

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

OP (FC).No. 180 of 2015 (R)

/OP 860/2014 FC, PATHANAMTHITTA:

PETITIONER(S)

ANIL KUMAR AGED 40 YEARS
S/O.M.SADASSIVAN, LAKSHMI VILASOM, PATTOMTHURUTHU P.O.
MANROTHURUTHU VILLAGE, KOLLAM.

BY ADVS.SRI.PRAVEEN K. JOY
SRI.T.A.JOY

RESPONDENT(S)/IA 451/15 OP 860/2014 FC, PATHANAMTHITTA:

INDU S.
D/O.T.R.SURENDRAN, KUARAVILASATHU VEETIL
THADIYOOR MURI, AIYROOR VILLAGE, RANNI TALUK
PATHANAMTHITTA DISTRICT-689 645.

R1 BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 18-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 180 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1. TRUE COPY OF THE JUDGMENT DATED 3/12/2014 IN OP 860/2014 OF
FAMILY COURT, PATHANAMTHITTA.

EXT.P2. TRUE COPY OF THE DECREE DATED 3/12/2014 IN OP 860/2014 OF
FAMILY COURT, PATHANAMTHITTA.

EXT.P3. TRUE PHOTOGRAPHS OF THE PETITIONER AND DAUGHTER.

EXT.P4. TRUE COPY OF THE PETITION BEFORE THE SUB INSPECTOR OF POLICE,
KOIPURAM.

EXT.P5. TRUE COPY OF THE AFFIDAVIT DATED 17/4/2015 SUBMITTED BY THE
PETITIONER IN OP 860/2014 BEFORE THE FAMILY COURT, PATHANAMTHITTA.

EXT.P6. TRUE COPY OF THE IA NO.451/2015 BEFORE THE FAMILY COURT,
PATHANAMTHITTA FILED BY THE RESPONDENT

EXT.P7. TRUE COPY OF THE ORDER IA NO.451/2015 BEFORE THE FAMILY COURT,
PATHANAMTHITTA.

RESPONDENT(S) ' EXHIBITS

; NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

K. RAMAKRISHNAN, JJ.

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O.P. (FC) No. 180 of 2015

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Dated, this the 18th day of June, 2015

JUDGMENT

Ramakrishnan, J.

The respondent in I.A. No. 451 of 2015 in O.P. No. 860 of 2014 of Family Court, Pathanamthitta has filed this petition seeking interference of this Court challenging the order passed by the Family Court, under Article 227 of the Constitution of India.

2. It is alleged in the petition that respondent is the wife of the petitioner and in the wedlock a minor child was born to them. After sometime, there was some strained relationship which made them to separate. The respondent herein filed O.P. No. 860 of 2014 before the Family Court, Pathanamthitta for permanent custody of the child along with other reliefs and the matter was later compromised as evidenced by Ext. P6 compromise and on that basis O.P. was disposed of as per Ext. P1 judgment. As per the terms of the compromise, permanent custody of the child was retained with the mother of the child and visitorial right was given to the father for two

days in a month; namely second Saturday and Sunday to be produced at Valiyakunnam SNDP Sakha Office No. 1515 and shall be returned at that place. Apart from that during Christmas and Onam holidays of every year, five days custody was given and during summer vacation first 10 days and last 10 days were given. During the last vacation, though the child was produced and was taken into custody, the child was not returned as agreed. So the petitioner in the main O.P. filed I.A. No. 451 of 2015 for modification of the order passed as per Ext. P1 regarding the visitorial right of the child. After considering the submissions of both the parties, the learned Family Court Judge passed Ext. P7 order, whereby visitorial right was restricted only for Onam holidays, that too from next Onam vacation. This order is sought to be challenged by the petitioner in this original petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The learned counsel for the petitioner submitted that except on the last occasion, there was no difficulty in getting the child and returning the child as per the compromise. But on the last occasion, there was some threat that if he went to the SNDP

office, he was likely to be attacked. So he did not go with the child to return the child and on the next day itself he moved the Family Court stating the reason for non production of child with an undertaking to produce child before that Court. It is thereafter that present petition was filed. This is denied by the learned counsel for the respondent.

5. It is an admitted fact that as per Ext. P2 compromise, the visitorial right of the child was agreed between the parties and on that basis earlier petition was disposed of as per Ext. P1 judgment dated 08.12.2014. Till last occasion there was no dispute regarding handing over the child and return of the child as agreed. Though it is mentioned in the petition that an application has been filed on the previous day of filing this petition stating the reason for non production of child, nothing was mentioned about the petition in the impugned order. However even if there was lapse on an occasion, it cannot be said to be deliberate or willful and visitorial right of a father of a child cannot be denied for that reason, especially when marital relationship between the parties is still subsisting, as joint petition for divorce is not disposed of so far. In the said circumstances, we feel that the order passed in I.A. No.

O.P.(FC) No. 180 of 2015

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451 of 2015 in O.P. No. 860 of 2014 of the Family Court has to be set aside and the earlier order passed on 03.12.2014 in O.P. No. 860 of 2014 has to be restored. So we do so.

It is made clear that if there is any modifications are required, parties are at liberty to move the Family Court from time to time and if any such application is filed, the Family Court is at liberty to pass appropriate orders in those applications at the earliest in accordance with law.

With the above observations, the Original Petition is disposed of. Communicate order to the Court below at the earliest.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**K. RAMAKRISHNAN,
(JUDGE)**

kmd