

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP (FC).No. 348 of 2014 (R)

AGAINST THE ORDER IN I.A.NO.1858/2014 IN GOP NO.772/2013 OF THE FAMILY COURT,
THRISSUR, DATED 20.06.2014.

PETITIONER(S):

DEEPA KURIAN, AGED 35 YEARS,
W/O. RIMY, THATTAPARAMBIL HOUSE,
JAWAHAR CROSS ROAD, THYKODAM,
VYTTILA (P.O)., COCHIN - 19,
WORKING AT PORTLAND LOCK, PORTLAND PLACE,
DUBLIN - I, IRELAND.

BY ADV. SMT.K.V.BHADRA KUMARI

RESPONDENT(S):

RIMY, AGED 39 YEARS,
S/O. ANTONY, PUTHOOR HOUSE,
MALAKKA, MANALITHARA (P.O).,
WADAKKANCHERRY (VIA),
THRISSUR DISTRICT.

BY ADV. SRI.E.VIJIN KARTHIK

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 01-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 348 of 2014

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPYOF THE ORDER IN GOP NO.772/2013 DATED 17.08.2013 OF FAMILY COURT, THRISSUR.**
- EXT.P2 : COPY OF THE PETITION, I.A.NO.1858/2014.**
- EXT.P3 : COPY OF THE OBJECTION FILED BY THE PETITIONER IN I.A.1858/2014.**
- EXT.P4 : CERTIFIED COPY OF THE COMMON ORDER IN I.A.NO.1858/2014 ALONG WITH THE OTHER I.A.'S FILED BY THE RESPONDENT DATED 20.06.2014 OF FAMILY COURT, THRISSUR.**

RESPONDENT'S EXHIBITS : NIL

//True Copy//

P.A. To Judge

SS

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

O.P.(F.C.)No.348 of 2014

Dated this the 1st day of July, 2015

JUDGMENT

K. Ramakrishnan, J

This is an application filed by the petitioner in I.A.No.1858/2014 in G.O.P.No.772/2013 of Family Court, Thrissur, challenging the order passed by the Family Court in that application under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the petitioner in I.A.No.1858/2014 and G.O.P. No.772/2013 of the Family Court, Thrissur. The petitioner and respondent are husband and wife respectively and a child by name Alan Puthoor Rimy was born to them in that wedlock. He is now aged 6 years. Earlier there was a proceeding between the parties regarding the custody of the child as G.O.P.No.772/2013 before the Family Court, Thrissur, which was disposed of by the Family Court as per

Ext.P1 order, whereby the minor child was given in custody of the petitioner and she was allowed to take him to Ireland and she has to bring back the child to Kerala twice a year, that is every six months and hand over the custody of the minor child to the respondent for a minimum period of ten days. She has to deposit ₹5,00,000/- and produce bank guarantee for ₹5,00,000/- each by any of the two relatives who are residing in Kerala before taking the child to Ireland. Thereafter the petitioner filed the present I.A., for modification of that order restricting the period to once in a year for ten days.

3. The respondent herein also filed I.A.1220/2014 for certain modification and also filed I.A.No.1761/2014 for forfeiture of the amount deposited for willful violation of the orders passed by the court and also filed I.A.No.1968/2014 for removing the petitioner/mother from guardianship and give permanent custody to him. Another application was filed as I.A.No.1967/2014 restraining the petitioner herein taking the child to Ireland

and I.A.No.1220/2014 for interim custody of the child to the father from the mother. All these petitions were disposed of by the Family Court by the impugned Ext.P4 order, whereby I.A.No.1967/2014, I.A.No.1968/2014, I.A.No.1761/2014 and I.A.No.1220/2014 were dismissed and I.A.No.1858/2014 was allowed to the extent by modifying the order dated 17.08.2013 in G.O.P. No.772/2013 by directing the custody of the child to be given for 20 days during school vacation for the child in Ireland to the respondent herein once in a year. It is also mentioned that, the petitioner herein has to inform the date on which she is arriving in India and handing over the child to the father in advance, so that, the father can collect the child from the court on that date and he was directed to return the child after the expiry of 20 days as mentioned therein and also giving intimation to the petitioner/ mother as the time of production in advance. That order was directed to be come in effect from 28.05.2014. This order was challenged by the petitioner by filing this petition.

4. Heard the counsel for the petitioner and respondent.

5. The counsel for the petitioner submitted that the child is going to school and only during vacation, she will be able to enjoy the presence of the child. If 20 days time is granted to the father, she will be losing the permanent enjoyment of the child during the vacation period, during which period alone the child will have leisure to be with the mother. Further the counsel for the petitioner also submitted that the period will have to be reduced to 10 days. Since the petitioner has not produced the child, on the basis of the application filed by the respondent, now a direction has to be given to produce the child and she had undertaken to produce the child on 08.07.2015 before the Family Court and for the period which has to be fixed by this court, custody will be given to the respondent.

6. The counsel for the respondent opposed the contentions stating that, the Family Court has considered all these aspects. Earlier he was given 20 days custody, but

on two occasions 10 days each, but that was modified by giving 20 days once in a year. Which does not want any interference.

7. We do not find any illegality committed by the Court below in ordering the interim custody of the child to the father. Considering the inconvenience of the petitioner, the court had modified the order instead of bringing the child twice in a year, permitted her to bring the child once in a year during vacation. However considering the grievance of both parties, this court feels that the period of 20 days can be re-fixed as 15 days. So the order passed by the court below regarding period of custody of the child is modified to the extent mentioned above.

8. If the petitioner produces the child before the Family Court on 08.07.2015, then the respondent is permitted to take custody of the child from there and return the child after expiry of 15 days as mentioned above. Hereafter this arrangement will continue till the disposal of

the main O.P. before the court below until modification is made by the court below in this regard. This arrangement will continue for every vacation of the child in Ireland during July or whenever the period of vacation is changed in Ireland for the child. If the petitioner violates this condition, then the earlier order of 20 days granted by the court below will be restored.

With the above direction and observation the petition is disposed of. Communicate this order to the court below at the earliest.

Sd/-
C.K. Abdul Rehim, Judge

Sd/-
K. Ramakrishnan, Judge

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P.A. to Judge