

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

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THE HONOURABLE MRS. JUSTICE M.R. ANITHA

TUESDAY, THE 12TH DAY OF MAY 2020 / 22ND VAISAKHA, 1942

O.P(FC).177 of 2020

(Against order dtd. 24.04.2020 in I.A No. 1 of 2020 in O.P. (G&W) No. 178 of 2018 on
the files of Family Court, Thodupuzha)

Petitioner

Shyla P.K., aged 45 years D/o Kumaran.
Parayil (H), Karimkunnam Kara and Village,
Thodupuzha Taluk, Idukki District- 685586

By Advocates George Mathew

S. Praveen

Respondent/Respondent:

Biju, aged 48 years, s/o. Damodaran,
Choondakattu Puthenpurayil (Pulimoottil)
House, Kuninji Kara, Purappuzha Village,
Thodupuzha Taluk, Idukki District - 685 583.

By Advocates Saju Paul and Shiji Mathews

THIS OP(FC) HAVING COME UP FOR ADMISSION ON 12.5.2020, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING :

ORDER

M.R.Anitha, J.

- 1.The above OP has been filed against the order passed by the Family Court, Thodupuzha declining custody of the minor child Sidharth to the petitioner. As per the impugned order, custody of the minor child was given to the father with visitation right to the petitioner mother as and when she come down to Kerala. When petitioner came down to Kerala on 7.3.2020, she filed petition seeking interim custody of the child but due to the pandemic situation prevailing then in Kerala, the court below was not inclined to grant interim custody of the child to the petitioner mother. Now her grievance is that as and when the lock down is over, she will have to go back to her work place and join duty and she will be denied an opportunity to spend time with her son Sidharth. So she seeks for the interim

custody of the child till she leaves India.

2. Respondent father filed a detailed counter-affidavit stoutly denying the allegations in the petition and it is also his contention that the lower court has passed the order elaborately after hearing both sides and no interference is called for at the instance of this court. As per the order in I.A.1 of 2020, the learned Family Court, Thodupuzha dismissed the petition for interim custody in view of the objection raised by the respondent father that the petitioner who has come from Saudi Arabia has not undergone medical check up and has violated the rules of quarantine. It is also contended that in Idukki COVID-19 persons are detected and hence giving custody of the minor to the petitioner is danger to the life of the minor. The court below also taken into account the pandemic situation due

to COVID-19 and the national lockdown imposed till 3.5.2020 and in Idukki district COVID-19 was detected and it was classified as an orange zone. Taking all those facts into account, the court below was of the view that the prayer cannot be considered.

3. Heard both sides.

4. Now the main contention of the learned counsel for the petitioner is that the petitioner had undergone COVID-19 test and the result is negative to COVID-19 test. The certificate issued from the District hospital, Thodupuzha has been produced which would certify that the petitioner is a symptomatic and COVID-19 test done on 8.5.2020 is negative. The copy of the certificate is also produced.

5. Though the learned counsel for the respondent also would contend that a counseling has to be done

through the Family Court, Thodupuzha before giving custody to the petitioner, being the mother of the minor son, we do not think that counseling by the Family Court would be necessary. As and when the son joins with mother, he will normally be quite comfortable with the mother. The request made by the learned counsel for the respondent that once in a week he should be given a chance to visit the son also does not seem to be entertainable in view of the pandemic situation. At any rate, it is submitted by the learned counsel for the petitioner that she would arrange Watts App call to the respondent weekly while the son is in her custody.

6. The fact that the petitioner is working abroad is not in dispute. It is also not seen to be disputed that she will have to go back when the lock down is lifted. The thirst of a mother to see the child after a long while is also quite imaginable. The

petitioner, a mother of five year old son Sidharth, is moving from court to court to get interim custody of her son. Taking into account the peculiar facts and circumstances, we are of the considered view that interim custody of the minor child Sidharth shall be given to the petitioner mother for a period of 15 days. In Idukky District as on now there seems to have no covid positive cases also. Both petitioner and respondent are from Idukky District also.

7. In the result, prayer for interim relief is allowed in part and respondent/father is directed to give interim custody of the minor son Sidharth to the petitioner on 14.5.2020 at 11.00 AM at the Family Court strictly in compliance with the guidelines issued by the state government except the movement of minor from the house. The petitioner shall hand over the custody of the minor child Sidharth to the

respondent on expiry of 15 days at 11.00 AM at Family court, Thodupuzha. Petitioner should permit the respondent to have Whatts app call with the son once in a week at the convenience of both parties and she shall provide the Whatts app number to the respondent.

ANU SIVARAMAN, JUDGE

M.R.ANITHA, JUDGE

Mrcs/12.5.

APPENDIX

Exhibit P1: True copy of order dtd. 26.03.2019 in O.P. (G&W) 13-21
No. 178 of 2018 of the Family Court, Thodupuzha.

Exhibit P2: True copy of affidavit and petition dtd. 12.03.2020 22-26
in I.A.No. 1 of 2020 in O.P. (G&W) No. 178 of 2018 of
Family Court, Thodupuzha.

Exhibit P3: True copy of objection dtd. 24.04.2020 in I.A. No. 1 27-31
of 2020 in O.P. (G&W) No. 178 of 2018 of the Family
Court, Thodupuzha.

Exhibit P4: True copy of order dtd. 24.04.2020 in I.A. No. 1 32-35
of 2020 in O.P. (G&W) No. 178 of 2018 of Family
Court,
Thodupuzha.