

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

OP (FC).No. 184 of 2014 (R)

IN OP(G&W) No.1022/2011 of FAMILY COURT, MALAPPURAM

PETITIONER(S):

**SHAMEER KANNAMTHODI
S/O.KADER HAJI, KANNAMTHODI VEEDU, PATHAIKKARA
PERINTHALMANNA, MALAPPURAM DISTRICT**

**BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI**

RESPONDENT(S):

- 1. E.SHABANA THASNI
D/O.EDAPATTA ABDULSALAM, EDAPATTA VEEDU
VANIYAMBALAM POST, NILAMBUR TALUK
MALAPPURAM DISTRICT PIN 679 339**
- 2. K.JASMINE,
W/O.ABDULSALAM, EDAPATTA VEEDU, VANIYAMBALAM POST
NILAMBUR TALUK, MALAPPURAM DISTRICT PIN 679 339**

**R2 BY ADV. SRI.K.ANAND
R2 BY ADV. SRI.HUSSAIN KOYA VALIYAVEEDAKATH**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF O.P(G&W) NO 1022/2011 ON THE FILE OF THE FAMILY COURT, MALAPPURAM FILED BY THE PETITIONER
- EXHIBIT P2 : TRUE COPY OF ORDER PASSED ON 3/10/2012 IN I.A1429/2012 IN O.P (G&W) NO 1022/2011 ON THE FILES OF THE FAMILY COURT, MALAPPURAM
- EXHIBIT P3 : TRUE COPY OF IA 2422/2013 IN O.P (G&W) NO 1022/2011 ON THE FILE OF THE FAMILY COURT, MALAPPURAM FILED BY THE PETITIONER
- EXHIBIT P4 : TRUE COPY OF COUNTER FILED IN IA 2422/2013 IN IA 1429/2012 IN O.P (G&W) NO 1022/2011 BY THE RESPONDENT
- EXHIBIT P5 : TRUE COPY OF IA 2465/2013 FILED IN IA 1429/2012 IN O.P (G&W) NO 1022/2011 BY THE RESPONDENT BEFORE THE FAMILY COURT, MALAPPURAM
- EXHIBIT P6 : TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN IA 2465/2013 IN IA 1429/2012 IN O.P (G & W) NO 1022/2011
- EXHIBIT P7 : TRUE COPY OF THE ORDER DATED 13/03/2014 PASSED BY THE FAMILY COURT MALAPPURAM IN IA 2422/2013 AND IA 2465/2013 FILED IN IA 1429/2012 IN O.P (G & W) NO 1022/2011
- EXHIBIT P8 : PHOTOGRAPHS SHOWING THE MINOR CHILD WITH THE COMPANY OF THE PETITIONER AND HIS FAMILY
- EXHIBIT P9 : TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE SUB INSPECTOR OF POLICE, WANDOOOR DATED 13.06.2015
- EXHIBIT P10 : TRUE COPY OF STATEMENT GIVEN BY THE SUB INSPECTOR OF POLICE, WANDOOOR ON 13.06.2015

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(a) : TRUE COPY OF THE JUDGMENT DATED 12.05.2015 IN OPFC NO.193/2015
- EXHIBIT R2(b) : TRUE COPY OF THE TRP(C)NO.230/2015 DATED 16.04.2015
- EXHIBIT R2(c) : TRUE COPY OF THE ORDER IN TRP(C)NO.230/2015 DATED 22.05.2015

/TRUE COPY/

PA TO JUDGE

VS

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

O.P.(FC).No.184 of 2014

Dated this the 14th day of September, 2015

JUDGMENT

C.K.Abdul Rehim, J.

The petitioner herein is the petitioner before the Family Court, Malappuram in O.P.(G&W)No.1022/2011 filed against the respondents herein. In the original petition the petitioner is seeking permanent custody of the minor child 'Hana Shameer' born in the wedlock between the petitioner and the first respondent. It is evident that, during pendency of the original petition before the Family court, an application for interim custody filed by the petitioner as I.A.No.1429/2012 was ordered on 03.10.2012, based on a joint statement of settlement filed by the parties. It is not in dispute that as per the joint settlement the petitioner was granted access and visitorial right to the minor child by giving interim custody to him on every Saturday from 10 a.m. to 3.00 p.m., except on second Saturdays. But the petitioner

herein had approached the Family court seeking modification of the arrangement, through Ext.P3 interim application filed as I.A.No.2422/2013, on the basis that there is a change of circumstance since the first respondent had remarried and left India to UAE along with her new husband. The said application was opposed by the respondents by filing objections as per Ext.P4. The respondents have also filed another interim application as I.A.No.2465/2013 seeking modification of Ext.P2 order to change the arrangement by limiting the visitation right only on 2nd Saturdays in every month, from 10 a.m. to 3 p.m.

2. The Family court considered both I.A.Nos.2422/13 and 2465/2013 together and passed Ext.P7 common order. The 2nd respondent is directed to hand over custody of the minor girl to the petitioner on every second Saturday from 9 a.m. to 4.30 p.m and also to hand over the child during 3 days in Christmas, Onam and summer vacations. It is challenging Ext.P7, the petitioner is approaching this Court in this original

petition, invoking the supervisory jurisdiction vested under Article 227 of the Constitution of India.

3. Contention of the petitioner is that the Family court went highly erred in not modifying the arrangement contained in Ext.P2, in a manner prejudicial to the petitioner, without mentioning any reason for the same. It is contended that in view of the fact that the 1st respondent had left India by leaving the child in the custody of the second respondent, the maternal grant mother, IA.No.2422/2013 filed by the petitioner ought to have been allowed.

4. Per contra, learned counsel appearing for the respondents contended that the petitioner has also got remarried and is now residing with his second wife. Granting overnight custody of the minor child to be left under the care of the second wife of the petitioner, would not be in the interest of the welfare of the child, is the contention. Therefore it is argued that, there is no circumstances warranting interference of this Court with respect to the arrangements made by the Family court

under Ext.P7.

5. While considering the rival contentions, this Court takes note of the fact that the original petition is of the year 2011. It will be appropriate on the part of the Family court to dispose of the original petition itself on an early basis. We notice that, during pendency of the above original petition before this Court, a common order was passed in IA.No.11635 and IA.No.8777 of 2014 on 28.08.2014 by directing the second respondent to hand over the minor child for 6 days during Onam vacation and also granting temporary custody to the petitioner herein on second and fourth Saturdays from 9 a.m. to 4.30 p.m. from the house of the second respondent. It is also noticed that on an earlier occasion, by virtue of an order dated 09.04.2014, the child was directed to be handed over under interim custody to the petitioner for a period of 3 weeks during summer vacation.

6. From the facts and circumstances, this Court is of the considered opinion that an appropriate interim arrangement can be made with respect to access and

visitation of the child by the petitioner, until disposal of the original petition by the Family court. This original petition can be disposed of on that basis by directing the Family court to have an expeditious disposal of the original petition itself. Hence the above original petition is disposed of based on the following terms.

(i) The respondents will produce the minor child Hana Shameer before the Family court, Malappuram on all 2nd and 4th Saturdays in every month at 10 a.m. The child shall be entrusted with custody of the petitioner by recording in the Register kept at the Family court by the Chief Ministerial Officer or any other Officer authorised for that purpose. The petitioner can have custody of the child till 3.30 p.m. on all such days. The petitioner shall return custody of the child to the respondents by producing the child before the Family court before 3.30 p.m. on all such days.

(ii) The petitioner will be entitled to have custody of the minor child for 5 days during Onam and Christmas holidays, during the first half. For the said purpose the

child shall be produced by the respondents on the first day of the beginning of the holidays at 10 a.m. before the Family court. The child shall be returned back on the evening of the 5th day before 3.30 p.m. as directed above. The child shall be given interim custody during summer vacation in the same manner for a period of 15 days during the first half.

The Family court, Malappuram is directed to expedite the proceedings in OP(G&W)No.1022/2011 and to dispose of the same at the earliest possible. At any rate, the original petition shall be dispose of within a period of 4 months from the date of receipt of a copy of this judgment.

Sd/-
C.K.ABDUL REHIM,
JUDGE

Sd/-
MARY JOSEPH,
JUDGE

VS