

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. 182 of 2014 (R)

O.P. NO. 1585/2013 OF FAMILY COURT, ERNAKULAM.

PETITIONER(S):

AJIT NAIR, AGED 39 YEARS,
S/O. RADHAKRISHNAN MADHAVAN NAIR, FLAT 18 H,
ESTONIA BUILDING, OLIVE COURT YARD, EDACHIRA,
KAKKANAD, ERNAKULAM - 682 030.

BY ADV. SRI.B.KRISHNA MANI.

RESPONDENT(S):

REMYA SUDHA RENJITKUMAR ALIAS REMYA R.KUMAR,
AGED 31 YEARS, D/O. RANJITKUMAR,
NARAYANAM HOUSE, KP VIII/176,
NO.29 NCC NAGAR, PEROORKADA P.O.,
THIRUVANANTHAPURAM - 695 005.

BY ADVS. SRI.A.BALAGOPALAN,
SRI.A.RAJAGOPALAN.

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 18-12-2015, ALONG WITH OP(FC) NO.247 OF 2014, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. TRUE COPY OF THE ORIGINAL PETITION, O.P.NO.1585/2013 BEFORE THE FAMILY COURT, ERNAKULAM DATED NIL.
- EXHIBIT P2. TRUE COPY OF THE I.A.3202/2013 DATED 21.12.2013 IN O.P.NO.1888/2013 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P3. TRUE COPY OF THE OBJECTION DATED 26.12.2013 IN I.A.3202/2013 IN O.P.NO.1888/2013 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P4. TRUE COPY OF THE ORDER DATED 06.01.2014 IN I.A.3202/2013 IN O.P.NO.1888/2013 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM.
- EXHIBIT P5. TRUE COPY OF THE ORDER DATED 27.09.2013 IN I.A.3391/2013 FAMILY COURT, ERNAKULAM.
- EXHIBIT P6. TRUE COPY OF THE APPLICATION DATED 25.09.2013.
- EXHIBIT P7. TRUE COPY OF THE APPLICATION I.A.3360/2013 DATED 25.09.2013.
- EXHIBIT P8. TRUE COPY OF THE APPLICATION I.A.3391/2013 DATED 27.09.2013.
- EXHIBIT P9. TRUE COPY OF THE MEMO DATED 26.02.2014 BEFORE THE FAMILY COURT ERNAKULAM.
- EXHIBIT P10. TRUE COPY OF THE APPLICATION I.A. NO.1326/2014 DATED 23/04/2014.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

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

OP(FC) No. 182 & 247 of 2014

Dated this the 18th day of December, 2015

JUDGMENT

Abdul Rehim,J.

Two interim orders passed by the Family Court, Thiruvananthapuram in OP.No.1888/2013, with respect to the custody of minor wards, are under challenge in these original petitions.

2. OP.No.1888/2013 was filed by the petitioner herein seeking permanent custody of two minor daughters aged 7 years and 5 years, respectively who were born out of the wedlock between the petitioner and the respondent. The case was originally instituted before the Family Court, Ernakulam, which got transferred to the Family court, Thiruvananthapuram at the instance of the respondent, by virtue of the order passed by this court in Tr.P(C). No.444/2013. During pendency of the matter before the Family Court Ernakulam IA.No.2951/13 was filed by the petitioner seeking interim custody of the wards. The

said application was disposed of by granting temporary custody on 3 alternate days during Onam vacation, for few hours. So also, on the basis of an application filed in MC.No.90/13 before the Judicial First Class Magistrate-II , Thiruvananthapuram, interim custody of the minor wards were ordered in favour of the petitioner on several days during December, 2013.

3. The petitioner herein filed IA.No.3202/13 before the Family Court, Thiruvananthapuram seeking interim custody of the children, based on an allegation that the respondent is refusing the petitioner to have access with the children and that she is denying over night custody. The Family court, after hearing both sides, passed an order on 6.1.2013, copy of which is produced as Ext.P4 in OP(FC).182/2014. By virtue of the said order the petitioner was allowed with interim custody of the children on every 2nd Saturday from 11 a.m. to 3. p.m. in the court premises. Further the petitioner was allowed to be with the wards for 3 days in the 2nd half of the Onam holidays and also for 3 days succeeding to the 25th December during the X'mas holidays. With respect to summer vacation the court directed that the petitioner has to make some interim arrangement for

custody of the children with him at Thiruvananthapuram and it is mentioned that appropriate orders will be passed on informing about such arrangement.

4. Subsequently the court below considered IA.No.3202/13 on 9.5.2014 and passed a further order as per Ext.P11 produced in OP(FC).247/14. Through the said order the petitioner was permitted to have custody of the children for 10 days from 10.5.2014 till 20.5.2014, subject to the condition that, such custody shall be on the basis of the petitioner staying with the children at the residence at Thiruvananthapuram address of which is specifically shown in the order, and subject to further contention that the children shall not be taken outside Thiruvananthapuram District. It is aggrieved by the above said 2 orders these original petitions are filed by invoking the jurisdiction vested on this court under Article 227 of the Constitution of India.

5. Heard; counsel appearing on both side. Contention on behalf of the petitioner is that the arrangement for visitation provided on every 2nd Saturday is too inadequate and insufficient. The petitioner was allowed to see the children only for few hours

in the court premises and he was not allowed even to take the children outside for having lunch with them, is the grievance. So also it is contended that the custody granted for 10 days during summer vacation is too insufficient. The insistence for staying only at Thiruvananthapuram is preventing the petitioner from taking the children to his parental house at Kottayam and also to temples within the State for the purpose of worship. It is also contended that by virtue of the order the petitioner is prevented from taking the children anywhere outside the house or for any pleasure trip.

6. Learned counsel for the respondent contended that, sufficient safeguards with respect to providing interim custody and visitation right have already been provided by the Family Court and there is no occasion for the petitioner to have any grievance. It is also pointed out that, the original petition was instituted as early as in the year 2013 before the Family Court, Ernakulam and all the issues can be settled by the disposal of the original petition itself.

7. Having considered the facts and circumstances enumerated as above, we are of the opinion that the interest of

justice can be achieved by directing the Family Court to have an early disposal of the original petition itself. However, we are of the opinion that interim arrangement on a permanent basis with respect to custody pending disposal of the case, can be made instead of the parties moving the Family Court seeking interim custody on every now and then. An arrangement on a permanent basis pendente lite will help the Family Court to save its precious time, because if such an arrangement is made it may not be necessary for the parties to move the court on every occasion. Hence we are of the opinion that both the original petitions can be disposed of by making an arrangement regarding interim custody of the minor children, till the disposal of the original petition and by directing the Family Court to have an early disposal of the case.

8. Therefore, the impugned orders will stand modified to the extent of making interim arrangement mentioned as follows:-

(i) The petitioner shall be given custody of the minor children on every 2nd Saturday from 11 a.m. till 5.00 p.m. The minor wards shall be produced at the premises of the Family Court, Thiruvananthapuram by the respondent and shall be

returned back from the same premises in between the time mentioned above. It will be left open to the petitioner to take the children outside the premises of the Family Court, subject to the restriction that they shall not be taken beyond the city limits of Thiruvananthapuram.

(ii) During Onam and Christmas holidays the petitioner shall be given custody for 3 days during the second half of vacation. Custody shall be entrusted at 10.30 a.m. on the first day at the Family Court premises and the petitioner shall return the wards to the respondent at the same premises before 5.p.m on the last day .

(iii) During summer vacation the petitioner shall be given custody of the minor ward for 20 days from the beginning of the vacation. Handing over custody during summer vacation shall also be on the very same terms as mentioned in clause (i) and (ii) above.

(iv) During the summer vacation when the minor wards are given custody to the petitioner for 20 days, they will normally stay at the house at Thiruvananthapuram, address of which is mentioned in Ext.P11 order in OP.No.247/14. But it is made

clear that the petitioner will be at liberty to take the children to the house of any of his relatives or to temples or to any other place for visit subject to the condition that the children shall not be taken outside the State without specific permission from the Family Court.

9. It is made clear that the above arrangement will continue till the disposal of the original petition by the Family Court. The Family Court, Thiruananthapuram is directed to dispose of OP.No.1888/13 at the earliest possible, at any rate, within a period of 6 months from the date of receipt of a copy of this judgment.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

