

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP (FC).No. 422 of 2015 ()

AGAINST THE ORDER IN IA 1031/2015 IN OP 860/14 OF FAMILY COURT,
PATHANAMTHITTA, DATED 18.08.2015

PETITIONER/RESPONDENT:

ANIL KUMAR, AGED 40 YEARS
S/O.M. SADASIVAN, LAKSHMI VILASOM, PATTOMTHURUTHU P.O
MANROTHURUTHU VILLAGE, KOLLAM

BY ADVS.SRI.PRAVEEN K. JOY
SRI.T.A.JOY

RESPONDENT/PETITIONER:

INDU S., AGED 37 YEARS
D/O. T.R SURENDRAN, KUARAVILASATHU VEETIL
THADIYOOR MURI, AIYROOR VILLAGE, RANNI TALUK
PATHANAMTHITTA DISTRICT

R1 BY ADVS. SRI.M.T.SURESHKUMAR
SRI.S.SANAL KUMAR
SMT.T.J.SEEMA
SMT.BHAVANA VELAYUDHAN
SMT.SMITHA PHILIPOSE

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 422 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1 THE TRUE PHOTOCOPY OF THE JUDGMENT DATED 3-12-14 IN OP 860/14
OF FAMILY COURT PATHANAMTHITTA

EXT.P2 THE TRUE PHOTOCOPY OF THE DECREE IN OP 860/14 DATED 03.12.2014
OF FAMILY COURT, PATHANAMTHITTA.

EXT.P3 THE TRUE PHOTOCOPY OF THE DEPOSIT RECEIPT DATED 9-6-2015 OF
CANARA BANK

EXT.P4 THE TRUE PHOTOCOPY OF THE CERTIFICATE DATED 7-7-15 OF CANARA BANK

EXT.P5 THE TRUE PHOTOCOPY OF THE TITLE DEED NO 701/15, DATED 18.05.2015
OF THE PETITIONER IN FAVOUR OF SREYA ANIL

EXT.P6 THE TRUE PHOTOCOPY OF THE JUDGMENT DATED 18-6-15 IN OP(FC)180/15

EXT.P7 THE PETITION FILED BEFORE KOYIPURAM POLICE STATION DATED 08.08.2015

EXT.P8 THE TRUE PHOTOCOPY OF THE IA 1031/15 IN OP 860/14 BEFORE FAMILY
COURT, PATHANAMTHITTA

EXT.P9 THE TRUE PHOTOCOPY OF THE ORDER DATED 18-08-15 IN IA 1031/2015 IN
OP 860/14 FAMILY COURT, PATHANAMTHITTA

EXT.P10 THE TRUE PHOTOCOPY OF THE COMPLAINT DATED 27-08-2015 BEFORE
KOYIPURAM POLICE STATION

RESPONDENT(S) ' EXHIBITS : NIL

//TRUE COPY//

P.A.TO JUDGE

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

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O.P.(FC).No. 422 of 2015

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Dated this the 19th day of October, 2015

JUDGMENT

C.K.ABDUL RAEHIM, J.

The petitioner herein, who is the respondent in O.P.No.860 of 2014 on the files of Family Court, Pathanamthitta, is approaching this court by invoking the supervisory jurisdiction vested under Article 227 of the Constitution, seeking to set aside Ext.P9 order passed by that court in I.A.No. 1031 of 2015. Inter alia, the petitioner is seeking appropriate direction to the Police Officer concerned to give assistance for taking custody of the minor child, namely Miss. Shreya Anil born out of the wedlock between the parties herein, which is allowed in Ext.P6 judgment of this Court.

2.Parties herein are husband and wife living separated due to matrimonial discord. There is a long history of

litigations with respect to custody of the minor child, Miss.Shreya Anil. The respondent herein approached Family Court, Pathanamthitta, in O.P.No. 860 of 2014 seeking permanent custody of the minor child. During pendency of that case, the parties have arrived at a settlement with respect to the entire disputes and filed Ext.P2 compromise petition as I.A.No.1361 of 2014. The terms of the compromise includes an arrangement agreed upon with respect to custody of the minor child. The Family court had disposed of O.P.No. 860 of 2015, on 03.12.2014, taking on record the compromise petition jointly filed by the parties as I.A.No.1361 of 2014, and allowing the case in terms of the compromise, which was incorporated along with the decree. Terms of the compromise would indicate that, the minor child will be given custody to the petitioner herein for two days on every 2nd Saturdays and Sundays and for 5 days each during the Onam and X'mas holidays and also for 10 days each at the beginning and closing of the mid summer

vacation (totaling to 20 days). The above arrangement was made subject to the condition that the petitioner will make deposit a sum of Rs. 7,00,000/- in a fixed deposit in the name of the minor girl, with liberty to the respondent to withdraw the interest by showing her name as nominee. It was also agreed upon that the petitioner will assign certain immovable properties situated in Mantrothuruth Village, in favour of the minor child. It is evident from Exts.P3 and P4 that the petitioner had made fixed deposit for Rs.7,00,000/- in the name of the minor and executed Ext.P5 settlement deed assigning the immovable properties into her name. The arrangement of custody as per the compromise decree was complied by both the parties till 2015.

3. Afterwards, the respondent herein approached the Family court by filing I.A.No. 451 of 2015 in O.P.No. 860 of 2014 rising an allegation that, after handing over custody of the child for 10 days during the mid-summer vacation on 03.04.2015 the child was not handed over back custody on

12.04.2015, on completion of 10 days. It is alleged that the child was illegally kept custody by the petitioner till 18.04.2015. Hence the respondent sought modification of the earlier order regarding custody of the minor. The Family court passed an order in that application on 21.04.2015, modifying the existing arrangement and ordering that the minor child need be given custody to the petitioner only from the next Onam holidays. The finding is to the effect that, the petitioner had committed willful violation of the terms of the compromise. The parties were directed to comply with the terms and conditions of the compromise decree in its letter and spirit from the next Onam vacation onwards. Till then the minor child was permitted to be in the custody of the respondent herein.

4. Order passed by the Family Court in I.A.No. 451 of 2015 was subjected to challenge before this court at the instance of the petitioner herein, in O.P.(FC).No. 180 of 2015. This court disposed of the said case through Ext.P6

judgment, dated 18.06.2015. It was observed that there was no violation of the terms of judgment in O.P. No.860 of 2014 from 03.12.2014 till the last occasion. It was also noticed that there was a petition filed by the petitioner herein before the Family Court with respect to the non-return of the child on completion of the 10 days period, which was omitted notice of the Family Court. Conclusion was that, merely because of the lapse on one occasion it cannot be said that there was a deliberate and willful omission on the part of the petitioner in giving back custody of the child. Therefore the order passed by the family court in I.A.No. 451 of 2015 was set aside and the earlier judgment of the Family Court dated 03.12.2014 was restored. However, liberty was reserved to the parties to seek modification if required, based on any change of circumstances.

5. Complaint of the petitioner herein is that, despite passing of Ext.P6 judgment by this court as early as on

18.06.2015, the respondent had failed to comply with the arrangement in handing over custody of the child on the 2nd Saturdays. Therefore the petitioner herein filed I.A.No.1031 of 2015 before the Family Court, during August 2015, seeking orders to have interim custody of the child and for direction to the Station House Officer of Kozhipuram Police Station, for executing the order of the Family Court. But the court below, while considering the said interim application, had again passed Ext.P9 order on 18.06.2015, directing the parties only to comply with the terms of the compromise decree and adjourned the case for further consideration to 01.09.2015. It is aggrieved by the said order and the alleged inaction on the part of the Family Court in taking any effective steps for enforcement of the compromise decree, the above original petition is filed.

6. Contention of the petitioner is that, the Family Court ought to have taken note of the continuous violation of Ext.P6 judgment, from 18.06.2015 onwards. It is also

contended that, despite such flagrant violation brought to the notice of the Family Court, there is failure to take any effective steps for enforcing the decree. Hence the petitioner is seeking invocation of the supervisory jurisdiction to ensure that justice is preserved and ensured.

7. Per contra, learned counsel for the respondent contended that, the obligation cast upon the petitioner in terms of the compromise has not been discharged in full. It is alleged that, on many occasions, despite production of the child before the “SNDP Shakha Office” at Valiyakunnam, the petitioner has not turned up to take custody of the child. It is submitted that the respondent is ready and willing to comply with the terms of the compromise, if the petitioner discharges all the stipulated conditions. It is specifically contended that the petitioner had not made the Fixed Deposit in a manner permitting the respondent to withdraw the interest.

8. It is pertinent to note that, the arrangement

regarding temporary custody of the child to the petitioner on the basis of the compromise decree continued from 03.12.2014 onwards. A solitary instance of violation pointed out was during April, 2015. Even at the time when the Family Court decided I.A.No.451 of 2015, there was no indication that the respondent had raised any contention based on the alleged violation of the terms of compromise. So also, when the matter was considered by this court in O.P.(FC).No.180 of 2015, there was no such contention raised. Hence it is evident that the contention based on the alleged violation of the terms of the compromise is raised for the first time in this original petition. It is evident that the respondent had violated the terms of compromise by not handing over custody of the child during the 2nd Saturdays and during the Onam holidays in 2015, despite specific directions contained in Ext.P6 judgment. Even if the respondent had any case regarding violation of the terms of compromise, the same should have been brought to the

notice of the Family Court at appropriate time. Instead, the respondent remained idle and continued violation of the compromise decree, which was reiterated through Ext.P6 judgment of this court. Now the respondent is seeking rescue by relying upon the condition incorporated under Clause 17 of the compromise petition. It would indicate that, if the conditions stipulated under Clause 5 and 6 are violated, then Clause 8, 9 and 10 will not be binding on the respondent. But as observed above, this court takes note of the fact that, even such a contention was not seen taken when the Family Court considered I.A.No.1031 of 2015 which was filed seeking for enforcement of the decree.

9. While hearing the matter, we put a pointed question to the counsel for the petitioner with respect to the aspects relating to withdrawal of interest accruing on the fixed deposit. The petitioner has no objection in the respondent withdrawing the interest, in accordance with the terms of compromise. Therefore we are of the considered opinion

that necessary direction in this regard can be issued to the Family Court, in order to ensure that the respondent is facilitated with withdrawal of the monthly interest. Subject to such direction, the 1st respondent need to be compelled to comply with the conditions in the compromise, with respect to the temporary custody of the child during all 2nd Saturdays and Sundays, and during Onam, X'mas and mid-summer holidays.

10. Under the above mentioned circumstances, this original petition is hereby disposed of by making it clear that the respondent is bound to comply with the compromise decree passed by the Family Court, Pathanamthitta, in O.P.No.860 of 2014, on 03.12.2014, which is confirmed and re-enforced through Ext.P6 judgment of this court in O.P.(FC).No. 180 of 2015. The respondent is directed to handover custody of the minor child to the petitioner at the premises of the Family Court, Pathanamthitta, by producing the child before the Chief

Ministerial Officer or any other Officer who is in charge in the Family Court, at 10.00 a.m., on 2nd Saturdays of every month, instead of producing the child before the “S.N.D.P. Shakha”, Valiyakunnu. The child shall be handed over back to the respondent from the same premises in the same manner before 5.00 p.m. on the succeeding Sundays. The place of handing over the child during Onam, X'mas and mid summer holidays shall also be the same premises, in accordance with terms of the compromise. The above direction shall be complied with strictly from the ensuing 2nd Saturday of the month of November, 2015 onwards.

11. The Family Court, Pathanamthitta, is directed to take steps to issue necessary direction to the Bank concerned in order to permit the respondent to withdraw the monthly interest accruing on the fixed deposit which is produced by the petitioner, along with arrears of the interest accrued till date. Necessary steps in this regards shall be taken immediately on receipt of this judgment.

12. The respondent is directed to comply with the conditions stipulated in the compromise decree, subject to the above modification regarding the place of handing over custody of the child. This court direct both the parties to appear before the Family Court on 12.11.2015, in order to ensure that the arrangement of temporary custody will be complied without fail from 14.11.2015 onwards.

13. In case of any failure on the part of the respondent to comply with the above directions, the Family Court shall pass appropriate effective orders in I.A.No.1031 of 2015 to ensure that the custody of the minor child is handed over to the petitioner.

Sd/-
C.K.ABDUL REHIM,
JUDGE.

Sd/-
MARY JOSEPH,
JUDGE