

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

OP (FC).No. 251 of 2015 (R)

AGAINST THE JUDGMENT IN OP 630/2012 of FAMILY COURT, MALAPPURAM

PETITIONER(S) :

CHRISTY JOSE, D/O.JOSE MATHEWS, AGED 34 YEARS
ARUVIKKAL HOUSE, AMARAMBALAM POST, POOKOTTUMPADAM
PIN-679 332, NILAMBUR POLICE STATION LIMIT.

BY ADV. SRI.SHIJU VARGHEESE

RESPONDENT(S) :

O.T.MATHEWKUTTY, S/O.UMMAN THAYYIL, , AGED 43 YEARS
THAYYIL HOUSE, ILLIKKAD, EDAKKARA
EDAKKARA VILLAGE, EDAKKARA POLICE STATION LIMIT.

R1 BY ADVS.M/S. P.SAMSUDIN, M.S.MOHAMMED ANSARY,
K.C.ANTONY MATHEW, JITHIN LUKOSE & K.RAKESH

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 02-11-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 251 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF OP NO.630/2012 DATED 18.2.2012.

EXHIBIT-P2: TRUE COPY OF OP NO.1712/2012.

EXHIBIT-P3: TRUE COPY OF OP NO.86/2014.

EXHIBIT-P4: TRUE COPY OF THE ORDER NO.OP NO.630/2012 DATED 23.4.2014.

EXHIBIT-P5: TRUE COPY OF THE I.A.NO.635/2014 DATED 28.5.2014.

EXHIBIT-P6: TRUE COPY OF THE I.A.NO.664/2015.

EXHIBIT-P7: TRUE COPY OF THE I.A.NO.665/2015.

EXHIBIT-P8: TRUE COPY OF THE IA NO.704/2015 DATED 30.5.2015.

EXHIBIT-P9: TRUE COPY OF MC NO.15/2014.

/true copy/

P.S. TO JUDGE.

s1.

C.K.Abdul Rehim & Mary Joseph, JJ.

=====

O.P.(FC)No.251 of 2015

=====

Dated this the 2nd day of November, 2015.

JUDGMENT

Abdul Rehim, J.

1. The above original petition is filed seeking directions from this court for an early disposal of Exts.P6 and P7 interim applications, which are pending before the Family Court, Malappuram in O.P.No.630 of 2012. The case before the Family Court was instituted by the respondent herein, who is the husband of the petitioner, seeking permanent custody of the minor daughter born out of the wedlock between the parties. The petitioner is employed in Rajasthan as a School Teacher and the minor daughter is with her. Other litigations instituted by the petitioner, seeking for dissolution of marriage and for recovery of money from the respondent, are also pending disposal before the Family Court, Ernakulam. But O.P.No.630 of

2012, instituted by the respondent seeking permanent custody of the minor child happened to be decreed ex-parte on 23.4.2014, by virtue of Ext.P4 order. According to the petitioner, she came to know about the ex-parte order only when an application was filed by the respondent to get the said order enforced. Immediately the petitioner had filed I.A.No.665 of 2015 seeking to set aside the ex-parte decree, along with I.A.No.664 of 2015 seeking for condonation of delay in filing the said application, as per Exts.P6 and P7. Since the respondent proceeded with steps to execute the ex-parte order, the petitioner had filed I.A.No.704 of 2015 before the Family Court, to keep in abeyance implementation of Ext.P4 order till the disposal of Exts.P6 and P7 applications. Copy of the said interim application is produced as Ext.P8. Grievance of the petitioner is that the Family Court is not considering Exts.P6, P7 and P8 applications and that the respondent is proceeding further with coercive steps, for enforcement of the ex-parte order.

2. Heard; both sides. It is evident that the application filed seeking to set aside the ex-parte order along with the delay condonation application is pending disposal before the Family Court. The petitioner had also moved an application seeking to keep in abeyance enforcement of ex-parte order, till the said applications are disposed of. That being so, if the ex-parte order is enforced through coercive steps, it may cause severe prejudice to the petitioner. Learned counsel for the respondent submitted that due to pendency of the above said applications the respondent is also not in a position to get the order enforced and to get custody of the minor child.
3. Therefore, this court is of the considered opinion that interest of justice can be achieved by directing the Family Court to have an early disposal of the applications. Hence the original petition is hereby disposed of by directing the Family Court, Malappuram to consider and to pass appropriate orders on Exts.P6 and P7 applications filed by the petitioner, as I.A.Nos.664 and 665 of 2015,

at the earliest possible, at any rate, within a period of six weeks from the date of receipt of a copy of this judgment.

4. Till such time the above said interim applications are disposed of as directed above, implementation of Ext.P4 ex-parte order passed in O.P.No.630 of 2012 shall be kept in abeyance.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

sl.