

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

WP(C).No. 13353 of 2015 (T)

PETITIONER(S) :

VINOD @ MUJEEB,
AGED 35 YEARS, S/O. FRANCIS,
KADAPPURATHU THAYYIL, PATHIRAPPALLY,
OMANAPPUZHA, ALAPPUZHA.

BY ADV. SRI.K.C.SUDHEER.

RESPONDENT(S) :

1. THE AMBALAPPUZHA TALUK LEGAL SERVICES COMMITTEE,
REPRESENTED BY ITS CHAIRMAN, DISTRICT COURT COMPLEX,
ALAPPUZHA - 688 001.
2. RAZIA,
AGED 32 YEARS, D/O. KASIM,
KAJAH BHAVANAM, VRIKSHA VILASOM THODU,
KARIMUGAL P.O., ERNAKULAM - 682 303.

R2 BY ADV. SRI.GEORGE SEBASTIAN &
BY GOVERNMENT PLEADER SMT. C.K.SHERIN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT-P1- TRUE COPY OF THE FIR IN CRIME NO. 485/2008 OF
KAYAMKULAM POLICE STATION.

EXHIBIT-P2- TRUE COPY OF THE ORDER DATED 27/09/2014 OF THE CHILD
WELFARE COMMITTEE, SOCIAL JUSTICE DEPARTMENT,
ALAPPUZHA DISTRICT.

EXHIBIT-P3- TRUE COPY OF THE COMMUNICATION DATED 18/10/2014 OF THE
CHILD WELFARE COMMITTEE, SOCIAL JUSTICE DEPARTMENT,
ALAPPUZHA.

EXHIBIT-P4- TRUE COPY OF THE PETITION FILED BEFORE THE FAMILY
COURT, ALAPPUZHA. OP NO.835/14.

EXHIBIT-P5- TRUE COPY OF THE AWARD DATED 22/03/2015 PASSED BY THE
DISTRICT SERVICE LEGAL AUTHORITY, AMBALAPUZHA.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. VINOD CHANDRAN, J.

W.P(C). No.13353 of 2015

Dated this the 27th day of May, 2015.

JUDGMENT

The petitioner has filed the above writ petition challenging Ext.P5 award passed by the District Legal Services Authority, Alappuzha on 22.03.2015. The challenge is made on the ground that the petitioner was not aware of the terms of the award and that the petitioner was forced into putting his signature in the award by the members of the District Legal Services Authority, Alappuzha.

2. The brief background facts are that, the petitioner, the husband of the 2nd respondent and father of the minor child Sarath borne in their wedlock, filed Ext.P4 petition before the Family Court, Alappuzha to declare the petitioner as the guardian of the minor child and for direction for custody of the minor child. The same was referred for settlement and on 22.03.2015, admittedly, an award was passed, which is challenged hereunder.

2. Obviously, the minor child was brought to the Family Court by the mother, the 2nd respondent, in whose custody the child was. The petitioner in Ext.P4 petition has made a number of allegations and has also averred that the custody of the child was handed over to the 2nd respondent only in September, 2014. Those facts are not gone into by this Court, since the challenge is only against the settlement arrived at as per Ext.P3. The Family Court has closed OP(G&W) No.835 of 2014 on the basis of the award passed. The award indicates that the petitioner was given custody of the child on 22.03.2015 with a direction to return the child back to the 2nd respondent, on 01.04.2015. Directions were also issued for interim custody during alternate weekends in a month.

3. Essentially it has to be noticed that the petitioner had accepted the custody of the child in the Lok Adalath, conducted on 22.03.2015 as per the award passed and had not complied with the order to return the custody of the child. The petitioner retained the custody of the child and filed the instant writ petition challenging Ext.P5 order. In such circumstances, the petitioner was directed to produce the child at 10.15am on today. The child

was produced before this Court and the petitioner and the 2nd respondent were also present. This Court has interacted with the child and the custody of the child was handed back to the mother. The petitioner admittedly took over custody of the child from the 2nd respondent on the basis of the award. Having enjoyed the benefit of the order the petitioner cannot turn around and allege coercion. This Court has also talked to the petitioner and the 2nd respondent.

4. In the circumstances of the petitioner having accepted custody of the child as per Ext.P5 award, the contention that the petitioner was forced to put his signature to the award cannot be countenanced. But, however the petitioner submits that he was not aware of the full implications of the award passed in the Lok Adalath.

In such circumstances, especially considering the fact that the OP(G&W) No.835 of 2014 filed before the Family Court, Alappuzha was settled on the basis of the award, it is only proper that the same be restored to the files of the Family Court, Alappuzha. The award passed is only one dealing with the interim custody sought for. The declaratory prayer would definitely arise

for consideration, especially since the petitioner has not given up the same. Ext.P5 would stand set aside. OP(G&W) No.835 of 2014 would be restored to the files of the Family Court, Alappuzha. The petitioner and the 1st respondent will be present before the Family Court, Alappuzha on 15.06.2015, on which date the said application is stated to be posted for appearance. The Family Court shall consider the matter afresh and shall also consider any application for interim custody untrammelled by any observation made in the aforesaid judgment. It is recorded that the custody of the child has been handed over to the mother in the presence of the father, the petitioner herein and the Family Court would be entitled to consider the issue, in accordance with law.

The writ petition would stand disposed of with the above observation.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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