

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

OP (FC).No.227 of 2015 (R)

I.A NO.1787/2015 IN GOP NO.1418/2013 of FAMILY COURT,THRISSUR.

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PETITIONER/RESPONDENT:

**SHEMEER.M.A,AGED 38 YEARS,S/O.ABDUL KHADER,
MATHILAKATH VEETIL,P.O.CHERPPU WEST,
THRISSUR TALUK,THRISSUR DISTRICT.**

BY ADV.SRI.M.PREMCHAND

RESPONDENT/PETITIONER:

**SHEMEERA,AGED 31 YEARS,
D/O.LATE ABDUL KHADER,PUTHIYAVEETIL HOUSE,
VADKKUMURI,ANTHIKKAD P.O,
THRISSUR TALUK,THRISSUR DISTRICT.**

**BY ADVS.SRI.SANTHOSH P.PODUVAL
SMT.VINAYA V.NAIR**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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OP (FC).No.227 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

- P1: TRUE COPY OF THE AGREEMENT DATED 18.12.2013 EXECUTED BETWEEN THE PETITIONER AND RESPONDENT.
- P2: TRUE COPY OF THE ORDER DATED 19.12.2013 IN GOP NO.1418/2013 OF THE FAMILY COURT, THRISSUR.
- P3: TRUE COPY OF IA.NO.1787/2015 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THRISSUR.
- P4: TRUE COPY OF THE OBJECTIONS SUBMITTED BY THE RESPONDENTS IN IA.NO.1787/2015 BEFORE THE FAMILY COURT, THRISSUR.
- P5: TRUE COPY OF THE IA.NO.2045/2015 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THRISSUR.
- P6: TRUE COPY OF THE ORDER DATED 20.05.2015 IN IA.NO.1787/2015 IN OP.NO.1418/2013 OF THE FAMILY COURT, THRISSUR.
- P7: TRUE COPY OF THE APPLICATION NO.2072/2015 BEFORE THE FAMILY COURT, THRISSUR.
- P8: TRUE COPY OF THE IA.NO.2100/2015 FILED BY THE RESPONDENT BEFORE THE FAMILY COURT, THRISSUR.
- P9: TRUE COPY OF THE OBJECTIONS FILED BY THE PETITIONER BEFORE THE FAMILY COURT,THRISSUR.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ.

OP(FC) .No. 227 of 2015

Dated this the 5th day of June, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner and the respondent are respectively the father and mother of 3 minor children viz. Adil, Ameen and Amjad. This writ petition under Article 227 is filed seeking to quash Ext.P6 order passed by the Family Court, Thrissur in IA.No.1787/2015 in OP.No.1418/2013. The case OP.No.1418/2013 was filed before the Family Court by the petitioner herein under the Guardians and Wards Act seeking custody of the above said 3 children. During pendency of the said case the parties have settled their matrimonial disputes through compromise and settled the above said OP along with another case filed for maintenance by the respondent herein. Ext.P1 is the terms of the agreement arrived between the parties. Recording the compromise the Guardian OP.1418/2013 was disposed of by the Family Court on 19.12.2013, as per Ext.P2.

Subsequently the petitioner herein filed Ext.P3 interim application as IA.No.1787/2015 seeking modification of Ext.P2 order to the extent of granting custody of one of the minor child, Adil to him. The allegation in Ext.P3 petition is to the effect that the respondent herein is treating the child in a cruel manner, about which the child made complaints to the petitioner on 30.4.2015 . From the affidavit of Ext.P3 it is revealed that the specific allegation is that the respondent herein had slapped on the face of the child on 29.4.2013 at about 4.00 p.m.. Since the child told him that he is not going back to the respondent, he had taken the child - Adil along with him from the 'Madrassa' and informed about the same to the respondent, is the allegation.

2. The respondent herein filed objection against Ext.P3 interim application. The respondent had also filed Ext.P5 interim application as IA.No.2045/2015 requesting the Family Court to have interaction with the minor child before taking a decision on the application seeking modification. The matter was dealt with by the Family Court in Ext.P6 order through which IA.No.1787/15 was disposed of. The Family Court observed that, by virtue of the compromise the custody of the child was given

to the respondent herein and visitorial right was reserved in favour of the petitioner. It is further found that the child in question was admitted to a 'Madrassa' near to the residence of the respondent and examination in the 'Madrassa' was scheduled from 26.5.2015 onwards. It is noticed that from 1.5.2015 the child is not attending the 'Madrassa'. Eventhough the petitioner contended that the child is admitted in a 'Madrassa' near to his residence, no proof to that effect was produced. More over the Family court found that it is always beneficial to the child to continue his education in the same school where he was studying all these years. Having found that the only allegation is regarding an assault made by the respondent to the child on one occasion, it is observed that it is not at all a ground to hold that the respondent is cruel to the child. The court found that the mother is always entitled to give minor punishment to the child. It was specifically found that the child is still a minor and he needs care and protection of the mother. Hence the interim application seeking modification was dismissed finding that there exists no ground to handover custody of the minor child - Adil to the petitioner.

3. Heard; both sides. On an active consideration of the factual aspects as mentioned above, we notice that there is no apparent error committed by the Family court in dismissing the application filed by the petitioner seeking modification of Ext.P2 order. We also take note of the fact that, by the act of taking the minor child from the 'Madrassa' on a particular day, the petitioner had in fact violated the arrangement ordered through Ext.P2 order, which was arrived by way of settlement. The petitioner had approached the Family Court seeking modification only after committing such violation. Further the Family Court was right in observing that merely based on an allegation of a single incident of the mother beating the child, it is not a valid reason to modify the arrangement with respect to the guardianship and visitorial right. Therefore we are not inclined to invoke the supervisory jurisdiction vested on this court under Article 227, either to set aside or to modify the impugned order Ext.P6.

4. However we make it clear that the above judgment will not stand in the way of the petitioner approaching the Family Court again, if there exists any valid reason seeking for

modification of Ext.P2 order. If any such approach is made the Family Court shall consider the same untrammelled by any of the observations contained in Ext.P6 or any observations contained in this judgment. It will be left open to the parties to agitate the issue based on the materials available at that point of time.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

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