IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

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THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

SATURDAY, THE 27TH DAY OF JULY 2024 / 5TH SRAVANA, 1946

MAT.APPEAL NO. 539 OF 2024

AGAINST THE ORDER/JUDGMENT DATED 30.03.2024 IN OPGW NO.626 OF 2019 OF FAMILY COURT, THIRUVANANTHAPURAM

APPELLANT/PETITIONER:

DR. MRINAL.S. PILLAI AGED 41 YEARS S/O K. SIVADASAN PILLAI @ K.S. PILLAI, RESIDING AT MAMOOTTIL, T.C. 3/629, T.K. DIVAKARAN ROAD, MUTTADA.P.O. THIRUVANANTHAPURAM DISTRICT, PIN - 695025

BY ADV R.ANILKUMAR

RESPONDENT/RESPONDENT:

DR. ATHIRA KRISHNAN, AGED 36 YEARS, D/O. RADHAKRISHNAN, 'SMRITHI', T.C. 9/1607, SMRA - 69, SRK HOSPITAL ROAD, SASTHAMANGALAM.P.O., THIRUVANANTHAPURAM DISTRICT, PIN - 695010

BY ADVS. V.K.BALACHANDRAN
SMT.AMRUTHA P.S.(K/1817/2020)
SRI V K BALACHANDRAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 27.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Devan Ramachandran, J.

The appellant – father of two children aged 13 and 11 years, are before us, impugning the order of the Family Court, Thiruvananthapuram, dated 30th March 2024, wherein it has been ordered that he shall have their custody only from 5 p.m. on all second Saturdays till 5 p.m. on the ensuing Sundays.

2. The specific case of the petitioner, as argued by his learned counsel – Sri.R.Anilkumar, is that the children are more than willing to be in his company; but that their wishes were never taken into account by the learned Family Court, while passing the impugned order. The learned counsel argued that it is necessary "that the children be given equal access to the father and mother"; and thus prayed that the impugned order be set aside and that his client be appointed as their guardian.

3. Noticing the afore specific stand of the petitioner, we thought it necessary to interact with the parties, as also with children; and to our benefit, when this matter was considered on 24.7.2024, the learned counsel submitted that they will all be present today - requesting for a special sitting on a Saturday, so as to enable children to interact with us, without losing their school.

4. The children are before us today, as also the parties – petitioner and respondent.

5. We interacted extensively with the children, who made it crystally clear that they want to be with their mother; and that they are not interested in going with their father for an overnight stay.

6. We, thereupon, allowed the petitioner to interact with the children in a vacant chamber of this Court; and after about 15 or 20 minutes, we again talked to them. The children reaffirmed and maintained that they want to be with their mother and that they will not agree to stay with their father overnight.

7. Sri.V.K.Balachandran – the learned counsel for the respondent, at this time, submitted that his client is only concerned about the welfare of the children and nothing else; but rendering it unequivocally clear that all allegations made against her in this Mat.Appeal are without any basis, thus being fully denied.

8. We do not propose to enter into the merits of the rival contentions of the parties because, we are also told at the Bar today by their learned counsel, that the petitioner has filed an application for divorce against the respondent.

9. We, therefore, feel enjoined to be careful in voicing our opinion on contentious issues since, these are matters that will have to be

decided by the Family Court.

10. As matters now stand, our paramount concern is about the children and nothing else. Since they unhesitatingly say that they want to be with the mother and that they are not interested in even an overnight stay with the father, we cannot find any error in the impugned order of the learned Family Court.

11. However, we make it clear that this will not stop the petitioner from making any further application before the Family Court in due course, as and when the circumstances should change; and that our observations in this judgment will not be a fetter to any such.

This Mat Appeal is thus closed.

SD/-
DEVAN RAMACHANDRAN, JUDGE

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M.B. SNEHALATHA, JUDGE

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