

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 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP (FC).No. 550 of 2015 ()

(AGAINST THE ORDER DATED 02-09-2015 IN IA No.1414/2015 IN
OP No.477/2015 OF FAMILY COURT, ERNAKULAM

PETITIONER/RESPONDENT-PETITIONER:

FIJY JOSE,
AGED 27 YEARS, D/O.JOSE,
VADAKUMPADAN HOUSE, KANJIRAPPILLY PO
THRISSUR DISTRICT-680 721.

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA
SMT.CHITHRA CHANDRASEKHARAN
SMT.SYAMA SIDHARTHAN

RESPONDENT/PETITIONER-RESPONDENT:

JOJO P.T,
AGED 36 YEARS, S/O.THOMAS,
PALATTY KOONATHAN HOUSE, CHULLY PO
OLIVE MOUNT, ANGAMALY-683 581.

BY ADVS. SRI.C.Y.VINOD KUMAR
SMT.SHERIN A.RAHIM

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 17-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

OP (FC).No. 550 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : TRUE COPY OF THE PETITION FILED AS OP NO.477/2015 IN THE FAMILY COURT, ERNAKULAM DT 12-3-2015.**
- P2 : TRUE COPY OF OBJECTION WITH COUNTER CLAIM FILED IN OP NO.477/2015 OF FAMILY COURT, ERNAKULAM DT 5-10-2015.**
- P3 : TRUE COPY OF IA NO.1414/2015 FILED IN OP.NO.477/2015 OF FAMILY COURT, ERNAKULAM DT 16-4-2015.**
- P4 : TRUE COPY OF THE OBJECTION TO EXT P3 APPLICATION FILED BY THE RESPONDENT DT 18-4-2015.**
- P5 : TRUE COPY OF THE ORDER IN IA.NO.1414/2015 IN OP.NO.477/2015 OF FAMILY COURT, ERNAKULAM DT 2-9-2015.**

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

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

O.P (FC) No. 550 OF 2015

DATED THIS THE 17th DAY OF DECEMBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

Challenge in this original petition which is filed under Article 227 of the Constitution of India is against Ext.P5 order passed by the Family Court, Ernakulam in IA No.1414/2015 in OP No.477/2015. The original petition before the Family Court was instituted by the respondent herein, seeking permanent custody of the minor child born out of the wedlock between the petitioner and respondent, who is now aged 4 years. The petitioner entered appearance before the court below and filed Ext.P2 objections raising a counter claim for permanent custody. Subsequent to filing of counter claim the petitioner herein had filed IA No.1414/2015 seeking interim custody of the minor child from 8 a.m. on every Saturday till 8 a.m. on succeeding Monday and to have free and unrestricted

access to the minor at all reasonable times or such other period as may be fixed by the court below. The respondent herein filed detailed objections to the interim application. The court below on considering the interim application had passed Ext.P5 order which is highly cryptic in nature. It is aggrieved by the said order this original petition is filed.

2. Heard; counsel appearing on both sides. On a perusal of the order impugned this court take note of the fact that there is no reflection of any consideration of the contentions raised by both parties. The only observation made by the court below is that the petitioner is the mother of the child and the child is in the custody of the father. There is no reflection in the order with respect to proper application of mind or advertence to the rival contentions. There is no reflection that the court below had taken note of the welfare of the child, which would have been the paramount consideration. There is no discussion with respect to the comparative eligibility of both the parties or with respect to conveniences available to the child at the

houses of both the parties, for a better life of the minor child. So also there is no evidence to show that the court below had taken note of any of the aspects of love, protection, care and affection of the mother towards the child. There is no reflection of advertence to the contentions raised by the respondent in the objections. Considering the nature of the order, which is impugned in this original petition, this court is of the opinion that the same cannot be sustained legally. Hence we are inclined to set aside the order and to remit the matter for passing a considered order.

3. However, having considered the fact that the petitioner is the mother of the minor child the arrangement of visitation already allowed under Ext.P5 can be directed to be continued, till a fresh order is passed by the Family Court in IA No.1414/2015.

4. Hence the original petition is hereby allowed and Ext.P5 order passed by the Family Court in IA No.1414/2015 in OP No.477/2015 is hereby quashed. The

Family Court, Ernakulam is directed to pass fresh considered and speaking order in the interim application, after affording reasonable opportunity of hearing to both sides. Fresh order shall be issued at the earliest possible, at any rate within a period of one month from the date of receipt of a copy of this judgment.

5. Till such time fresh order is passed as directed above, the interim arrangement made by virtue of Ext.P5 with respect to custody of the child shall continue.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge