

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

OP (FC).No. 484 of 2015 (R)

(AGAINST O.P.64/2013 OF THE FAMILY COURT, ERNAKULAM)

PETITIONER(S) :

SANOJ PAREETHU AGED 37 YEARS
S/O.LATE KHADER ALI PAREETHU, HOUSE NO.37/2904
PONOTH ROAD, KALOOR, KOCHI-682017.

BY ADVS.M/S.A.BALAGOPALAN & M.S.IMTHIYAZ AHAMMED

RESPONDENT(S) :

NIMY P.Y.
D/O.P.A.YOUNES, PUNNEPILLIL HOUSE, SHENOY ROAD
KALOOR, KOCHI-682017.

BY ADV. SRI.BABU KARUKAPADTH.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) .No. 484 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P1: TRUE COPY OF THE OP 64/13 BEFORE THE FAMILY COURT ERNAKULAM.

EXT.P2: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT.

EXT.P3: TRUE COPY OF THE IA 1819/2013.

EXT.P4: TRUE COPY OF THE OBJECTION TO IA 1819/2013.

EXT.P5: TRUE COPY OF THE ORDER DT.27-6-2013 IN IA 1819/13 IN OP 64/13.

EXT.P6: TRUE COPY OF THE IA 1304/14.

EXT.P7: TRUE COPY OF THE ORDER IN IA 1304/14 DT.6-6-2014.

/TRUE COPY/

P.S. TO JUDGE.

s1.

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

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O.P.(FC)No.484 of 2015

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Dated this the 16th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. The petitioner herein is the petitioner in O.P.No.64 of 2013 on the files of the Family Court, Ernakulam. The respondent herein is the 1st respondent before that court. The case was instituted seeking custody of the minor child born to the parties herein, namely Master Nashwan, who is cited as the 2nd respondent in the original petition before the Family Court. The case before the Family Court was instituted in the year 2013. In an interim application filed by the respondents before the Family Court as I.A.1819 of 2013, challenging the maintainability of the original petition before that

court, the court below passed Ext.P5 order on 27.6.2013. The respondent herein was given interim custody of the minor child and the petitioner herein was permitted to visit him at Mumbai on all 2nd Saturdays from 10 a.m. till 5 p.m. It is also ordered that if necessary he can have custody of the child on ensuing Sunday also from 10 a.m, till 2 p.m. Evidently, the said arrangement continued after June, 2013. Thereafter the petitioner herein had filed I.A.1304 of 2014 during May, 2014 seeking interim custody of the minor child for two weeks during Summer Vacation, in July, 2014. The said application was dismissed by the Family Court through Ext.P7, observing that, overnight custody of the child to the petitioner was already denied earlier, after counselling conducted by the Judge who was then holding the office on taking into account of the health conditions of the child. It is aggrieved by the said order, the petitioner is approaching this court invoking jurisdiction vested under Article 227

of the Constitution of India.

2. Heard Sri.Imthiyaz Ahammed learned counsel appearing for the petitioner and Sri.Babu Karukapadath, learned counsel appearing for the respondent.
3. It is evident that the earlier arrangement with respect to the interim custody was ordered as early as in June, 2013. That being so, the denial of overnight custody which was sought for in I.A.No.1304 of 2014, merely observing that it was denied earlier considering the health condition of the child, is not a proper finding. As held by the Honourable Supreme Court in various decisions, any order with respect to custody of a minor child can only be treated as an interim arrangement. On every occasion whenever there is a change of circumstances, it is the duty of the court to evaluate the circumstance and to ascertain whether there exists any necessity to modify the interim arrangement. It is for the court to evaluate the situation

prevailing and to take note of the paramount consideration, which is the welfare of the child.

4. However, we notice that any interference in Ext.P7 is not at all warranted, because the interim custody sought for in I.A.No.1304 of 2014 was with respect to the Summer Vacation during July, 2014. If there occurred any change of circumstance entitling the petitioner to have interim custody of the child during any ensuing vacation period, it is for the petitioner to approach the Family Court in appropriate petition. Since the relief sought for in I.A.No.1304 of 2014 has become infructuous long back, we are not interfering with the impugned order. Hence on leaving open liberty to the petitioner to approach the Family Court seeking appropriate relief regarding interim custody, the above original petition is hereby dismissed.
5. Needless to observe that if the petitioner apprises the Family Court regarding any urgency of such interim application if any filed, the

Family Court shall consider such motion and shall take appropriate decision with respect to entertaining such an application, without any further delay.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

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