

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 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

OP (FC).No. 546 of 2015 (R)

PETITIONER:

VIGNESH BALAGOPAL AGED 33 YEARS
S/O BALAGOPAL, KRISHNAKRIPA, ARIYALLOOR PO
TIRURANGADI TALUK, MALAPPURAM DISTRICT

BY ADVS.SRI.HARISH R. MENON
SRI.K.T.SHYAMKUMAR

RESPONDENTS:

DIVYA K.RADHAKRISHNAN
D/O RADHAKRISHNAN, RESIDING AT SREEPURAM
PUTHIUYANGADI PO, PAVANGAD, KOZHIKODE DIST. 673 021

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 01-
12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 546 of 2015 (R)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: A TRUE COPY OF NO 387/15.

EXT.P2: A TRUE COPY OF THEIA NO. 759/15 IN OP NO. 387/15

EXT.P3: THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT ON 23/9/15

EXT.P4: A TRUE COPY OF IA NO. 1299/15 IN IA NO. 759/15.

RESPONDENT(S) ' EXHIBITS:NIL

TRUE COPY

P.S TO JUDGE

AL/-

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

O.P.(F.C.)No.546 of 2015

Dated this the 1st day of December, 2015

JUDGMENT

C.K.Abdul Rehim J.

In view of the limited relief which is sought for and proposed to be granted in this original petition, issuance of notice to the respondent is dispensed with.

2. The petitioner herein is the petitioner in O.P.No.387/2015 before the Family Court, Kozhikode which is filed under the Guardian And Ward Act seeking custody of a minor child born to the parties herein. Another O.P filed by the petitioner seeking dissolution of the marriage is also pending disposal as O.P.No.808/2014. In O.P.387 of 2015, the petitioner had filed an interim application as I.A. 759 of 2015 for getting interim custody of the minor child. The said interim application was posted for consideration on 3.11.2015, after the respondent had filed objections. But, on that day the petitioner failed to appear before the court below and there was no representation on his behalf. Hence the Family Court had dismissed I.A.No.759 of 2015 and posted the O.P for further steps to 4.1.2016. On the same day, the petitioner had filed I.A.No.1299 of 2015 seeking for restoration of I.A.759/2015, which was dismissed for default. Ext.P4 is the copy of I.A

1299/2015. The petitioner is approaching this Court seeking direction for an early disposal of I.A. No. 1299 of 2015 stating that, unless there is any specific direction issued from this Court, the Family Court will take a long time to decide the question of restoration. According to the petitioner, unless urgent orders are not obtained in the matter of interim custody of the child, he will be put to severe prejudice and irreparable legal injuries. Hence, the petitioner seeks direction for an early disposal of I.A. No.1299/2015, within a time limit to be stipulated by this Court.

3. During the course of argument the learned counsel for the petitioner contended that, I.A.No.1299/2015 was filed after giving notice to the counsel appearing for the respondent. Despite that, the Family Court had ordered notice in the said application and posted the I.A along with the Original Petition to 4.1.2016 is the grievances expressed. This Court directed the Registry to call for a report from the Family Court, in order to ascertain whether I.A. No.1299/2015 was filed after serving notice to the counsel appearing for the opposite side and to ascertain as to whether it was necessary to order notice in the said application.

4. A report received from the Judge, Family Court, Kozhikode would indicate that O.P. 387/2015 now stands posted for pre-trial steps to 4.1.2016. I.A.No. 759 of 2015 was dismissed for default on 3.11.2015, because there was no representation for the petitioner herein on the said date and on the previous date on 28.9.2015. With respect to the

I.A.No.1299/2015 it is stated in the report that the said application was filed on 3.11.2015, showing the hearing date as 4.1.2016, without giving notice to the respondent or to the counsel for the respondent. Hence notice was ordered in the said I.A and it was posted along with original petition to 4.1.2016. It is stated that on further verification of the records it is found that, on 6.11.2015 the counsel for the petitioner had filed a 'notice voucher' to the effect that a copy of the interim application was served on the counsel appearing for the respondent. A copy of the said 'notice voucher' is also produced along with report. It would indicate that a copy of I.A. No.1299 of 2015 was served on the counsel appearing for the opposite side only on 5.11.2015. According to the report, the said voucher was filed before that court only on 6.11.2015. Hence it is evident that, at the time when I.A.No. 1299/2015 was filed before the Family court on 3.11.2015, there was no notice served on the respondent. Hence, the Family Court is perfectly justified in ordering notice.

5. However, it is now evident that notice has already been served in I.A.No.1299/2015 which is filed seeking for restoration of I.A.No.759/2015. Circumstances being so, it is left open to the petitioner to seek advancement of the posting of I.A. No. 1299/2015, by filing appropriate application before the court below. If any such application is filed with due notice to the respondent, the Family Court shall consider the same and shall take appropriate decision, taking note of the

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fact that I.A.No. 759 of 2015 is an application seeking interim custody of a minor child. Necessary steps for an early disposal of the matter shall be taken by the Family Court, if any such approach is made. The Family court will dispose of I.A. No. 1299 of 2015 within a period of one month, provided the petitioner files any advancement application within one week from today.

Sd/-

C.K.Abdul Rehim, Judge

Sd/-

Mary Joseph, Judge

al/-

True copy

P.S to Judge