

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

OP (FC).No. 292 of 2015 (R)

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(OP 579/2014 OF FAMILY COURT, TRIVANDRUM)**

PETITIONER:

**LEKSHMI R.S
AGED 30 YEARS,
T.C NO 21/1916(5), STRA-34,
PANAYIL ROAD, KARAMANA, ELANKOM P.O,
THIRUVANANTHAPURAM 695 001**

BY ADV. SRI.K.B.PRADEEP

RESPONDENT:

**SANJUDAS N.S.
T.C NO 4/417, ROHINI BHAVAN, SNRA-18,
INDIRA NAGAR, PEROORKADA,
THIRUVANANTHAPURAM 695 005**

BY ADV. SRI.LINDONS C.DAVIS

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

OP (FC).No. 292 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS

**EXHIBIT P1 - TRUE COPY OF THE INTERLOCUTORY APPLICATION BEARING
I.A NO.3965/2014.**

EXHIBIT P2 - TRUE COPY OF THE COMMON ORDER PASSED ON 29-04-2015.

EXHIBIT P3 - TRUE COPY OF THE RODER DATED 23-05-2015.

EXHIBIT P4 - TRUE COPY OF THE ORDER DATED 23-05-2015.

RESPONDENT(S)' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 292 OF 2015

DATED THIS THE 15th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

Petitioner in OP 579/2014 before the Family Court, Thiruvananthapuram is challenging Ext.P4 order passed by the family court under Article 227 of the Constitution of India.

2. The petitioner and respondent were husband and wife and their marital relationship was dissolved by filing joint petition for divorce as OP 579/2014. In the wedlock they have got a child by name, Maithri S. Nair, who is now living with the petitioner. At the time of divorce there was an agreement between the parties that permanent custody of the child will be with the mother-petitioner herein and custody of the child will be given once in a month to the father, who is a respondent herein. Since the petitioner did not comply with the same, he filed OP (G&W) 62/2015 for permanent custody of the child and in that he filed I.A.

64/2015 and 808/2015 for interim custody. Both those applications were dismissed by the family court as per Ext.P2 order giving visitation right on every Sunday to the father as agreed between the parties as per the agreement entered into between them at the time when divorce petition was filed. The petitioner filed Ext.P1 petition for waiver of the condition regarding custody stating circumstances which warranted her to file the application and that is pending. In the meantime petitioner filed I.A 3965/2014 and in that application the court below passed an interim order directing the parties to comply with the terms of agreement entered into between them by handing over the child to the respondent on a Sunday. This order is being challenged by the petitioner by filing this petition.

3. Heard the counsel for the petitioner and respondent.

4. The counsel for the petitioner submitted that handing over of the child during Sunday will be difficult for the petitioner as well as the child and further it was not mentioned on which Sunday the child will have to be

produced. The counsel for the petitioner further submitted that since she has filed Ext.P1 application for complete waiver of the condition of handing over of the custody of the child, the court below should not have directed the parties to abide by the agreement which has been entered into between them at the time when they filed application for joint petition for divorce on mutual consent.

5. On the other hand the counsel for the respondent submitted that there is no illegality committed by the court below. If the Sunday is inconvenient for them, he had no objection in producing the child on any other day. He want only the visitorial right of the child as provided under the agreement.

6. The fact that the petitioner and the respondent married and in the wedlock, the minor child by name, Maithri S. Nair was born to them is not in dispute. It is also an admitted fact that the marital relationship between them strained which resulted in divorce by filing joint petition for divorce and at that time they have entered into agreement regarding the custody of the child as per which the

permanent custody was given to the mother with a right of granting custody one day in a month to the father. Since that was not complied with, the respondent filed a petition for permanent custody of the child and also moved for interim custody and also getting custody of the child during vacation and those petitions were dismissed by the family court as per Ext.P2 order. The main OP filed by the respondent namely, OP (G&W) 62/2015 is still pending. Similarly it is also an admitted fact that the petitioner herein filed IA 3965/2014 in OP 579/2014 under Section 26 of the Hindu Marriage Act for waiver of the condition regarding custody, that has been provided as per the agreement entered into between them and the court below rejected the contention of the respondent that the application is not maintainable, but held that the application is maintainable but directed the parties to abide by the terms entered into between the parties dated 04-04-2014 and fixed the day for custody as Sunday. This arrangement is being challenged by the petitioner.

7. The counsel for the petitioner submitted that Sunday will be inconvenient for both petitioner and the child. Since she wanted permanent exemption from the condition entered into between the parties, without disposing that I.A., the court below should not have ordered interim custody. This contention of the counsel for the petitioner cannot be accepted. Till the condition is modified, the parties are bound by the agreement entered into between them when the divorce was effected regarding the custody of the child. So, court below cannot be said at fault for permitting interim custody of the child for a day to the father as agreed between the parties in the agreement dated 04-04-2014. But there is nothing mentioned in the order as to when that order will come into effect, and which Sunday the child has to be produced and the time between which the custody can be given etc. So the order on the face of it is vague, and that has to be clarified. We feel instead of Sunday producing the child on the last Saturday on every month before the family court at 10.30 a.m. and directing handing over of the child to the father from the family court

premises at that time and return the child at 4 p.m. in the family court premises on the same day will be sufficient and that will meet the ends of justice as far as both the parties are concerned and also considering the paramount interest of the child. So the order passed by the court below is modified as follows:

The petitioner is directed to produce the child before the Family Court, Thiruvananthapuram in the family court premises on the last Saturday of every month at 10.30 a.m. and the respondent can take custody of the child and produce the child before the family court at 4 p.m. on the same day so that the petitioner can take back the custody of the child from there. The CMO of the court is directed to enter the production and return of the child in the register maintained in that office regularly.

8. This interim arrangement will continue till final orders are passed in Ext.P1 application filed by the petitioner and also in the OP (G&W) 62/2015 filed by the respondent herein. The parties are at liberty to move that court itself for modification of the order if any required

showing the change of circumstances and if such an application is filed, the family court is at liberty to pass appropriate orders in that application.

9. With the above directions and modifications the original petition is disposed of.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge