

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 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

OP (FC).No. 245 of 2015 (R)

AGASNT THE ORDER IN OP(G&W)NO.1834/2014 OF FAMILY COURT,
THIRUVANANTHAPURAM

PETITIONER/RESPONDENT:

DR.VARUN.S.NAIR(SIDHA), AGED 37 YEARS,
S/O.SUKUMARAN NAIR, VINDYAVIHAR, THACHOTTUKAVU,
MALAYINKEEZHU, THIRUVANANTHAPURAM.

BY ADV. SRI.V.R.GOPU

RESPONDENT/PETITIONER:

REMYA.S.NAIR,, AGED 27 YEARS,
D/O.ALLYKUMARI, NOW RESIDING AT KUNNILVEEDU,
THEKKUMKARA, NEDUMANGADU.P.O, THIRUVANANTHAPURAM.

BY SRI.WILSON URMESE

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
07-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 THE TRUE COPY OF THE PETITION OP(G&W)NO.1834/2014 FILED BY THE RESPONDENT DATED 25.11.2014

EXT.P2 THE TRUE COPY OF THE PETITION IN I.A.3472/2014 IN OP(G&W) NO.1834 OF 2014 DATED 25.11.2014

EXT.P3 THE TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER DATED NIL

EXT.P4 THE TRUE COPY OF THE ORDER IN I.A.3472/2014 IN OP(G&W)NO.1834 OF 2014 DATED 30-04-2015

EXT.P5 THE TRUE COPY OF THE CERTIFICATE ISSUED BY THE DOCTOR IN GEETHA HOSPITAL, THIRUVANANTHAPURAM DATED 07.05.2015.

EXT.P6 THE PHOTOS(3 NUMBERS) SHOWING THAT THE CHILD PARTICIPATING IN DANCE PROGRAMME IN SCHOOL.

EXT.P7 THE TRUE COPY OF THE REVIEW PETITION IN I.A.1209 OF 2015 DATED 11.05.2015.

EXT.P8 THE COPY OF THE OBJECTION FILED BY THE RESPONDENT DATED 13.05.2015.

EXT.P9 THE TRUE COPY OF THE PETITION, I.A.1208 OF 2015 DATED 11.05.2015.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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

.....
O.P.(FC)No.245 of 2015
.....

Dated this the 7th day of July, 2015.

JUDGMENT

Abdul Rehim, J:

In this writ petition filed under Article 227 of the Constitution of India, the petitioner is challenging Ext.P4 order passed by the Family Court, Thiruvananthapuram in I.A.No.3472/2014 in OP(G&W)No.1834/2014. The petitioner and the respondent are husband and wife and their marriage was solemnized on 22.6.2008. A girl child was born out of the wedlock, on 11.10.2009. The child was in the custody of the petitioner at the time when the respondent filed OP(G&W) 1834/2014. Along with the original petition, the respondent filed IA.No.3472/14 seeking for interim custody of the minor child, pending disposal of the original petition. The petitioner filed Ext.P3 objections, to the interim application. After considering arguments on both sides, the Family Court passed Ext.P4 order finding that, considering the welfare of the child, who is aged only 5 years, affection of her mother is highly needed. Therefore the paramount interest of the child lies in

giving her in the custody of the mother, as an interim arrangement, pending disposal of the original petition. However, the Family Court allowed visitation rights to the petitioner on a fortnightly basis for two days during the week end. It is aggrieved by Ext.P4, this writ petition is filed by invoking the supervisory jurisdiction vested on this Court.

2. Contention of the petitioner is that, the custody given to the respondent through interim order had virtually resulted in allowing the original petition itself, which the Family Court ought not have done. It is pointed out that the petitioner has not yet filed objections in the original petition and the interim order is passed without taking any evidence, based only on the rival contentions. It is further contended that the findings regarding the welfare of the child was arrived based on no materials available before the Family Court. It is also contended that the Family Court had failed to take note of the contentions raised by the petitioner to the effect that atmosphere in the house of the respondent is not conducive for the welfare of the child.

3. All the above contentions were resisted by learned counsel appearing for the respondent. It is pointed out that

the child was in the custody of both the parents till 16.11.2014 and the respondent was deprived of acquaintance with the child only when she was hospitalized allegedly due an assault caused by the petitioner. It is also pointed out that the original petition as well as the interim application were filed within two weeks of the separation. It is pointed out that the child is of 6 years age and is a female child. It is rightly observed by the court below that the child requires affection and love at the hands of the mother, considering the tender age.

4. While appreciating the rival contentions, we take note of the fact that, interference by this Court by invoking the supervisory jurisdiction is required only when the courts below commit any grave error of jurisdiction or if it acts beyond the scope of any statutory limits. An interim arrangement with respect to custody of a minor child, ordered by the Family Court, cannot be termed as erroneous exercise of jurisdiction. It could not be insisted that such arrangement should be made only after elaborate consideration of evidence based on every pleadings. We do not find any unreasonableness or arbitrariness in the observations made by the Family Court to the extent that

a girl child of 6 years needs love and affection of the mother. Merely because custody of the child was with the petitioner at the time of filing of the original petition, nothing prevents the Family Court from making an interim arrangement by handing over custody of the child to the mother, pending disposal of the original petition.

5. However, we consider that the visitation rights provided to the petitioner need be modified in order to facilitate to have acquaintance with the child more frequently. So also we feel that a direction to have an expeditious final disposal of the matter would serve to meet the ends of justice.

6. Under the above mentioned circumstances, this writ petition is hereby disposed of subject to the following directions:

(i) Ext.P4 order will stand modified with respect to the visitation right provided to the petitioner. The petitioner shall be permitted to have custody of the child on every weekend from 4 p.m on Friday till 4 p.m on Sunday. Fixation of venue regarding the arrangement will be on the basis of the terms contained in Ext.P4 order.

(ii). The Family Court, Thiruvananthapuram is directed to dispose of OP(G&W)No.1834/2014 on an early basis, provided

the parties co-operate to complete the pleadings and steps without any further delay. At any rate, an earnest endeavor shall be made to dispose of the matter finally within a period of six months from the date of receipt of a copy of this judgment.

It is made clear that the Family Court shall dispose of the matter on merits based on the evidence adduced, untrammelled by any observations contained herein above.

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

Sd/-
K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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