

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

OP (FC).No. 329 of 2015 (R)

IA.NO.240/2015 IN OP(G&W) 81/2015 OF THE FAMILY COURT, VATAKARA.

PETITIONER(S)/PETITIONER:

RANKESH K NAMBIAR AGED 35 YEARS
S/O KUNJIRAMAN NAMBIAR, MANGOTTU VEEDU
CHENOLI AMSOM DESOM, CHENOLI P.O

BY ADVS.SMT.V.P.SATHI
SMT O V BINDU

RESPONDENT(S)/RESPONDENT:

THUSHARA
D/O BALAN NAIR, POTTANAKANDY VEEDU, ERAYATTOOR PO
PERAMBRA-673 525, KOYILANDI TALUK

R1 BY ADV. SRI.SUNIL NAIR PALAKKAT
R1 BY ADV. SRI.K.N.ABHILASH

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 329 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE DETAILS OF PRESCRIPTION DT. 18/1/14
EXT.P1(A): TRUE COPY OF THE DETAILS OF PRESCRIPTION DT. 25/11/14
EXT.P1(B): TRUE COPY OF THE DETAILS OF PRESCRIPTION DT.25/11/14
EXT.P2: TRUE COPY OF THE PETITIONER FILED BEFORE FAMILY COURT
VATAKAR FOR PERMANENT CUSTODY OF THE CHILD DT. 26/2/15
EXT.P3: TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER IN THE O.P
DT. 26/2/15
EXT.P4: TRUE COPY OF THE INTERIM ORDER OF THE FAMILY COURT DT.
11/6/15

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

OP(FC) No. 329 of 2015

Dated this the 15th day of October, 2015

JUDGMENT

Abdul Rehim,J.

The above original petition is filed by invoking the supervisory jurisdiction vested on this court under Article 226 of the Constitution of India, for challenging Ext.P4 order passed by the Family Court, Vadakara in IA. No.240/2015 in OP. No.81/2015. The case before the Family Court was instituted by the petitioner herein seeking permanent custody of his minor child viz. 'Sidhardh R.Nambiar' born out of the wedlock between the petitioner and the respondent. Along with the original petition, IA.No.240/2015 was filed before the Family Court seeking interim custody of the minor child , pending disposal of the original petition. While considering the interim application the Family Court observed that the child is of only 4 years age and he is studying in LKG at a school near to the houses of the

respondent and the petitioner. The court found that the parents of the petitioner are aged and ailing and there is nobody else in his house to look after the child if the petitioner is given custody. It was stated that the petitioner is doing business and if goes out of the house in connection with his activities, any other person except his parents, who are aged and ailing, will be there to look after the child. On the other hand, the respondent will be available to look after the child if the child is in her custody. Therefore, considering the welfare of the child, interim custody of the child to the petitioner was declined. But the court had allowed the petitioner and his parents to see the child and to interact with him from the school where he is studying, twice in a week, on the 1st and 4th working days during lunch break or at any other time convenient to the school authorities.

2. Contention of the petitioner is that the arrangement for visitation ordered by the court below is too

insufficient. It is contended that, atleast interim custody of the child during weekend holidays should have been provided to the petitioner. It is also contended that the Family Court has not considered the wish of the child. Learned counsel for the petitioner pointed out that, as and when the petitioner and his mother makes a visit of the child in the school, the child is crying stating that he wish to go with them to the house of the petitioner. Under such circumstances it is necessary to order interim custody of the child to the petitioner with permission to take the child along with him to his residence atleast during the weekends, is the contention. Per contra, learned counsel appearing for the respondent disputed the claims contending that the child is of very tender age and he need love , care and protection of the mother. Further it is contended that the allegation regarding the expression made by the child during the visit by the petitioner and his mother, is a subsequent event which need not be taken as a ground to interfere with the

findings contained in the impugned order.

3. While considering the rival contentions, this court is of the opinion that there is no irregularity or error of jurisdiction committed by the court below while passing the impugned order. Therefore interference with respect to the arrangement contained in the impugned order is not warranted. However, if the petitioner has got a case that there exists a change of circumstance in view of the attitude of the child, it will be left open to the petitioner to seek for a modification with respect to the arrangement of interim custody, by approaching the Family Court itself. It is made clear that if the petitioner makes any such approach before the Family Court, the Family Court will consider all the attendant circumstances and shall take an appropriate decision in the matter.

4. Learned counsel for the petitioner made an apprehension that the Family Court may not consider such an application in view of the fact that the trial is about to

commence in the original petition. But we are of the opinion that the arrangement regarding interim custody is a matter which need to be considered at any time, if the court is convinced there exists any change of circumstances. Therefore we do not find any basis for such an apprehension.

5. Under the above mentioned circumstances the original petition is hereby disposed of by declining interference with Ext.P4 order. However, liberty of the petitioner to seek appropriate remedy before the Family Court for modification of the interim arrangement is hereby reserved.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

