

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 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

OP (FC).No. 517 of 2015 (R)

PETITIONERS:

- 1. SMITHA DEVI.B.,
AGED 36 YEARS, D/O.BABY,
PRESENTLY WORKING AS ACCOUNT ASSISTANT, CCDU
PTC TOWERS, S.S.KOVIL ROAD, THAMPANOR
THIRUVANANTHAPURAM DISTRICT
PERMANENT ADDRESS AT 'DEVI BHAVAN', VETTAMPALLY
IRINCHAYAM P.O., ANAD VILLAGE, NEDUMANGAD TALUK
THIRUVANANTHAPURAM DISTRICT, PIN-695561.**
- 2. PONNU @ GATHA
AGED 44 YEARS, S/O. LATE. GOPINATHAN,
REPRESENTED BY THE 1ST PETITIONER
PERMANENT ADDRESS AT 'DEVI BHAVAN', VETTAMPALLY
IRINCHAYAM P.O., ANAD VILLAGE, NEDUMANGAD TALUK
THIRUVANANTHAPURAM DISTRICT, PIN-695561.**

BY ADV. SRI.R.B.RAJESH

RESPONDENT:

**GIREESH KUMAR.G.S,
AGED 44 YEARS, S/O.LATE GOPINATHAN,
GOURI SANKARAM, ALUMMOODU LANE
ARUVIKKARA, NEDUMANGAD TALUK
THIRUVANANTHAPURAM DISTRICT, PIN-695542.**

BY ADV. SRI.D.KISHORE

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 18-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

APPENDIX

PETITIONER'S EXHIBITS

- P1 : TRUE COPY OF THE COMPROMISE PETITION FILED IN OP 43/2010
DT.31-3-2012 OF FAMILY COURT, NEDUMANGAD.**
- P2 : TRUE COPY OF THE DECREE IN OP 43/2010 DT.24-04-2012 OF FAMILY COURT,
NEDUMANGAD.**
- P3 : TRUE COPY OF THE EP 98/2013 DT. 26-11-2012 FILED BY THE
RESPONDENT/PETITIONER.**
- P4 : TRUE COPY OF THE E.A.79/2015 DT.18-5-2015 FILED BY THE
RESPONDENT/PETITIONER.**
- P5 : TRUE COPY OF THE EA NO.113/2015 DT.19-3-2015 FILED BY THIS
PETITIONER.**
- P6 : TRUE COPY OF THE ORDER IN EA 79/2015 IN EP 98/2013 IN OP 43/2010
DT.10-9-2015 OF FAMILY COURT, NEDUMANGAD.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

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

O.P (FC) No. 517 OF 2015

DATED THIS THE 18th DAY OF DECEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioners are challenging Ext.P6 order passed by the Family Court, Nedumangad in EA No.79/2015 in EP No.98/2013 in OP No.43/2010, dated 10-09-2015.

2. EP No.98/2013 was filed by the respondent herein seeking enforcement of an order passed in OP No.43/2010. Evidently OP No.43/2010 was disposed of by the court below based on a compromise, in which the petitioners herein have agreed that custody of the minor child will be given to the respondent on 2nd Saturdays of every month till 5 p.m. on the succeeding Sundays. It is on the basis of allegation that the petitioners have failed to comply with the compromise decree, that the respondent had filed EP No.98/2013. The respondent herein filed an interim application before the executing court as EA No.79/2014

seeking direction to hand over custody of the minor ward. The said application was opposed by the petitioners herein and they have filed another interim application as EA No.113/2015 seeking modification of the compromise decree. The court below had dismissed EA No.113/2015 and allowed EA No.79/2015 directing the petitioners to produce the minor ward on 11-10-2015 and to hand over custody to the respondent herein till 11-12-2015. It is aggrieved by the said order passed in EA No.79/2015 (Ext.P6), the above original petition is filed invoking the supervisory jurisdiction vested on this court under Article 227.

3. Heard; counsel on both sides. Contention of the petitioners is that, the child is not willing to go with the respondent and hence the petitioners have sought for a modification of the order by filing EA No.113/2015. First of all it is to be noted that, if the petitioners are intending to seek any modification of the compromise decree, they have to approach the court on the original side and not in the

execution proceedings. More over the order passed by the Family Court dismissing the EA No.113/2015 is not seen challenged. Apart from the above aspect, we do not find any merit in the challenge raised against Ext.P6, because the petitioners are not disputing the terms of the compromise decree. However, learned counsel for the petitioner had pointed out that the custody is granted for a period of 2 months from 11-10-2015 till 11-12-2015 which is beyond the scope of the terms of the decree and the execution court is not empowered to grant interim custody for such a long period, which is not there in the decree being executed.

4. Per contra, learned counsel for the respondent had pointed out that, at any rate the period specified in the order stands expired and the petitioners have failed to comply with the direction, despite the fact that this court has not stayed the operation of the order impugned. Further he made an appeal to this court to direct production of the minor ward before this court, in execution of the compromise decree and in pursuance to the order

impugned. But this court is of the considered opinion that the execution court can proceed with the matter by taking appropriate steps for enforcing its orders, especially in view of provisions contained under Section 25 (2) of the Guardian and Wards Act, 1890.

5. Under the above mentioned circumstances the original petition deserves no merit and the same is hereby dismissed. The parties are at liberty to seek appropriate remedy before the Family Court.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

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True copy

P.A. to Judge