

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 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

OP (FC).No. 357 of 2015 (R)

**ARISING FROM ORDER DATED 09-07-2015 IN OP 1750/2012 of
FAMILY COURT, THRISSUR.**

PETITIONER/RESPONDENT:

**SULFIA,
AGED 23 YEARS, D/O MUHAMMEDUNNI,
MAMMASRAYILATH HOUSE
ORUMANAYUR P.O., CHAVAKKAD.**

BY ADV. SRI.M.A.ABDUL HAKHIM

RESPONDENT/PETITIONER:

**NAVAS,
AGED 29 YEARS, S/O ABDUL KHADER,
NALAKATH KULIYIL HOSUE, MARUTHAYUR
PAVARATTY P.O., CHAVAKKAD.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 05-08-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: A PHOTOSTAT COPY OF O.P.NO.1750/2012 OF THE FAMILY COURT, THRISSUR.**
- EXHIBIT P2: THE OBJECTION FILED BY THE PETITIONER IN O.P.NO.1750/2012 OF THE FAMILY COURT THRISSUR.**
- EXHIBIT P3: A PHOTOSTAT COPY OF THE LIST OF DOCUMENTS FILED BY THE RESPONDENT IN O.P.NO.1750/2015 OF THE FAMILY COURT THRISSUR.**
- EXHIBIT P4: A PHOTOSTAT COPY OF IA NO.3068/2015 FILED BY THE RESPONDENT IN O.P.1750/2012 OF THE FAMILY COURT THRISSUR.**
- EXHIBIT P5: A PHOTOSTAT COPY OF THE OBJECTION FILED BY THE PETITIONER IN IA NO.3068/2015 IN O.P.NO.1750/2012 OF THE FAMILY COURT THRISSUR.**
- EXHIBIT P6: A PHOTOSTAT COPY OF THE ORDER OF THE FAMILY COURT THRISSUR IN IA NO.3068/2015 IN OP NO.1750/2012.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 357 OF 2015

DATED THIS THE 5th DAY OF AUGUST, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

In this original petition filed under Article 227 of the Constitution of India, the petitioner is challenging Ext.P6 order passed by the Family Court, Thrissur in IA 3068/2015 in OP 1750/2012. The petitioner herein is the respondent in OP 1750/2012 before the family court. The respondent herein is the petitioner before the court below. The said original petition was filed seeking custody of the minor child of the parties namely, Muhammed Yasin, aged 3 years. The impugned order of the family court was passed in IA 3068/2015 which is filed by the respondent herein seeking for re-opening of the evidence for adducing further evidence on behalf of the respondent. In Ext.P6 order the family court, after hearing both sides, allowed the interim application finding that the family court being a trial court

should afford opportunity to the parties to adduce evidence as they desire and that the relief to the extent of permitting additional evidence should not be denied. Hence the interim application for re-opening of evidence was allowed. It is aggrieved by the said order, this original petition is filed.

2. Learned counsel appearing for the petitioner contended that the interim application for re-opening evidence was allowed without considering Ext.P2 objection filed by the petitioner herein. It is contended that the additional evidence sought to be adduced, as enlisted as in Ext.P3 list are matters which are not at all relevant to the issue involved in the case. It is contended that the attempt of the respondent is only to protract the case. Therefore it is contended that the family court went erred in exercising its jurisdiction in a judicious manner.

3. We are of the considered opinion that the impugned order is not liable to be interfered in exercise of the supervisory jurisdiction vested on this court under Article 227 of the Constitution of India. On an appreciation

of the factual aspects, the family court found that the respondent herein shall not be denied of opportunity to adduce further evidence which according to him is relevant for the purpose of a better adjudication and decision on the issues involved. Contention that, in allowing such an application the family court had committed grave error of jurisdiction, cannot be accepted. We are also not convinced that virtue of the impugned order any prejudice has been caused to the petitioner. Learned Judge of the family court had taken the decision in exercise of his judicial wisdom which would definitely be dependent upon the factual matrix of the case which is being tried. When the court below had taken a decision to permit one of the parties to lead additional evidence, the same cannot be termed in any manner as unreasonable or arbitrary. The order will not in any manner be termed as one issued in an erroneous exercise of jurisdiction vested on that court or as an order issued in violation of any statutory provisions. Hence the original petition deserves no merit.

4. However, we make it clear that the petitioner herein will be at liberty to raise objections regarding admissibility of any one of the evidence which is sought to be adduced by recalling the petitioner for further examination. Needless to observe that, if any such objection is raised with respect to admissibility of anyone of the evidence, the family court will consider the same and shall take appropriate decision.

The original petition is dismissed, however subject to the above observations.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge