

Mini Vs. K.Shivan

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Court : Kerala

Decided On : Jan-22-2013

Judge : Honourable Mr.Justice Pius C.Kuriakose

Appellant : Mini

Respondent : K.Shivan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE PIUS C.KURIAKOSE & THE HON'BLE MR. JUSTICE BABU MATHEW P.JOSEPH TUESDAY, THE 22ND DAY OF JANUARY 2013 2ND MAGHA 193 OP (FC).No. 147 of 2013 (R) ----- PETITIONER(S)/RESPONDENT IN O.P (G &W) AND I.A : ----- MINI, AGED 3 YEARS, D/O ACHUTHAN NAIR, SWATHY, ADINADU, KATTILKADAVU P.O, KOLLAM 69 542. BY ADVS.SRI.C.PRATHAPACHANDRAN PILLAI SRI.R.SURAJ KUMAR SRI.SUNIL J.CHAKKALACKAL RESPONDENT(S)/PETITIONER IN O.P (G & W) & I.A: ----- K.SHIVAN, AGED 4 YEARS, S/O KUTTAN NAIR, RESIDING AT CHITTAKATTUTHEKKATHIL, MYNAGAPPALLY VILLAGE, KUNNATHOOR P.O 540. KOLLAM DISTRICT. BY ADV.SRI.C.P.MUHAMMED NAVAS THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 22-01-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: DG OP (FC).No.

147 of 2013 (R) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: COPY OF THE O.P (G&W).NO.236/12 ON THE FILE OF THE FAMILY COURT, KOLLAM (RENUMBERED AS O.P.(G&W) NO.745/2012 ON THE FILE OF THE FAMILY COURT, KOTTARAKKARA) DATED 13 02.2012. EXT.P2: COPY OF THE I.A.NO.1952/2012 IN O.P(G&W) 745/2012 ON THE FILE OF THE FAMILY COURT, KOTTARAKKARA DATED 19 11.2012. EXT.P3: COPY OF THE ORDER DATED 21 12.2012 IN I.A.NO.1952/12 IN O.P. (G & W) NO.745/2012 ON THE FILE OF THE FAMILY COURT, KOTTARAKKARA. RESPONDENT'S EXHIBITS - NIL //TRUE COPY// P.A TO JUDGE DG PIUS C.KURIAKOSE , & BABU MATHEW P. JOSEPH, JJ.

..... O.P(FC). No.147 of 2013
..... Dated this the 22nd day of January,
2013.

JUDGMENT

Pius C.Kuriakose, J Read our order dated 21.01.2013. Under challenge in this original petition that filed under Article 227 of the Constitution of India is Exhibit P3 order passed by the Family Court, Kottarakkara, restraining the petitioner, mother of the boy Karthik Sivan, from taking the boy from Navodaya School at Kottarakkara where he is presently studying and from re- admitting the boy in Amritha School situated near to her place of residence. In fact, under the impugned order the petitioner has also be restrained by an injunction from taking her daughter by name Meenakshi Sivan from Amritha School, Puthiyakavu where she is presently studying to any other school by T.C or otherwise. But under challenge in this original petition is only the order of injunction passed in respect of the boy, Karthik Sivan. Today the petitioner has filed I.A No.1185 of 2013 wherein the prayer is that the boy Karthik Sivan may be subjected to a comprehensive medical examination by a panel of expert doctors headed by a Medical Officer in the rank not less O.P(FC). No.147 o

2. than District Medical Officer of the district. Having considered the submissions addressed before us by Mr.C.Prathapachandran Pillai and later by Mr.Sunil J.Chakkalackal, learned counsel for the petitioner and those of C.P.Muhammed

Nias, learned counsel for the respondent, we feel that the crucial question to be decided is whether continuance of studies at Navodaya School, Kottarakkara by Karthik Sivan will be to the benefit of the boy considering the boy's present health condition. While the petitioner, the boy's mother submits that the boy has to be taken from Kottarakkara, a hilly place where the boy's respiratory problems like wheezing increases., the stand of the respondent, the boy's father is that taking the boy out of the Navodaya School where the boy secured admission on the basis of a competitive examination will be highly detrimental to his academic prosperous . We are not inclined to decide the issue. We are of the view that the issue should be re-considered. In order to enable the Family Court to do that we set aside the impugned order and remit the matter back to the Family Court. I.A.No.1185/2013 in O.P.(FC)No.147/2013 is transmitted to the Family Court, that court will register this I.A as an I.A on the O.P(FC). No.147 o

3. files of that court immediately orders will be passed on the I.A and if under the order to be passed in I.A.No.1185/2013. The child is referred to a board of medical experts. The Family Court should issue directions to the board to have the examination conducted immediately so that final decision on the issue can be taken without delay. Revised order on the issue as directed above as to whether the boy should be allowed to be taken out to the Navodaya School, the Family Court should set a time frame of 10 days to the medical board for completing the examination and for submission of order. Revised orders shall be passed at any rate within 5 days of getting medical report. Sd/- PIUS C.KURIAKOSE, JUDGE
Sd/- BABU MATHEW P. JOSEPH, JUDGE //TRUE COPY// P.A TO JUDGE DG

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