

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

OP (FC).No. 446 of 2015 (R)

(AGAINST THE ORDER IN I.A.1372/15 IN O.P.NO.1123/13 OF THE FAMILY
COURT, PALAKKAD)

PETITIONER(S)/PETITIONERS :

1. RAJU CHANDRAN, AGED 40 YEARS
S/O. A.M.CHANDRAN, SANTHI SADAN, KUTTIYATTOOR P.O.
MAYIL VIA, KANNUR-670 602.

2. THANKAM CHANDRAN, AGED 61 YEARS
W/O. A.M.CHANDRAN, ARAVINDAN, PULIYAPARAMBU
POODUR AMSOM DESOM, KODUNTHIRAPPULLY P.O.
PALAKKAD TALUK, PIN-678 004.

BY ADVS.M/S.SUNIL NAIR PALAKKAT & K.N.ABHILASH.

RESPONDENT(S)/RESPONDENT :

LATHA SUNDARESWARAN, AGED 33 YEARS
D/O. SUNDARESWARAN NAIR, DEVAKI
OPP. TO VASAVI VIDHYALAYA, CHITTUR ROAD
MANAPPULLIKKAVU, KUNNATHURMEDU P.O.
PALAKKAD TALUK-678 013.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 22-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 446 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1 : COPY OF THE JUDGMENT DTD.25.5.2015 ON THE FILE OF FAMILY
COURT, PALAKKAD.

EXT.P2 : COPY OF THE LETTER DTD.210.8.2015 TO THE RESPONDENT.

EXT.P3 : COPY OF THE IA NO.1372/15 IN OP NO.1123/13 DTD.4.9.2015.

EXT.P4 : TYPEWRITTEN COPY OF THE 'A' DIARY PROCEEDINGS DTD.15.9.2015 IN
IA NO.1372/15 IN OP NO.1123/13.

/TRUE COPY/

P.S. TO JUDGE.

s1.

C.K. Abdul Rehim & Mary Joseph, JJ.

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O.P.(F.C.)No.446 of 2015

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Dated this the 22nd day of September, 2015.

JUDGMENT

Abdul Rehim, J.

1. The petitioners herein are the petitioners in O.P.No.1123 of 2013 on the file of the Family Court, Palakkad. The respondent herein is the respondent before the court below. The original petition before the Family Court was filed seeking permanent custody of two minor children born out of the wedlock between the first petitioner and the respondent. The Family Court, Palakkad had adjudicated the original petition and dismissed the same through Ext.P1 judgment, but reserving visitation right to the petitioners on all Saturdays and Sundays, whenever the 1st petitioner is available at the native place on leave. In terms of Ext.P1 judgment, the 1st petitioner was permitted to take custody of the children at 9 a.m. from the house of the respondent on all Saturdays and to return the children at the same

place before 5 p.m. on subsequent Sundays. Case of the petitioners is that, the 2nd petitioner had sent a registered notice to the respondent intimating the fact that the 1st petitioner will be available at native place from 3.9.2015 till 29.9.2015. The respondent was requested to make arrangements for effecting the visitation right on that basis. The petitioners have filed I.A.No.1372 of 2015 (Ext.P3) before the court below, seeking direction for production of the minor children before the court and to hand over custody on all Saturdays and Sundays from 3.9.2015 to 29.9.2015 and also to permit the 2nd petitioner to contact the minor children over telephone on all Wednesdays between 8 p.m. and 9 p.m., as ordered in Ext.P1. Ext.P3 interim application was filed before the Family Court on 4.9.2015. The Family Court ordered notice in the said petition and posted the case to 11.9.2015. On 11.9.2015, the case was again adjourned to 15.9.2015. According to the petitioners, they could pay the Batta and take steps for effecting service of notice on the respondent, only on 14.9.2015. But the process server could not be deputed from the

court since 12.9.2015 and 13.9.2015 were holidays. Therefore on 15.9.2015 when the case was taken up, the court below adjourned the interim application to 15.9.2015, as evidenced from the extract of the 'A' Diary proceedings produced as Ext.P4.

2. It is stated that the 1st petitioner has to leave the place on 29.9.2015 on the expiry of his leave period. It is alleged that the court below had failed in considering the above aspect and in ordering production of the children. Under such circumstances, the petitioners are approaching this Court by invoking its supervisory jurisdiction vested under Article 227, seeking direction to grant custody of the children to the petitioners in terms of Ext.P1 order. On the alternative, the petitioners seek direction to the Family Court to dispose of Ext.P3 application expeditiously.
3. It is evident from the terms of Ext.P1 judgment that the petitioners were entitled to have custody of the children on every Saturdays and Sundays, when the 1st petitioner is available in station. Specific conditions stipulated in Ext.P1 is to the effect that the 1st petitioner

can take custody of the children from the place of the respondent at 9 a.m. on all Saturdays and should return the children at the very same place at 5 p.m. on the next Sundays. Nothing is mentioned in the affidavit filed in support of Ext.P3 application filed before the Family Court or in this original petition filed before this Court, to the effect that the 1st petitioner went to the house of the respondent to take custody of the children on any specific Saturday, after he had reached the native place on leave. However, there is an allegation that the respondent had violated terms of Ext.P1 judgment by denying the 2nd petitioner to have access to the children over telephone, in violation of the stipulations contained therein permitting such contact on every Wednesday.

4. As admitted, Ext.P3 interim application was moved only on 4.9.2015, as evident from the endorsement contained in the docket sheet of Ext.P3 interim application. The Family Court had posted the matter for hearing on 11.9.2015. But it is evident that the petitioners have paid the Batta only on 8.9.2015. According to

learned counsel for the petitioners, despite that the notice could not be served because the respondent was not available when the process server went to her house. It is conceded that the court below had adjourned the matter to 15.9.2015 after ordering notice. But the Batta was paid only on 14.9.2015. Therefore, the petitioners alone can be attributed with fault in not taking effective steps to complete service of notice on the respondent within the dates specified for posting of the interim application. It is stated that the case now stands adjourned, from 15.9.2015 to 13.10.2015, before the Family Court. If the petitioners have got any grievance regarding such long adjournment of the interim application, it is left open to them to move before the Family Court seeking advancement of hearing. Learned counsel for the petitioners submitted that an application seeking advancement of posting date is being filed before the Family Court on today. It is for the petitioners to move such application before the Family Court and to get posting of the matter on an expeditious basis, by apprising about urgency of the matter before

that court. This Court is of the opinion that if any such attempt is made, the Family Court will appreciate the situation and shall take appropriate decision. At any rate, there are no circumstances warranting interference of this Court at this stage to direct production of the children. It will be left open to the Family Court to take appropriate decision in the matter considering the urgency of the situation.

The original petition is disposed of subject to the above observations.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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