

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. 596 of 2015 (R)

(IA.NO.1885/2015 IN OP. (G&W)437/2015 OF THE FAMILY COURT, CHAVARA)

PETITIONER(S):PETITIONER

SKANDA DAS S. AGED 36 YEARS
S/O.SUNDARESAN, EDAPPURAYIL HOUSE
AYANIVELIKULANGARA VILLAGE, KARUNAGAPPALLY TALUK
PANIKKARKADAVU, AYANIVELIKULANGARA PO, KOLLAM 690 518.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH
SRI.RAAJESH S.SUBRAHMANIAN

RESPONDENT(S):RESPONDENT

GIFTA A.R.
D/O.AMBUJAN, PUTHEN PARAMBIL HOUSE, ALAPPAD VILLAGE
CHERIYAZHEEKAL PO, KOLLAM 690 573.

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

OP (FC).No. 596 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- TRUE PHOTOSTAT COPY OF THE PETITION IN OP (G & W) NO.437 OF 20-15
FILED BEFORE THE FAMILY COURT, CHAVARA, DATED 31.7.2015

P2- TRUE PHOTOSTAT COPY OF THE IA NO.1203 OF 2015 IN OP (G & W)
NO.437 OF 20-15 OF THE FAMILY COURT, CHAVARA DATED NIL

P3- TRUE PHOTOSTAT COPY OF THE OBJECTION FILED BY THE RESPONDENT IN
IA NO.1203/2015 IN OP(G & W) NO.437 OF 2015 DATED 21.8.15

P4- TRUE PHOTOSTAT COPY OF THE IA NO.1885 OF 2015 IN OP (G & W)
NO.437 OF 2015 DATED NIL

P5- TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE RESPONDENT IN IA
1885 OF 2015, DATED 28.11.2015

P6- TRUE PHOTOSTAT COPY OF THE ORDER OF THE FAMILY COURT, CHAVARA
IN IA NO.1885 OF 2015 IN OP (G &) NO.437 OF 2015 DATED 7.12.2015

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

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

OP(FC) No. 596 of 2015

Dated this the 18th day of December, 2015

JUDGMENT

Abdul Rehim,J.

In this original petition filed under Article 227 of the Constitution of India, the petitioner is challenging Ext.P6 order passed by the Family Court, Chavara in IA.1885/2015 in OP (G &W) No. 437/2015.

2. The original petition before the Family Court was instituted by the petitioner herein seeking permanent custody of the minor child of the petitioner viz. Sivanarayanan, who was born on 10.4.2009 out of the wedlock of the petitioner with the respondent. Evidently the said original petition was filed during July 2015. The petitioner had filed IA.No.1203/2015 seeking interim custody of the minor ward, pending disposal of the original petition. Ext. P2 is the copy of the said interim application. The respondent herein had entered appearance and filed objections to IA.No.1203/2015, as evidenced from Ext.P3.

During pendency of the original petition and IA.No.1203/2015, the petitioner had filed IA.No.1885/2015 seeking interim custody of the minor child for 3 days from 11.12.2015 to 13.12.2015, for the purpose of taking the child for pilgrimage to Sabarimala. Ext. P4 is the copy of the said interim application. The respondent had filed objections to the said IA., as per Ext.P5. The court below had considered IA.No.1885/2015 and passed Ext.P6 order denying permission to take the minor child for the pilgrimage, considering the health condition of the minor child. It is aggrieved by the said order the above writ petition is filed.

3. From the impugned order it is evident that the court below had taken note of Exts.B1 and B2 Medical Certificates produced from the side of the respondent. Those Certificates are issued by a Senior Consultant Pediatrician, of a private medical institute at Karunagapally. Contention raised by the respondent is that the minor ward was regularly being consulted at the hospital from March 2015 onwards for 'moderate persistent bronchial asthma', 'recurrent allergic rhinitis' and 'chronic adenotonsillitis'. It is contended that the health condition of the minor child is not favourable to shift him to the atmospheric condition of a hilly place. The court below noticed that in Exts.B1 and B2

Certificates the Pediatrician had advised to refrain from putting the minor child to strenuous physical exertion and to avoid cold, dust and smoke. Considering the Medical Certificates, findings was arrived to the effect that the health condition of the minor ward is not fit to permit him to be taken for the pilgrimage.

4. Learned counsel appearing for the petitioner contended that Exts.B1 and B2 are not genuine certificates. It is pointed out that those certificates were seriously disputed before the court below. Further it is pointed out that the respondent had not mentioned anything about illness of the child in Ext.P3 objections filed to IA.No.1203/2015, during August 2015. Therefore it is contended that the allegation of illness now put forth, with the support of fabricated Medical Certificates, is only with an intention to deny custody of the child to the petitioner and to prevent him from taking the child for pilgrimage.

5. Under Article 227 of the Constitution of India, this court is exercising only a supervisory power, which is visitorial in nature. It is not a court of appeal or revision. A re-appreciation of the factual aspects based on the rival contention is not supposed in this jurisdiction. Interference of this court is warranted only in cases where there occurs grave error of

jurisdiction, committed by the subordinate courts in cases where the court below passes an order which is totally contradictory to the statutory provisions or in a case where the order impugned is totally perverse. Going by the order impugned in the case at hand, there is nothing to show that, despite the dispute raised by the petitioner, any evidence has been adduced to prove that Exts.B1 and B2 Medical Certificates are not genuine. The court below cannot be blamed of denying the request based on Exts. B1 and B2 Certificates, because what is to be taken into consideration is only the welfare of the child. On the basis of Exts.B1 and B2 it cannot be said that the findings is erroneous, because the Doctor had advised to avoid any strenuous exertion of the child which may cause adverse impact on his health conditions. More over, we take note of the fact that the relief sought for in Ext.P4 application IA.No.1885/15 was for interim custody of the child from 11.12.2015 to 13.12.15. The period now stands expired. But we take note of the contentions of the petitioner that the respondent is coming out with a contention related to health conditions of the minor ward, for the time when IA.No.1885/15 is filed. It is pertinent to take note of the contentions that such an argument was not raised when the

respondent had filed objection to IA.1203/2015 . Further, it is for the Family Court to consider the application for interim custody filed as IA.No.1203/2015.

6. Learned counsel for the petitioner made an appeal to this court to direct interim custody of the minor child for few days during Christmas holidays. But since the original petition as well as the interim application are pending, we do not find any specific reason for this court to issue any such direction. On the other hand, the petitioner can be given liberty to move the Family Court for appropriate orders in the said application. Needless to observe that, if any such motion is made it is for the Family Court to consider the interim application on an early basis, if possible before the expiry of the X'mas holidays in December 2015 itself, and to pass appropriate orders.

7. Under the above mentioned circumstances, while dismissing the above original petition declining interference with respect to Ext.P6 order, the Family Court is directed to consider IA.No.1203/2015 or any other application if filed seeking interim custody of the minor ward, on an early basis and to pass appropriate orders thereon, after affording opportunity of hearing to both sides. The Family Court shall take all earnest efforts to

pass orders on such interim application before closing of the X'mas holidays.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/