

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 JYASHTA, 1937

OP (FC).No. 239 of 2015 (R)

OP(GW) NO.429/2015 of FAMILY COURT, NEDUMANGAD.

..

PETITIONER'S/RESPONDENTS:

1. **DR.BINDU,AGED 45 YEARS,D/O.M.S RAVINDRAN,
SABIJA,T.C 5/330,13-INDIRA NAGAR,
PEROORKADA P.O,THIRUVANANTHAPURAM-695 005**
2. **GAUTHAM KRISHNA(MINOR),AGED 13 YEARS,
REPRESENTED BY HIS MOTHER AND GUARDIAN,
1ST PETITIONER DR.BINDU,D/O.M.S.RAVINDRAN,
SABIJA,T.C 5/330 13-INDIRA NAGAR,
PEROORKADA P.O,THIRUVANANTHAPURAM-695 005**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT:

**DR.SAJEEV,AGED 48 YEARS,S/O.SANKU,SANTA NIVAS,
CHIRAYINKEEZHU,THIRUVANANTHAPURAM-695 304**

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

pk

OP (FC).No.239 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1:TRUE COPY OF O.P (GW) 429/2015.

**EXHIBIT P2:TRUE COPY OF THE NOTICE DATED 12-5-2015 ISSUED TO THE 1ST
PETITIONER.**

**EXHIBIT P3:TRUE COPY OF THE JUDGMENT DATED 4-11-2006 IN O.P
NO.723/2005.**

**EXHIBIT P4:TRUE COPY OF THE JUDGMENT DATED 14-05-2007 IN O.P (GW)
NO 257/2007.**

**EXHIBIT P5:TRUE COPY OF THE FAMILY COURT,NEDUMANGADU IN O.P
NO.475/2007 OF THE FAMILY COURT,NEDUMANGADU.**

**EXHIBIT P6:TRUE COPY OF THE JOINT PETITION FILED BY THE 1ST PETITIONER
AND RESPONDENT.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

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

OP(FC).No. 239 of 2015

Dated this the 5th day of June, 2015

JUDGMENT

Abdul Rehim,J.

The petitioners, who are the respondents in OP(G&W) 429/2015 on the files of the Family Court, Nedumangad, are approaching this court by invoking jurisdiction vested under Article 227 of the Constitution of India seeking for a relief to the extent of quashing the case pending before the Family Court. Inter alia, the petitioners seek declaration from this court to the effect that the 1st petitioner alone is entitled to have custody of the 2nd petitioner, the minor son. Further relief is also claimed to the extent of directing the Family Court Nedumangad to restrain from compelling attendance of the petitioners till the 1st petitioner completes her studies in Post Graduate Medical Degree.

2. The 1st petitioner herein is the divorced wife of the respondent and mother of the 2nd petitioner-minor child. The case OP(G&W) 429/2015 is filed by the respondent herein seeking permanent custody of the 2nd petitioner. Along with the

said petition the respondent had filed IA.No.837/2015 seeking direction for production of the 2nd petitioner before the Family Court. It is stated that the Family Court had passed an order in the said IA for production of the 2nd petitioner and the 2nd petitioner was produced before that court on 18.5.2015. The Family Court ordered to leave the 2nd petitioner in the custody of the respondent for one hour. Now the case is posted to tomorrow (6.6.2015) for production of the child.

3. Allegations in the writ petition is that OP(G&W) 429/2015 was filed only with an intention to harass the petitioners. Various factual aspects are narrated contending that the respondent was treating the 1st petitioner with cruelty and there were continuous torture both mental and physical. It is further mentioned that the respondent had filed OP.13432/2003 seeking dissolution of the marriage, which was dismissed by the Family Court, Nedumangad after re-umbering the case as OP.No.723/2005, based on the submission that both parties are residing together and they do not want to proceed with the case. Ext.P3 is the order passed by the Family Court, Nedumangad in this regard. But even thereafter the torturing continued and the

petitioners were compelled to leave the house of the respondent. Thereafter the respondent filed OP (G&D) 257/2007 before the Family Court, Nedumangad seeking custody of the child, which was dismissed as not pressed, as evidenced from Ext.P4.

Meanwhile a joint petition filed for divorce under section 13B of the Hindu Marriage Act was allowed by the Family Court, as per Ext.P5. It is pointed out by the petitioners that, in the joint petition for divorce it was mutually agreed that permanent custody of the 2nd petitioner shall be with the 1st petitioner and she shall be having all rights to be the guardian of the 2nd petitioner. Ext. P6 is the copy of the joint petition filed. It is also mentioned that the respondent had remarried and has a child born out of that wedlock.

4. Under the above mentioned circumstances, vehement arguments are raised to the effect that the present application before the Family court, OP (G&W).No.429/2015, is a clear abuse of the process of that court and is filed only to harass the petitioners and to torture them with an oblique motive to see that studies of the 1st petitioner is being interrupted.

5. Article 227 of the Constitution of India confers power

on the High Court to have superintendence over courts and tribunals within the territories of its jurisdiction. The power of superintendence conferred on this court cannot be construed as one intended for interference with any judicial process in the courts below, at every stage of such proceedings. In that context, we may *prima facie* observe that this writ petition is highly misconceived. Whether O.P(G&W)No.429/2015 is filed with an intention to harass the petitioners or to torture them in any manner, is a question which need to be appreciated based on factual aspects upon which the parties will be definitely on conflict. It is only after adducing evidence the court can arrive at any conclusion to that effect.

6. Further question is as to whether the O.P.No.429/2015 is maintainable before that court, in view of the settlements arrived earlier with respect to custody of the minor child, on the basis of Ext.P4. It is a matter which need to be considered at the first instance by the court where the O.P. is instituted. Whether the respondent herein is entitled to seek a modification with respect to the arrangement regarding custody of the minor child or as to whether there exists any change of

circumstances which permit him to seek such a remedy, are all matters which need to be evaluated by the court below, where the case is pending. In this regard it is pertinent to note that the petitioners have not even filed any preliminary objection on the question of maintainability before the Family Court. They have not even sought for a hearing of any such issue as a preliminary question for which they could have initiated steps provided under Order 14, Rule - 2 of the Code of Civil Procedure.

7. It is admitted that the Family Court had ordered production of the minor child and permitted the respondent to have interaction with the child at the court premises. No where it is stated in this writ petition that the petitioner had filed any objection with respect to the interim application. The attempt made by the petitioner without initiating any steps as mentioned above cannot be appreciated in any manner. There is no contention raised on the basis of any statutory provisions that the case before the court below is unsustainable. At any rate, this court is of the firm opinion that the Family Court has not committed any apparent error of jurisdiction in entertaining the O.P. filed by the respondent, and in issuing notice to the

petitioners, and in further pursuing the proceedings on the basis of allegations contained in the petition filed before that court.

8. Therefore the relief sought for in this writ petition to quash further proceedings in O.P.(G&W) No.429/2015 on the files of the Family Court, Nedumangad cannot be granted. The declaration sought for with respect to custody of the minor child is a matter which need to be considered by the Family Court, while adjudicating the proceedings which is now pending before that court. With respect to appearance of the 1st petitioner before the court below and with respect to production of the 2nd petitioner, it is left open to the petitioners to seek appropriate orders from that court. The petitioners will be also at liberty to raise the question of maintainability before that court, if so advised.

9. Under the above mentioned circumstances, this writ petition is totally devoid of any merit and the same is hereby dismissed.

10. However, we make it clear that any of the observations contained herein above shall not be taken judicial notice by the Family Court while deciding the question of

maintainability or merits of the case which is now instituted by the respondent before that court.

C.K.ABDUL REHIM, JUDGE

K.RAMAKRISHNAN, JUDGE

Pmn/

