

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Before

THE HON'BLE MR. JUSTICE SHAJI P. CHALY

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THE HON'BLE MR. JUSTICE ASHOK MENON

Tuesday, the 5th day of May, 2020/15th Vysakh, 1942

O.P.(FC) TMP No. 2 of 2020

Petitioner/Petitioner/1st Respondent:

Shyla P.K., aged 45 years, D/o. Kumaran,
Parayil House, Karimkunnam Kara & Village,
Thodupuzha Taluk, Idukki District - 685 586.

By

Sri. George Mathew

Sri. S. Praveen

Sri. M.D. Sasikumar

Sri. A.G.Sunil kumar

Sri. Dipu James

Sri. K.T. Mathew

Sri. K.V. George

Respondent/Respondent:

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

By Adv. Sri. Shiji Mathews

This OP(FC) having come up for orders on 05.05.2020, the court on the same day passed the following:

SHAJI P. CHALY & ASHOK MENON, JJ.

O.P.(FC) TMP No. 2 of 2020

Dated this the 5th day of May, 2020

ORDER

SHAJI P. CHALY, J

This original petition is filed against the order of the Family Court, Thodupuzha in I.A.No.1/2020 in O.P.(G&W) No.178/2018. In fact, permanent custody of the child was given to the father as per an order dated 26.3.2019 after declaring the petitioner herein i.e., the mother ex parte. Admittedly, petitioner is working in Saudi Arabia. She had come down to Kerala on 7.3.2020 after the pandemic COVID-19 started spreading all over the world.

2. Anyhow, when petitioner filed an application, after taking into account the factual circumstances, the Family Court, Thodupuzha dismissed the application seeking temporary custody of the child on the ground that due to advisories issued by the State Government on the pandemic COVID - 19, the application could not be considered on merits at this point of time, especially due to the factual allegation

made by the husband against the wife that she did not undergo COVID - 19 test and has not proved negative. Therefore, petitioner was given the liberty to move the application when the lock down is lifted or the conditions are relaxed.

3. However, fact remains, according to the parties, Family Court, Thodupuzha is not functioning consequent to the advisories issued by the State Government. At this point of time, learned counsel for petitioner submitted that, petitioner is prepared to undergo COVID - 19 test before the appropriate hospital at Idukki and also submitted that since the Family Court is not functioning, petitioner may not be in a position to approach the Family Court for getting custody of the child by filing a fresh application.

In that view of the matter, we are of the considered opinion that, the matter could be considered by this Court again if and when the petitioner produces a certificate from the appropriate hospital proving that she is negative with the disease of COVID - 19. Therefore, there will be a direction to the petitioner to undergo the prescribed test for COVID - 19 and produce a certificate before this Court. For production

of the certificate by the petitioner, post the case on 18.5.2020. There will be a further direction to the Superintendent, District Hospital, Thodupuzha to conduct a test in regard to COVID - 19 on petitioner and issue a certificate to the petitioner thereafter. The test shall be conducted at the cost of the petitioner.

SHAJI P. CHALY, JUDGE.

ASHOK MENON, JUDGE.

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