

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

OP (FC).No. 407 of 2015 (R)

AGAINST THE ORDER DT. 24.7.2015 IN IA.229/2015 IN OP(G& W) 32/15 OF
THE FAMILY COURT, KOZHIKODE.

PETITIONER(S)/PETITIONER:

SABITH YOONUS NALAKATH
S/O. DR.YOONUS NALAKATH, UDAILIYA VEEDU
PATHANAPURAVAILLAPPUZHA POST, ARECOKKODE
MALAPPURAM DISTRICT.

BY ADVS.SRI.A.A.ZIYAD RAHMAN
SRI.LAL K.JOSEPH
SRI.P.M.ZAFARULLAH
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM

RESPONDENT(S):

1. AHSANA NAVAL.K.
D/O. DR.K.MUHAMMED SAJITH, KALLINGAL, DARUL IHASAN
P.T.USHA ROAD, THER VEEDU LANE, KOZHIKODE
KOZHIKODE DISTRICT.
2. DR. K.MUHAMMED SAJITH
KALLINGAL, S/O.AHAMMED AMEED, DARUL IHASAN
P.T.USHA ROAD, THER VEEDU LANE, KOZHIKODE
KOZHIKODE DISTRICT.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 02-
09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 407 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE PETITION BEARING NO. OP(G&W)NO.32/12
- P2 - TRUE COPY OF THE JUDGMENT DATED 10.06.2015 IN OP (FC)NO.181/2015
- P2(A) - TRUE COPY OF THE ORDER DATED 2.07.2015 IN RP NO.548/15 IN OP (FC)NO.181/15
- P3 - TRUE COPY OF THE PETITION IA NO.229/15 BEFORE THE FAMILY COURT.
- P4 - TRUE COPY OF THE COUNTER AFFIDAVIT DATED 16.03.2015
- P5 - TRUE COPY OF THE ORDER DATED 24.07.2015 IN IA NO.229/2015 IN OP (G&W) 32/2015

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

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

OP(FC) No. 407 of 2015

Dated this the 2nd day of September, 2015

JUDGMENT

Abdul Rehim,J.

The petitioner herein is the petitioner in OP(G&W) No.32/2015 pending before the Family Court, Kozhikode. Respondents herein are the respondents before the court below. The original petition before the court below was filed seeking custody of 2 minor children born to the petitioner and the 1st respondent. Evidently the marital relationship stands estranged and the parties are living separately. On an earlier occasion the petitioner had approached this court challenging an order of interim custody passed by the Family Court in IA.No.44/2015 in OP(G&W).32/2015. The said original petition, OP(FC). No.181/2015, was disposed of by this court through Ext.P2 judgment. This court found that there is no ground for interference with respect to the order passed by the Family Court declining custody of the minor children to the petitioner.

However, the visitorial rights granted in favour of the petitioner was modified in accordance with the conditions stipulated in Ext.P2 judgment. Thereafter the 1st respondent approached this court in a review petition seeking modification of Ext.P2 judgment. The said review petition was disposed of through Ext.P2(a) order on the basis of clarifications mentioned therein.

2. At present the petitioner is aggrieved by the dismissal of Ext.P3 interim application, filed as IA.229/2015. In Ext.P3 application the petitioner sought for appointment of a medical expert in order to evaluate the mental conditions of the respondents herein and to call for a report of such evaluation. Allegations contained in the affidavit filed in support of the said interim application is that the respondents are suffering from some sort of mental illness and therefore the minor children need to be shifted along with the 1st respondent to a more healthy atmosphere. Therefore it is requested that an evaluation of the mental condition of the respondents through a medical expert need to be done. The court below had declined the relief through Ext.P5 order finding that the original petition is only at the stage of counselling and hence the interim application is

premature and that the relief sought for in the interim application is vague and not clear. However it is made clear that the petitioner will be at liberty to file proper application as and when required.

3. According to the petitioner, the court below had failed in appreciating the relief sought for in the interim application in its real perspective. Learned counsel for the petitioner submitted that the application is intended only to secure service of a medical expert by the Family Court for the purpose of assisting the Family Court in discharging its functions enumerated under section 12 of the Family Court Act 1984. Chapter VI of the Family Court Act deals with duty cast upon the Family Court to make efforts for settlement. It is provided under section 12 that, it will be open to the Family Court to secure service of medical experts in promoting welfare of the Family and for the purpose of assisting the Family Court in discharging its functions in appropriate cases. It is left open to the Family Court to refer the parties for psychological or psychiatric counselling in order to achieve ends of welfare of the family or to promote the efforts of settlement. But in the case at hand, as observed by the court

below, the original petition is only at the stage of counselling. Whether any psychological or psychiatric counselling is required or not is a matter which need to be decided by the Family Court, after obtaining the report of counselling. More over, it is doubtful as to whether a party in a proceedings can seek for a procedure as contemplated under section 12 of the Act.

4. However, it will be left open to the petitioner to seek for expert evidence during trial of the case, if the petitioner is having any opinion that the respondents are suffering from mental illness and that such illness is a matter which need to be taken note of in deciding the issue involved in the petition. Needless to observe that, if any such approach is made by the petitioner at the appropriate stage of proceedings in the original petition, the same shall be considered by the Family Court independently or untrammelled by any observations contained in Ext. P5 order.

5. Learned counsel appearing for the petitioner had expressed further apprehension that the observation contained in Ext. P5 order to the effect that there is no prayer or application for appointment of guardian for any of the respondents may

cause prejudice to the petitioner. According to the learned counsel, the petitioner never intended to make any application for appointment of a guardian/next friend as contemplated under Order XXXII of the CPC. According to him, the interim application now filed before the court was intended only for the purpose of invoking section 12 of the Family Court Act. Needless to observe that if any further application of the petitioner pursuing remedies as mentioned above is filed, the same shall be considered independently in its real perspective even without recourse to the procedure contemplated under Order XXXII of CPC.

6. Under the above mentioned circumstances, we are of the opinion that the impugned order does not warrant interference of this court. Hence the original petition is hereby dismissed, subject to observations contained hereinabove.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

