

OP(FC) No.588 of 2022

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

TUESDAY, THE 1<sup>ST</sup> DAY OF NOVEMBER 2022/10TH KARTHIKA, 1944

O.P.(FC) NO. 588 OF 2022

AGAINST THE ORDER DATED 29.09.2022 IN I.A.NO.4998 OF 2022

IN G.O.P.NO.2336 OF 2022 OF THE FAMILY COURT,ERNAKULAM

PETITIONER:

NEENA GEORGE,  
AGED 32 YEARS, D/O GEORGE JOSEPH,  
KATTARATHIL PARAMBIL, CHAMAKKALA P.O.,  
MANJOOR SOUTH, KOTTAYAM, PIN - 686603.

BY ADVS.  
ANEESH K.R  
SAURAV B.

RESPONDENTS:

- 1 ALWIN K. JACOB,  
AGED 32 YEARS, S/O JACOB C. KOSHY,  
CHELAKKAVIL HOUSE, MS JUNCTION, ROCKWEL ROAD,  
PALLILAMKARA, KALAMASSERY, HMT JN, ERNAKULAM,  
PIN - 683503.
- 2 JACOB C. KOSHY,  
S/O KOSHY, CHELAKKAVIL HOUSE, MS JUNCTION,  
ROCKWEL ROAD, PALLILAMKARA, KALAMASSERY, HMT JN,  
ERNAKULAM, PIN - 683503.
- 3 BIJI JACOB,  
W/O JACOB C KOSHY, CHELAKKAVIL HOUSE, MS  
JUNCTION,ROCKWEL ROAD, PALLILAMKARA,  
KALAMASSERY, HMT JN, ERNAKULAM, PIN - 683503.

BY ADVS.  
M.S.AMAL DHARSAN  
THUSHARA JAMES

THIS OP (FAMILY COURT) HAVING COME UP FOR FINAL  
HEARING ON 20.10.2022, THE COURT ON 01.11.2022 DELIVERED  
THE FOLLOWING:

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

Ajithkumar, J

The Mother of minor girl Ishaani Sarah Alwin aged 2 years, is the petitioner. She challenges Ext.P4, the order dated 29.09.2022 of the Family Court, Ernakulam in I.A.No.4998 of 2022 in G.O.P No.2336 of 2022.

2. On 14.10.2022, notice on admission was directed to be served on the respondents who are the father and grandparents of the child. An order of interim stay till 20.10.2022 was granted. The respondents entered appearance through counsel. The 1<sup>st</sup> respondent has filed a counter affidavit controverting the allegations of the petitioner.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

4. G.O.P No.2336 of 2022 was filed before the Family Court, Ernakulam for the custody of the child alleging that following the marital discord between the petitioner and the 1<sup>st</sup> respondent she was kicked out of the marital home on 13.08.2022 without allowing her to take the breastfeeding child

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along with her. It was further alleged that the respondents illegally retained custody of the child, and therefore the petitioner had to approach the police and the Child Welfare Committee, Ernakulam. She also filed W.P(Crl.) No.738 of 2022 before this Court requesting to evoke Habeas Corpus jurisdiction, but she could not get custody of the child. In G.O.P No.2336 of 2022 also no effective steps were taken to restore the custody of the child to the petitioner. Pointing out the said circumstances, the petitioner approached this Court by filing O.P (FC) No.488 of 2022. That O.P was disposed of by this Court on 27.09.2022 with the following directions:

“The Family Court, Ernakulam to list Ext.P5 (I.A.No.4998 of 2022 in G.O.P No.2336 of 2022) for consideration on 29.09.2022. Both parties along with the child shall be present before the Family Court, Ernakulam on that day. The Family Court will pass an order regarding interim custody of the child Ishaani Sarah Alwin on the said day or on 30.09.2022.”

5. Pursuant to the said direction, the Family Court considered the matter. Both parties appeared before the Family Court together with the child. The Family Court noticed that the child was interacting with both the mother and the father. After

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hearing both sides and considering the materials on record, the Family Court issued the following directions regarding interim custody of the child as per the impugned order:

1) The Petitioner/Mother shall give interim custody of the minor child Ishaani Sarah Alwin to the first respondent/Father from 10.30 am on all 2<sup>nd</sup> Saturdays till 4 pm on ensuing Sundays. The handing over and taking back custody of the child will be in the premises of the Family Court, Ettumanoor.

2) The Petitioner/Mother shall give interim custody of the minor child Ishaani Sarah Alwin to the first Respondent/Father from 10.30 am to 4 pm on all Sundays except Second Sundays, in the premises of the Family Court, Ettumanoor.

3) The first Respondent/Father is permitted to interact with the minor child through video call between 6.30 pm and 7 pm on all Wednesdays.

6. The learned counsel appearing for the petitioner would submit that when the child was given in custody of the respondents, at the premises of the Family Court, not only the respondents, but a few others also interacted with the child whereupon it got tired and exhausted. No doubt, such things resulting in stress and strain to the child should not have happened. It is further contended that the only holiday

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available to the petitioner is Sunday and when she has to take the child to the Family Court for giving custody to the 1st respondent, it causes much inconvenience to her.

7. While disposing of O.P(FC) No.488 of 2022, this Court directed the Family Court to decide the interim custody of the child bearing in mind the principle laid down by the Apex court in **Yashita Sahu v. State of Rajasthan [(2020) 3 SCC 67]**.

8. In **Yashita Sahu** the Apex Court held that law is well settled by a catena of judgments that, while deciding matters of custody of a child, primary and paramount consideration is the welfare of the child. If the welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, more often than not, the parents who otherwise love their child,

present a picture as if the other spouse is a villain and he or she alone is entitled to custody of the child. The court must therefore be very wary of what is said by each of the spouses.

9. In **Yashita Sahu** the Apex Court noticed that a child, especially a child of tender years requires the love, affection, company, and protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation and every re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with

any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights. A child has a human right to have the love and affection of both parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

10. In **Vasudha Sethi and others v. Kiran V. Bhaskar and another [AIR 2022 SC 476]** the Apex Court held that, whenever the court disturbs the custody of one parent, unless there are compelling reasons, the court will normally provide for visitation rights to the other parent. The reason is that the child needs the company of both parents. The orders for visitation rights are essentially passed for the welfare of minors and for the protection of their right of having the company of both parents.

11. It is seen that the Family Court has taken into

consideration all such parameters while passing Ext.P4 order. It is no doubt, the welfare of the child is of prime consideration. If the child is denied the opportunity to interact with the father, it certainly will cause snapping of the emotional and psychological bondage with the father and the child. While the child is allowed to be with the mother, there shall be an opportunity for the father to have frequent interaction with the child. Viewed so, we find no reason to interfere with the impugned order. The inconvenience said to be occasioned to the petitioner by traveling to the Family Court, a short distance, cannot be a reason to deny the father the opportunity to interact with the child.

In the said circumstances, we find no merit in this original petition. It is accordingly dismissed.

**Sd/-**  
**ANIL K.NARENDRAN**  
**JUDGE**

**Sd/-**  
**P.G. AJITHKUMAR**  
**JUDGE**



APPENDIX OF OP (FC) 588/2022

## PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE BIRTH CERTIFICATE OF THE CHILD
- Exhibit P2 THE TRUE COPY OF THE FIR IN CRIME NO 805/2022 OF KALAMASSERY POLICE STATION
- Exhibit P3 THE TRUE COPY OF THE JUDGMENT IN OP(FC) NO 488/2022 OF HONOURABLE HIGH COURT
- Exhibit P4 THE TRUE COPY OF THE ORDER DATED 29.09.2022 IN IA NO 4998/2022 IN GOP NO 2336/2022 BEFORE FAMILY COURT ERNAKULAM

## RESPONDENT EXHIBITS

- Exhibit R1 True copy of the objection filed in I.A. No. 4998/2022 in GOP No. 2336/2022