strictly complied with and that the petitioner was given visitation right on every 2<sup>nd</sup> Saturday for 2 hours. It was also alleged that the petitioner had no interest to visit the child and that he has no love and affection towards the child. Allegation was also made to the effect that the petitioner is ill-treating the child during when the parties were living together. Contention was that, granting interim custody of the child during vacation would definitely cause stress and strain to the child.

2. The court below after considering the rival contentions observed that, opportunity should be given to the petitioner to have interaction with the child, despite the matrimonial disputes and difference of opinion prevailing between the spouses. It was noticed that the petitioner and the 1<sup>st</sup> respondent are living separately for the last 4 years.

Further it was noticed that from 19<sup>th</sup> August 2014 onwards arrangements was made for permitting the petitioner to see the child on every 2<sup>nd</sup> Saturday for 2 hours. However, the court observed that, before handing over interim custody of the child during vacation as sought for in the application, the petitioner should be provided with more opportunity to have interaction with the child. Therefore it was found that the visitation arrangements would create a circumstance which is in favour of the child to have more association with the father, the petitioner herein. Hence, through Ext.P2 order the interim arrangement continued since then was modified and visitorial right was permitted on alternate Saturdays in the court premises for 3 hours from 11 a.m. to 3 p.m. till the end of June, 2015.

3. Contention of the petitioner is that the 1<sup>st</sup> respondent is working in a Bank and she usually come home at night and the 2<sup>nd</sup> respondent is a habitual drunkard. Circumstances prevailing in the house of the respondents will put the child to misery. It is further contended that the

child will be having more lovable and affectionate atmosphere in the house of the petitioner. It is contended that the Family Court had failed in appreciating such aspects in its real perspective. Denial to have the child in custody of the petitioner during half of the vacation as prayed for is totally unreasonable and is an unjustifiable order, is the contention.

4. While considering the issue, primarily we are satisfied that there is no apparent error of jurisdiction or miscarriage of justice committed by the court below, warranting interference of this court in exercise of the supervisory jurisdiction vested under Article 227 of the Constitution of India. It is evident that the OP before the Family court is pending disposal. Interim arrangement which was prevailing as per order in IA No.1404/2014 was modified through Ext.P2. The chance for having more frequent acquaintance is provided through the said order. The Family Court specifically observed that, the petitioner need to have more interaction with the child and the

visitation arrangement will create a circumstance which is favourable to the child to have more association with him. Such an observation made by the Family Court, in our view, is presumably based on direct interaction which the court had with the parties and the child. It is an order passed after considering all the factual situations and circumstances prevailing in the case. A modification of such an order, that too in exercise of powers vested under Article 227, would be totally misconceived.

5. However, we notice that the interim arrangement now made through Ext.P2 is limited only upto the end of June, 2015. It will be left open to the petitioner to seek for further interim arrangements for having more access with the child, after the said date. We are sure that the Family Court will consider all the attendant circumstances in discharge such an issue, if the petitioner approaches for further modification of the arrangement.

6. Therefore this writ petition is dismissed without prejudice to rights of the petitioner to approach the Family

Court seeking modification of interim arrangement made in Ext.P2 order with respect to custody of the child, after June 2015.

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

Sd/-  
**K. RAMAKRISHNAN, JUDGE.**

AMG

True copy

P.A. to Judge