

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

OP (FC).No. 320 of 2015 (R)

(AGAINST THE ORDER IN I.A.548/15 IN O.P.(G&W0488/14 OF THE FAMILY
COURT, THIRUVALLA)

PETITIONER(S) :

RENY VARGHESE, AGED 30 YEARS
D/O. SUDHA SUSAN VARGHESE, MARY VILLA, PARUMALA P.O
KADAPRA VILLAGE, THIRUVALLA TALUK
PATHANAMTHITTA DISTRICT

BY ADV. SRI.B.MOHANLAL

RESPONDENT(S) :

ROSHAN GEORGE
S/O. GEORGE JOSEPH, P.O BOX NO 4844
GREEN TREE AGRICULTURAL COMPANY, OITC GROUP, DOHA
QATAR (FROM UZATHIL BUNGLOW, PARUMALA P.O
THIRUVALLA TALUK
PATHANAMTHITTA DISTRICT) REPRESENTED BY HIS FATHER AND POWER OF
ATTORNEY HOLDER GEORGE JOSEPH
UZATHIL BUNGLOW, PARUMALA P.O, KADAPRA VILLAGE
THIRUVALLA TALUK
PATHANAMTHITTA DISTRICT PIN 689 626.

BY ADVS.M/S.JOSEPH GEORGE & JESWIN P.VARGHESE

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 04-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 320 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- THE TRUE COPY OF THE PSYCHIATRIC COUNSELING REPORT DATED
06/01/2015.

EXHIBIT P2- THE TRUE COPY OF THE OBJECTION FILED BY THE PETITION IN O.P
(G & W) NO 488/2014 OF THE FAMILY COURT, THIRUVALLA.

EXHIBIT P3- THE TRUE COPY OF THE ORDER IN I.A NO 548/2015 IN O.P (G &
W) NO 488/2014 DATED 06/06/2015 OF THE FAMILY COURT, THIRUVALLA

/TRUE COPY/

P.S. TO JUDGE.

s1.

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

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O.P.(FC)No.320 of 2015

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Dated this the 4th day of September, 2015.

JUDGMENT

Mary Joseph, J.

1. The petitioner, who is working as a Staff Nurse in Doha has moved this original petition (FC) under Article 227 of the Constitution of India against the respondent, who is none other than her husband, who is a graduate working at Green Tree Agricultural Company, Doha, seeking reliefs as mentioned hereunder:

- “i) to set aside Ext.P3 order passed by the Family Court, Thiruvalla in I.A.No.548 of 2015 in O.P. (G&W)No.488 of 2014 and to get interim custody.
- ii) to direct the Family Court, Thiruvalla to set aside Ext.P3 order in I.A.548/2015 in O.P.(G&W) No.488/2014 and grant interim custody of the minor

ward Reuben George Roshan, aged 3 ¼ years within a stipulated time as directed by this Hon'ble Court.

iii) to declare that in view of the tender age the petitioner is entitled to get the interim custody of the minor ward Reuben George Roshan, aged 3 ¼ years.

iv) to declare in view of the tender age the respondent is not entitled to get interim custody of the minor ward Reuben George Roshan, aged 3 ¼ years residing in bachelor accommodation.

v) to issue such other reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The petitioner is the respondent in the above mentioned O.P.(G&W) and the respondent is the petitioner therein. Each parties were represented before the Family Court, Thiruvalla through Power of Attorney Holders, who are none other than the mother and father respectively of each of them. Permanent custody of the minor ward,

namely 'Reuben George Roshan', was sought for in the O.P.(G&W) No.488/14. The averments in the writ petition, *de sans* the immaterial ones are reproduced hereunder:

3. The petitioner and the respondent got married on 15.11.2010 at Parumala Seminary Church, Parumala and the marriage was solemnised as per the customary rites under the Christian law that governs the parties. During their stay together at the house of the respondent, the minor child Reuben George Roshan was born on 13.3.2012. The marital relationship got estranged in the course of life due to differences in opinion among them. Therefore, since the last one year prior to filing of the original petition they opted for separate residence. The petitioner filed O.P.(G&W)No.243 of 2014 against the respondent before the Family Court, Thiruvalla seeking permanent custody of the minor ward, Reuben George Roshan. During the pendency of the said case, O.P.(G&W)No.488 of 2014 was filed by the respondent herein against the petitioner. I.A.No.548 of 2015 was filed in O.P.(G&W)No.488 of 2014 seeking interim

custody of the minor ward. The Family Court, Thiruvalla through Ext.P3 order dated 6.6.2015 had allowed the I.A. and granted interim custody of the minor ward to the respondent for one day in every week, from 4 p.m. on Thursday till 4 p.m. on the succeeding Friday. Aggrieved by the said order, this O.P.(F.C.) is preferred on the ground that it is perverse, illegal and passed by the Family Court without application of mind.

4. When Ext.P3 order was put under challenge, this Court has passed an order in modification of the impugned order on the following terms:

“The interim order is modified directing the petitioner to produce the child on every Friday at 10 a.m. before the Indian Embassy, Doha, Quatar. The Embassy authorities shall hand over the child to the respondent and respondent shall return the child at 4 p.m. on the same day before the same authority so that the child can be handed over back to the petitioner by the authorities.”

5. This Court has also specified in the order *supra* that the modified interim arrangement will continue only till disposal of the O.P.(F.C.).

Learned counsel for the respondent has also sought time to produce the document to show that the respondent is residing in a part of a villa, as an independent accommodation. Accordingly a week's time was granted. Thereafter, an additional document was produced along with I.A.No.11382 of 2015 filed to accept the same.

6. The document Ext.R1(b) is a tenancy agreement executed by the respondent for the period from 1.6.2015 till 31.5.2016 in respect of the flat. Photographs produced as Ext.R1(c) would reveal the facilities contained in the said flat and that the respondent is having the facility of car provided by his employer, Green Tree Agricultural Materials Company, Doha. Those documents are produced to convince this Court that the respondent in this original petition has an independent residence at Doha, Qatar to accommodate the ward.
7. In the counter affidavit filed in support of I.A.No.11382 of 2015 to accept the additional documents it was specifically sworn to by the respondent that the petitioner has not produced the child at the Indian Embassy at Doha, Qatar on 24.7.2015 though he had waited there

from 8 a.m. till 3 p.m. and thus has disobeyed this Court's direction in the order dated 23.7.2015.

8. Heard Sri..B.Mohanlal and Sri.Joseph George, the respective counsel appearing for the petitioner and the respondent. Learned counsel for the petitioner urges that the respondent is a bachelor and having only bachelor accommodation at Doha. He being a Web Designer, as the nature of the work demands, must always be in front of a computer, and would not get any time to spare with the child. It would be the destiny of the child if sent along with him to be confined in dark rooms, assaulted and abused. In the said circumstances, the minor ward would be in peril and therefore his interim custody at any cost would not have been given to the respondent. Placing reliance upon Ext.P1, allegedly issued by an expert, it is urged that the respondent has difficulty to control his temper and therefore he used to assault his wife on sudden impulses that in such a circumstance the same attitude alone could be expected from him towards the ward and that it would hamper the welfare of the child, which is the paramount

aspect to be considered in cases of custody, is the contention. According to the petitioner, the Family Court ought to have considered the fact that the child is only aged 3¼ years and being at a tender age must be more safe and comfortable with his mother and that the respondent has absolutely no valid reasons or justifiable grounds to have his custody.

9. Per contra, Sri. Joseph George, learned counsel for the respondent had submitted on the basis of Exts.R1(b) & R1(c) that the respondent, being the father of the child and the natural guardian, having possessed of a flat on rental basis and a car and having been employed, has the capacity to accommodate the child and to look after him.

10. We have gone through Exts.R1(b) & R1(c), the additional documents, and got convinced of the capacity of the respondent to accommodate the ward in case the custody of the former is given to him. His employment as Web Designer at Doha is also not disputed by the petitioner. Therefore, the respondent has succeeded in

establishing that he has financial capacity to look after the ward. There is absolutely no evidence let in by the petitioner to establish the contention that the respondent has acted to the detriment of the interest of the ward on any previous occasion. The only point to which our attention was drawn by the petitioner is Ext.P1 issued from Medical College Hospital, Pushpagiri jointly by Professor Dr.Roy Abraham Kallivayalil, Head of the Department of Psychiatry and Dr.Fazal Mohammed, Associate Professor of Department of Psychiatry, wherein their impression on their examination of the respondent is expressed as follows:

“Mr.Roshan George has difficulty to control his temper and assaults his wife on a sudden impulse. But he lacks true insight into his condition. Hence, our counselling sessions were not fully successful.

Mrs.Reny Varughese does not have any psychiatric disorder. But she has found it unable to adjust with her husband any more. She has benefitted from counselling sessions. We recommended that the couple may be counselled again.”

- 11.The aforesaid impression was developed by respective psychiatrists' based on their interaction with the petitioner and the respondent. The psychiatrists have not opined that the respondent is a person affected with psychic disorder. They have also noticed that the petitioner has inability to adjust with the respondent. Apart from all the above it is pertinent to note that, the petitioner has no previous history of psychiatric disorder. No materials to that effect are also forthcoming. What Ext.P1 reveals is only inability of the parties to the marital relations to adjust among themselves.
- 12.The apprehension of the petitioner as expressed by his counsel Sri.B.Mohanlal was that the respondent being a computer addict with the character of uncontrollable temper will find it difficult to manage the child of 3 ¼ years during night hours and therefore, the overnight stay ordered as per Ext.P3 is to be avoided.
- 13.It is pertinent to note at this juncture that the Family Court, Thiruvalla had occasion to interact with the respondent and the child in his chamber and has evaluated that the child is very happy and

comfortable in the company of his father. Solely on the reason that the respondent without any history of arrogant behaviour to anyone was loosing temper while dealing with his wife out of their strained relationship for which both are equally responsible, this court cannot presume that he will act to the child in similar way. Moreover the Family Court has reported from his personal experience that the child and the respondent are very cordial in their meeting. Nothing strange was noticed by the Family Court in the chamber counselling in the relationship of the child and the respondent.

14.Respondent is the natural guardian of the child. The Family Court has passed Ext.P3 order after evaluating the demeanour of the parties personally. Therefore we cannot found any error, illegality or impropriety in the order warranting our interference. The modifications sought in Ext.P3 seems to us absolutely unnecessary in the absence of any materials revealing history of psychic disorder of the respondent while in the company of the ward. Therefore we find no ground to interfere. Moreover, the child who was 3 ¼ years at the

time when the O.P(G&W) No.488 of 2014 was filed, has become mature than then and there is no question of the breast feeding being affected. It is only for a single day that overnight stay is ordered. No doubt, the child will be safe at his father's custody.

In the result, the O.P(F.C) is dismissed. The order of the Family Court in O.P(G&W) No.488 of 2014 is confirmed. Parties shall bear their respective costs.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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