

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 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

OP (FC).No. 307 of 2015 (R)

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(OPG& W 1101/2013 of FAMILY COURT, KOLLAM)**

PETITIONERS:

- 1. BERYL NETTO,
AGED 70 YEARS, WIFE OF LATE LEONARD G. NETTO,
RESIDING AT SHERLANDS, THEKKEVILA PO.O,
KOLLAM TALUK, KOLLAM DISTRICT.**
- 2. SHONIN ALPHONSE NETTO,
AGED 43 YEARS, SON OF LATE LEONARD G. NETTO,
RESIDING AT 4/29, GRAHAM ROAD, HIGHETT,
VICTORIA-3190, AUSTRALIA
(REPRESENTED BY THE POWER OF ATTORNEY HOLDER,
THE 1ST PETITIONER)**

**BY ADVS.SRI.JOHNSON GOMEZ
SRI.S.SREEKUMAR (KOLLAM)
SRI.S.BIJU (KIZHAKKANELA)
SRI.ANIL ELGIN
SRI.S.VINCENT**

RESPONDENT:

**NISHA MARCELES,
AGED 35 YEARS, D/O. MARCELES,
RESIDING AT NISHANTHI, PALACE ROAD,
THANKASSERI P.O., KOLLAM-691007.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 08-07-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE POWER OF ATTORNEY DATED 29-10-2013 EXECUTED BY THE 2ND PETITIONER IN FAVOUR OF THE 1ST PETITIONER.
- EXT- P2- TRUE COPY OF THE ORDER DATED 04-07-2013 PASSED BY THE FEDERAL COURT OF AUSTRALIA, MELBOURNE FILE No.(P) MLC 4024/2013.
- EXT- P3- TRUE COPY OF THE INTERIM ORDER DATED 07-08-2013 PASSED BY THE FEDERAL CIRCUIT COURT OF AUSTRALIA, MELBOURNE FILE No.(P) MLC 4024/2013.
- EXT- P4- TRUE COPY OF THE ORDER DATED 27-08-2013 IN IA No.3048/2013 IN OP (GW) 1101/2013 PASSED BY THE FAMILY COURT, KOLLAM.
- EXT- P5- TRUE COPY OF THE JOINT STATEMENT DATED 29-10-2013 FILED BY THE PARTIES BEFORE THE FAMILY COURT.
- EXT- P6- TRUE COPY OF THE I.A. No.929/2015 IN OP (G&W) No.1101/2013 FILED BY THE 1ST PETITIONER BEFORE THE FAMILY COURT, KOLLAM.
- EXT- P7- TRUE COPY OF THE WRITTEN OBJECTION FILED BY THE RESPONDENT IN IA No.929/2015 IN OP (GW) No.1101/2013 BEFORE THE FAMILY COURT, KOLLAM.
- EXT- P8- TRUE COPY OF THE INTERIM ORDER DATED 31-07-2014 IN OP (FC) No.317/2014 PASSED BY THIS HON'BLE COURT.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 307 OF 2015

DATED THIS THE 8th DAY OF JULY, 2015

J U D G M E N T

K. Ramakrishnan, J:

This is an application filed by the petitioner seeking intervention of this court with respect to the custody of the child in OP (G&W) 1101/2013 on the file of Family Court, Kollam under Article 227 of the Constitution of India.

2. It is alleged in the petition that the 2nd petitioner married the respondent and in that a male child was born to them. But due to some difference of opinion, the relationship between themselves strained, which resulted in dissolution of marriage as per the orders of the Family Court at Australia. Thereafter the 1st petitioner filed OP (G&W) 1101/2013 before the Family Court, Kollam for permanent custody of the child and also moved I.A. 3048/2013 restraining the respondent from taking the child outside India and Ext.P4 order was passed. Thereafter Ext.P5 joint statement was filed whereby the custody of the child was given to the respondent and she was permitted

to take the child to Saudi Arabia on the understanding that during vacation some arrangement between the parties will have to be made regarding the custody of the child to be given to the 2nd petitioner. Thereafter during July 2014 the presence of the child could not be procured and the petitioner moved this court for getting interim custody as OP (FC) No.371/2014 and this court by Ext.P8 order made an interim arrangement of custody and thereafter the OP was disposed of later. Now the petitioner filed I.A No.929/2015 before the Family Court seeking custody of the child during vacation of this year which will have to start in the middle of July. Respondent filed Ext.P7 objection and the court below has not passed any order in that application and the application is posted along with main petition now. So the petitioner has no other remedy to approach this court seeking the following reliefs.

(a) To direct the Family Court, Kollam to order temporary custody of the Minor ward Anthea Netto for a period of 7 days from 16th July 2015 to 22nd July 2015 to the petitioners.

(b) To direct the Family Court, Kollam to consider Ext.P6 petition for interim custody expeditiously and within a time frame that is fixed by this Hon'ble Court.

3. Considering the nature of the relief claimed, this court felt that the petition can be disposed of at the admission stage

itself, giving certain directions to the Family Court to consider and dispose of I.A. 929/2015 filed by the petitioner. If the petitioner files an application for advancing the hearing stating the reason for urgency in hearing the matter, then the court below is directed to consider that application and advance hearing of I.A 929/2015 and after hearing both sides pass appropriate orders in accordance with law, as expeditiously as possible, at any rate before 16-07-2015, during which period the 2nd petitioner is expected to come to India to have interaction with the child.

4. With the above directions and observations this petition is disposed of.

5. Office is directed to communicate this judgment to the court below by fax, immediately.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge