

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

OP (FC).No. 466 of 2015 (R)

IA.NO.53/13 IN OP.NO.24/13 OF FAMILY COURT, MALAPPURAM.

PETITIONER:

**MUHAMMED SHAM, AGED 31 YEARS,
S/O.SHAHUL HAMEED, CHOLAKKAL HOUSE,
PACHATHODI, MUNDUPARAMBU(P.O),
MALAPPURAM - 676 509.**

BY ADV. SRI.R.ABDUL AHAD

RESPONDENT:

**KAMARUNNEESSA, AGED 24 YEARS,
D/O.ABDUL AZEEZ, CHATHANCHIRA HOUSE,
MUNDUPARAMBU POST, MUNDUPARAMBU
CHERI ROAD, MALAPPURAM - 676 509.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 01-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

OP (FC).No. 466 of 2015 (R)

APPENDIX

PETITIONERS' EXHIBITS:

EXT. P1 : CERTIFIED COPY OF THE ORDER IN I.A.NO.53 OF 2013 IN OP.NO.24 OF
2013 ON THE FILE OF THE FAMILY COURT, MALAPPURAM
DATED 6.7.2013.

EXT. P2 : TRUE COPY OF ELECTRONIC EXIT RE-ENTRY VISA(SINGLE).

EXT. P3 : TRUE COPY OF THE AIR TICKET NO.40581539 DATED 29.7.2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

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

O.P (FC) No. 466 OF 2015

DATED THIS THE 1st DAY OF OCTOBER, 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 seeking interim custody of his minor child, Master. Mohammed Ghais for 2 days on every week. Inter alia, direction is sought against the respondent to hand over custody of the minor child to the petitioner on every Fridays at 5 p.m. till 5 p.m. on Sundays.

2. Averments are to the effect that, the petitioner's mother had filed a case before the Family Court, Malappuram as OP No. 24/2013 seeking custody of the said minor child and the said original petition is pending disposal. The respondent herein, who is the mother of the minor child, is the respondent in that original petition. It is pointed out that on 06-05-2015 the Family Court had passed Ext.P1 order in IA No.53/2013, directing the respondent to hand over the child to the custody of the petitioner's mother for 3 hours on the 3rd Saturdays of every

month, before the Principal Counsellor of that court. It is stated that the petitioner is working abroad and he went to Gulf countries during September 2012. Thereafter he returned from abroad only on 31-07-2015. It is alleged that the petitioner could not see his minor child, because the respondent had defaulted compliance of the terms of Ext.P1 order, despite the fact that the petitioner was present before the Family Court along with his mother on 19-09-2015. According to the petitioner he has to return to his place of work before 17-01-2016 and he had booked return ticket for 26-12-2015. According to the petitioner, he is very much desirous of seeing his child. But the respondent is preventing him from such attempts by disobeying the order of the Family Court.

3. It seems that the above original petition is filed on a total misconception about the supervisory jurisdiction vested on this court under Article 227. The petitioner is not challenging any of the orders passed by the Family Court. Nor there is any allegation of any error of jurisdiction committed by the Family Court in any of the proceedings pending before that court. The allegation is mainly that the respondent had violated Ext.P1 order. It is pertinent to note that the petitioner is not a party

before the Family Court in OP No.24/2013. If the terms of Ext.P1 order is not complied with by the respondent, it is for the petitioner in the said case to seek appropriate remedy before the Family Court. We take note of the fact that the petitioner had never approached the Family Court in any petition with respect to custody of the minor child. Under such circumstances there is no situation pleaded or materials produced to the effect that the Family Court had exercised its jurisdiction in any manner illegal or erroneous.

4. For the reasons mentioned above, the original petition is not sustainable. Hence the same is hereby dismissed. However, it is made clear that the above judgment will not stand in the way of the petitioner seeking appropriate remedy with respect to custody of his minor child in appropriate proceedings before appropriate forum.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge