

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID  
&  
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 12TH DAY OF FEBRUARY 2014/23RD MAGHA, 1935

OP (FC).No. 3151 of 2013 (R)

-----  
AGAINST THE ORDER IN I.A.NO.1578/2013 IN OP 897/2013 of FAMILY COURT,  
ERNAKULAM DATED 1.8.2013.

PETITIONER(S):

-----

SMITHA P.K, AGED 36 YEARS,  
DAUGHTER OF M.BALAN, 8/379 B, 'GEETHAM'  
SNRA 17, SUVARNA NAGAR, EROOR WEST P.O.  
TRIPUNITHURA, ERNAKULAM, PIN CODE : 682 306.

BY ADVS.SMT.K.MEERA  
SRI.BOBY MATHEW

RESPONDENT(S):

-----

SIVAN P.N., AGED 45 YEARS  
SON OF P.N.NEELAN, PAIPARA HOUSE, KARUKUTTY P.O.  
ANGAMALY, ERNAKULAM DISTRICT.

BY ADV. SRI.M.S.UNNIKRISHNAN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 12-02-  
2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 3151 of 2013 (R)  
-----

APPENDIX

PETITIONER(S)' EXHIBITS:  
-----

EXT.P1: TRUE COPY OF OP NO.897/2013 FILED BY THE PETITIONER PENDING BEFORE THE FAMILY COURT, ERNAKULAM.

EXT.P2: TRUE COPY OF I.A 1578/2013 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, ERNAKULAM IN EXT.P1 OP

EXT.P3: TRUE COPY OF THE OBJECTION DATED 17/5/2013 FILED BY THE RESPONDENT IN EXT.P2 IA.

EXT.P4: TRUE COPY OF I.A 1775 OF 2013 IN OP 897/2013 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, ERNAKULAM.

EXT.P5: TRUE COPY OF OP NO.987/2013 FILED BY THE RESPONDENT PENDING BEFORE THE FAMILY COURT, ERNAKULAM.

EXT.P6: TRUE COPY OF THE OBJECTION DATED 31/5/2013 FILED BY THE RESPONDENT IN EXT.P4 I.A

EXT.P7: TRUE COPY OF THE ORDER DATED 04/06/2013 PASSED BY THE FAMILY COURT, ERNAKULAM IN EXT.P4 I.A VIZ: I.A NO.1775/2013 IN O.P. NO.897/2013.

EXT.P8: TRUE COPY OF THE JUDGMENT DATED 20/06/2013 IN OP (FC) 2062 OF 2013 PASSED BY THIS HON'BLE COURT.

EXT.P9: TRUE COPY OF THE ADDITIONAL OBJECTION DATED 16/07/2013 FILED BY THE RESPONDENT IN EXT.P2 IA

EXT.P10: TRUE COPY OF THE ORDER DATED 01/08/2013 PASSED BY THE FAMILY COURT, ERNAKULAM IN IA 1578/2013 IN OP 897/2013.

RESPONDENT(S)' EXHIBITS: NIL  
-----

// TRUE COPY //

P.A TO JUDGE.

**HARUN-UL-RASHID & ALEXANDER THOMAS, JJ.**

**O.P.(FC) No.3151 Of 2013**

**Dated this the 12<sup>th</sup> day of February, 2014.**

**J U D G M E N T**

**Harun-Ul-Rashid, J.**

Order dated 1.8.2013 in I.A.No.1578/2013 in O.P.No.897/2013 on the file of the Family Court, Ernakulam is under challenge in this petition. Petitioner herein is the petitioner in O.P.No.897/2013 which was filed for a declaration that the petitioner is the guardian in respect of the person and property of her two minor sons and for granting permanent custody of the petitioner's two minor sons. Copy of the O.P is marked as Ext.P1 and the same is pending.

2. The petitioner moved I.A.No.1578/2013 for interim custody of the minor sons. The learned Judge after considering the facts and circumstances granted interim custody of the two minor sons to the mother for two days once in a month. The respondent husband is in permanent custody of the minor sons. According to the petitioner, Ext.P10 interim order has resulted in grave miscarriage of justice to the petitioner and minor children and contended that the court below ought to have adopted a more realistic and reasonable

**O.P.(FC) No.3151 Of 2013**

approach rather than passing Ext.P10 order. The petitioner in fact sought for permanent interim custody of the minor sons pending disposal of the main petition.

3. After hearing both sides, this Court vide interim order dated 26.9.2013 directed that the petitioner be given week end custody of the children. This Court permitted the petitioner to collect the children from the school every Friday evening and drop them back at the school in the morning of the following Monday. A further direction was also issued by this Court directing that it will be open to the respondent to contact them over phone and when the children are with the respondent the petitioner will also have similar liberty.

4. In the facts and circumstances of the case, we do not propose to modify the present arrangement ordered by this court.

Accordingly, the O.P is disposed of directing the Family Court, Ernakulam to hear and dispose of O.P.No.897/2013 as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. The interim order passed by this Court dated 26.9.2013 shall

**O.P.(FC) No.3151 Of 2013**

continue till the disposal of O.P.No.897/2013. The petitioner is at liberty to apply now for admission tentatively before any educational institution. The court below shall dispose of the case untrammelled by any of the observations or interim direction issued by this Court.

**HARUN-UL-RASHID,  
Judge.**

**ALEXANDER THOMAS,  
Judge.**

bkn/-