

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937H

OP (FC).No. 390 of 2015 (R)

PETITIONER:

**UNNIKRISHNAN C.
DEVI NIVAS, VALLIKUNNU P.O,
ATHANIKKAL, MALAPPURAM 673 314.**

**BY ADVS.SRI.A.RAJASIMHAN
SRI.K.NIRMALAN**

RESPONDENT:

**SREELA
D/O.UNNIKRISHNAN NAIR,
THEKKATTU SREELEKSHMI
KANNIPARAMBU, MAVOOR, KOZHIKODE 673 661.**

BY ADV. SRI.JACOB ABRAHAM

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

OP (FC).No. 390 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE OP(GW)NO.186/15 PENDING BEFORE THE FAMILY COURT, KOZHIKODE.

EXHIBIT P2. COPY OF THE PHOTOGRAPHS.

EXHIBIT P3. COPY OF THE JUDGMENT IN OPFC 188/15 DATED 23.6.15.

EXHIBIT P4. COPY OF THE IA 854/15 BEFORE THE FAMILY COURT, KOZHIKODE.

EXHIBIT P5. COPY OF THE OBJECTION IN IA 854/15.

EXHIBIT P6. COPY OF THE ORDER IN IA 854/15.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 390 OF 2015

DATED THIS THE 21st DAY OF AUGUST, 2015

J U D G M E N T

K. Ramakrishnan, J:

This original petition is filed by the petitioner challenging Ext.P6 order passed by the Family Court in IA 854/2015 in OP (G&W) 186/2015 under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and respondent are husband and wife and in the wedlock two children were born to them, who are aged 5 years and 9 months respectively. Due to some misunderstanding between them, they started residing separately and the children are now with the mother-respondent. Earlier he filed an application for custody of the children and that was granted with some conditions and IA 240/2015 and 441/2015 were filed seeking modification of the existing conditions and those petitions were disposed of by the

family court with some modification which was challenged by the petitioner by filing OP (FC) 188/2015 before this court and this court by Ext.P3 order disposed of the petition making some modification in the order. Thereafter petitioner filed Ext.P4 petition before the family court for custody of the elder child during Onam vacation and respondent filed Ext.P5 objection and the learned family court Judge by a cryptic-Ext.P6 order dismissed the same stating that as regards interim custody of the children, this court passed an order in OP (FC) 188/2015 and there is change of circumstances. This order is being challenged before this court by filing this petition.

3. Heard counsel for the petitioner and respondent.

4. The counsel for the petitioner submitted that the child is very comfortable with the father and no harm will be caused if interim custody of the 1st child was given to the petitioner during Onam holidays.

5. On the other hand, the counsel for the respondent submitted that the overnight custody of the children was not given to the petitioner even earlier considering the

conduct of the petitioner and also the report of the Counsellor in this regard. Further he had summoned certain documents from the hospital showing the health condition of the petitioner and that will be produced before the court and that will have to be considered by the family court before passing an order in the application. He further stated that he has no objection to set aside the order and directing the family court to re-consider the application after considering the objections and claims raised by respective parties in the petition. This was opposed by the counsel for the petitioner on the ground that by the time orders will be passed the Onam holidays will be over.

6. At the outset we may say, we are not satisfied with the manner in which Ext.P6 order was passed by the family court. When an application has been filed and the objection has been filed to that, Presiding officer is expected to consider those allegations and counter allegations in the petition and the objection and it must be seen from the order that there is application of mind on the part of the Officer before passing order. Further court

below also failed in note the fact that as regards custody of the minor children are concerned, every order is in the nature of interim order and that can be modified by the court as and when change of circumstances brought to the notice of that court or new circumstances mentioned for modifying the order. Further the reasons stated by the court below that since the court has passed an order in OP (FC) 188/2015 regarding the custody of the children, no further modification is required is also not correct because no such restriction was made by this court in the order passed in the petition.

7. So under the circumstances we feel that the impugned order passed by the court below has to be set aside and will have to be remitted back to the family court for fresh disposal in accordance with law and we do so. The parties are directed to appear before the court below tomorrow as per the orders of this court, the accessibility of the children will have to be given to the father tomorrow. If the parties present before the court below on tomorrow, the court below is directed to consider IA 854/2015 afresh and

pass appropriate orders in that application after considering the allegations and counter allegations made and also considering the fact that order passed by this court in OP(FC) 188/2015 is not a bar for considering the application for modification regarding custody of the children during holidays by the court, namely Onam, Christmas and summer vacation. So the court below is directed to consider and dispose of the petition as expeditiously as possible, at any rate on or before 24-08-2015.

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

Office is directed to communicate this judgment to the concerned court as far as possible today itself by fax.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

AMG

True copy

P.A. to Judge