

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 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP (FC).No. 196 of 2015 (R)

PETITIONER:

**REJEESH RAJAN,
AGED 38 YEARS, S/O.RAJAN U.N, RAJESWARI,
PALACE ROAD, KIZHAKKE CHALAKUDY P.O.,
MUKUDNAPURAM TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.P.M.POULOSE**

RESPONDENT:

**PRIYANKA REJEESH
W/O. REJEESH RAJAN, AGED 29 YEARS,
AKKAPARAMBIL HOUSE, NOCHIMA,
KOMBARA, N.A.D P.O., ERNAKULAM DISTRICT-683 563.**

**BY ADVS. SRI.JAGAN ABRAHAM M.GEORGE
SRI.P.JAYABAL MENON**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE LETTER DATED 27/6/2005 ISSUED BY THE DR.PAUL SEBASTIAN, PROFESSOR AND HEAD, SURGICAL ONCOLOGY DIVISION, REGIONAL CANCER CENTRE, TRIVANDRUM.
- EXT.P2. TRUE COPY OF THE G.O.P.NO.722/2014 BEFORE THE FAMILY COURT, ERNAKULAM FILED BY THE PETITIONER.
- EXT.P3. TRUE COPY OF THE IA NO.246/2015 IN G.O.P.NO.722/2014 BEFORE THE FAMILY COURT, ERNAKULAM AND SUPPORTING AFFIDAVIT.
- EXT.P4. TRUE COPY OF THE OBJECTION IN IA NO.246/2015 IN G.O.P.NO.722/2014 BEFORE THE FAMILY COURT, ERNAKULAM.
- EXT.P5. TRUE COPY OF THE ORDER IA NO.246/2015 IN G.O.P.NO.722/2014 DATED 28/4/2015 BEFORE THE FAMILY COURT, ERNAKULAM.
- EXT.P6. TRUE COPY OF THE JUDGMENT DATED 9/6/2014 IN WPC NO.13664/2014 OF THIS HONOURABLE COURT.

RESPONDENTS' EXHIBITS

- EXT- R1 (a) - TRUE COPY OF THE ORDER DATED 18-03-2015 IN Tr.P (Crl) No.24/2015.
- EXT- R1 (b) - TRUE COPY OF THE RELEVANT PAGES OF THE SAVINGS BANK PASS BOOK OF INDIAN BANK. ALUVA BRANCH IN THE NAME OF THE RESPONDENT.

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 196 OF 2015

DATED THIS THE 22nd DAY OF JUNE, 2015

J U D G M E N T

K. Ramakrishnan, J:

This is an application filed by the petitioner who is a respondent in the impugned application challenging the order passed by the Family Court, Ernakulam in I.A 246/2015 in OP 722/2014 on the file of that court in invoking supervisory jurisdiction under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and respondent are husband and wife and their marriage was solemnized on 18-05-2006 and two male children were born to them in that wedlock, who are aged 8 years and 6 years respectively. Both of them are now studying at Swamy Gopalananda Theertha Saraswathy Vidyanikethan School, Nochima, Aluva. There arose disputes between the spouses, which resulted in filing several applications before the

Family Court including G.O.P by the petitioner herein declaring that he is the guardian of the minor children and also seeking permanent custody of the children. In that some interim arrangements were made by which the respondent herein was permitted to stay in a rented house on condition of paying Rs.7,000/- by the petitioner herein and also agreeing to meet the education expenses of the children in the school. Thereafter the respondent herein filed I.A. No.246/2015 for permission to get T.C. from the school so as to admit them in the school of her choice at her native place at Pathanamthitta. Reasons stated in the petition was that she was supported her brother and her brother was residing there along with her. Now he got employment and without the support of others it is not possible for her to live alone with the children in the rented house. If she can admit the children at Pathanamthitta where her parents are residing it will be both helpful for the children as well as the respondent herein. The petitioner filed detailed objection stating that he was cancer patient

after treatment, it was cured and the only attempt of the petitioner is to avoid right of the petitioner to see the children that such an attempt has been made by the respondent herein. After considering the submissions of both sides, the Family Court Judge passed Ext.P5 impugned order allowing the application directing the petitioner herein to give consent to the school authorities within a week to issue TC to the children, failing which the school authorities are directed to issue the TC to the children to enable the respondent herein to admit the children of the school of her choice in her native place. This order is being challenged by the petitioner by filing this original petition.

3. Heard Senior Counsel Sri. S.V. Balakrishna Iyer appearing for the petitioner and Sri.Jagan Abraham M. Geroje, counsel for the respondent.

4. The Senior counsel appeared for the petitioner had submitted that the petitioner was a cancer patient and he is working in a Company getting only Rs.25,000/-. It is difficult for him to travel to see the children if the children

were shifted to Pathanamthitta. Further the case itself is ripe for trial and at that stage there is no necessity to disturb the education of the children who are now studying in the school.

5. Application was opposed by the counsel for the respondent on the ground that a lady with two minor children living in Kochi with a meager amount of Rs.7,000/- given by the petitioner is an impossibility. Further, earlier her brother was with her as a support for her to live there, now he got employment and it is not safe for the respondent to live with the minor children in Ernakulam. Further the amount ordered to be paid as rent and maintenance has not been paid as well.

6. It is an admitted fact that petitioner was a cancer patient and the respondent had married the petitioner after he was cured and thereafter two children were born to them. It is also an admitted fact till 2013, they were living together and the children were with them. Thereafter due to matrimonial disputes arose between them, they fell apart

and the respondent with children were residing in a rented building and several petitions including the petition for divorce and also for custody of the children were filed. G.O.P 722/2014 is one such petition filed by the petitioner herein for permanent custody of the children. It was fairly conceded by both sides that it was based on an interim arrangement that a rented building will be taken at Aluva allowing the respondent to reside with the children and an amount was fixed as Rs.7,000/- per month and the petitioner also had undertaken to meet the education expenses of the children in the school, besides the amount of Rs.7,000/- agreed to be paid. On that understanding a rented building was taken out and she was residing with the children in that building. It is only in the year 2015, that the respondent has filed an application for shifting the children to some other place of her choice. Reason stated was that living with the children alone in a rented building is not safe and for the welfare and safety of the children, it is necessary that they will have to be shifted to her parental house. Learned

counsel for the petitioner submitted that the children will have to travel long distance for the purpose of attending the school and that the respondent is residing in a hilly area and her parents will not be available always to look after them as well. On the other hand if the children were allowed to stay in the present place itself, the petitioner as well as his mother can protect their interest as well. The case is of the year 2014 and pleadings are completed and conciliation proceedings have already been completed, the case is ripe for trial. Further the children were studying in the same school from the date on which they have been admitted in the school. So suddenly changing them from one school to another of different environment is likely to affect their studies for the time being, considering their age. Further grievance of the respondent is that with the meager amount of Rs.7,000/- it is not possible to live there. We feel that some enhancement has to be made for meeting the requirements of the respondent to reside there in the house comfortably. Further it will be convenient for the

petitioner who had suffered cancer and recovered from the same to meet the children also. So considering the circumstances we feel that the amount of Rs.7,000/- is enhanced to Rs.18,000/- which includes rent, maintenance of the respondent and children and also appointing a person to look after the household work to help the respondents during her stay in the house excluding expenses payable to the children as undertaken by the petitioner earlier. The petitioner is also directed to deposit 3 months amount in advance every time within one week from the date of expiry of that 3 months so as to enable the respondent to get the amount without any default from the petitioner so as to make her living with the children in the rented house without any threat of eviction on the ground of default of payment of rent etc. The 1st installment of 3 months advance amount at the rate as mentioned above has to be deposited by the petitioner within one week from today. If the petitioner commits any default, then the order passed by the court below will be restored and the respondent is at

liberty to take the children and put them in the school of her choice from the next academic year onwards. In the meantime considering the fact that dispute involved is only regarding custody of the children and also considering the fact that the respondent has to reside with the children alone, this court feels that a direction can be given to the Family Court to dispose of the case as expeditiously as possible, at any rate within 6 months from the date of receipt of this judgment. The respondent is directed to put back the children in the same school where they were studying during pendency of the proceedings before the court below immediately so as to enable them to continue the education of the children.

7. If any interim arrangement is required regarding visitorial right of the children and if the parties move the court below for that purpose that can be considered and appropriate orders can be passed by the court below on that aspect at the earliest without delay.

8. With the above directions and modifications the order passed by the court below is set aside and the petition is disposed of accordingly.

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

Sd/-
K. RAMAKRISHNAN, JUDGE.

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True copy

P.A. to Judge