

**Adithyan C vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1329917](https://sooperkanoon.com/1329917)

**Court :** Kerala

**Decided On :** Jan-05-2023

**Judge :** Honourable Mr.Justice C.S.Dias

**Appeal No. :** OP(C)/15/2023

**Appellant :** Adithyan C

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 5TH DAY OF JANUARY 2023 / 15TH POUSHA, 1944 OP(C) NO. 15 OF 2023 OS 652/2022 OF PRINCIPAL MUNSIF COURT, PALAKKAD

**ORDER IN IA 3/2022 IN CMA 169/2022 DATED 27.12.2022 OF ADDITIONAL**

DISTRICT COURT-I (VACATION COURT), PALAKKAD PETITIONER: ADITHYAN.C AGED 16 YEARS (MINOR), S/O.PRAMOD NAIR REPRESENTED BY HIS FATHER AND NEXT FRIEND PRAMOD NAIR, AGED 47 YEARS, S/O. RAMACHANDRAN, CHAKKAINGAL HOUSE, KATTUSERRY, ALATHUR,PALAKKAD, PIN - 678541 BY ADVS. P.A.MOHAMMED SHAH

RENOY VINCENT HELEN P.A. ARUN ROY SHAHIR SHOWKATH ALI  
RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE DISTRICT COLLECTOR, CIVIL STATION, PALAKKAD, PIN - 678001 2 P.V.MANOJKUMAR GENERAL CONVENOR, PALAKKAD REVENUE DISTRICT KERALA SCHOOL KALOTSAVAM 2022-2023, DEPUTY DIRECTOR OF EDUCATION, OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION, CIVIL STATION, PALAKKAD TALUK, PALAKKAD, PIN - 678001 3 P.K.ARAVINDAN THE CONVENOR, PROGRAMME COMMITTEE, 61ST KERALA STATE SCHOOL KALOTSAVAM 2022-2023, KOZHIKODE, PIN - 673004

OP(C)No.15/2023 2 4 C.A.SANTHOSH GENERAL CONVENOR, 61ST KERALA STATE SCHOOL KALOTSAVAM 2022-2023, KOZHIKODE 673004 EX-OFFICIO, ADDITIONAL DIRECTOR OF PUBLIC INSTRUCTIONS (GENERAL), OFFICE OF THE DIRECTOR GENERAL OF EDUCATION, JAGATHI, THIRUVANANTHAPURAM - 695014. BY ADV GOVERNMENT PLEADER THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 05.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP(C)No.15/2023 3

## **JUDGMENT**

Aggrieved by Ext.P6 order passed in I.A.No.3 of 2022 in C.M.A.No.169 of 2022 by the Court of the Additional District Judge- I (Vacation Court), Palakkad (Appellate Court), the appellant - a minor - has filed the original petition through his next friend. The respondents in the original petition are the respondents in the appeal.

2. The concise case of the petitioner in the original petition is

that, he has filed O.S.No.652 of 2022, through his next friend, before the Court of the Principal Munsiff, Palakkad (Trial Court), against the respondents, inter alia, to pass a decree of mandatory injunction to direct the respondents to permit the petitioner to contest in the faculty of 'Mookabhinayam (HSS) (General)' in the 61st Kerala State School Kalotsavam- 2022-2023, (in short, Kalotsavam) to be held in

Kozhikode from January 3<sup>rd</sup> to January 7<sup>th</sup>, 2023. Along with the suit, the petitioner filed I.A.No.3042 of 2022 (Ext.P2), for an order of temporary injunction. The Trial Court, by Ext.P3 order, rejected Ext.P2 application. Challenging Ext.P3 order, the petitioner preferred C.M.A.No.169 of 2022 (Ext.P4) before the Appellate Court. With the appeal, the petitioner filed I.A.No.3 of 2022 (Ext.P5), for an order of interim mandatory

OP(C)No.15/2023 4 injunction, to permit him to participate in the faculty of 'Mookabhinayam'. The Appellate Court, by the impugned Ext.P6 order, rejected Ext.P5 application. Ext.P6 order is manifestly wrong and unsustainable in law. Hence, the original petition.

3. Heard Sri.Mohammed Shah, the learned counsel appearing for the petitioner and the learned Government Pleader appearing for the first respondent on admission.

4. The question is whether there is any illegality in Ext.P6

**order.**

5. The petitioner has filed the suit, inter-alia, to pass a decree

of mandatory injunction against the respondents to permit him to participate in the faculty of Mookabhinayam in the Kalotsavam from January 3<sup>rd</sup> to January 7<sup>th</sup>, 2023.

6. With the suit, the petitioner filed Ext.P2 application for an

**order of ad-interim mandatory injunction, for an identical relief as**

prayed for in the suit.

7. The Trial Court, by Ext.P3 order after referring to the law

laid down by this Court on the point held that no ground has been made out to grant an order of interim mandatory injunction to direct the respondents to permit the petitioner to participate in the Kalotsavam. OP(C)No.15/2023 5

8. Challenging Ext.P3 order, the petitioner filed C.M.A. No.169 of 2022. The Appellate Court also, after re-appreciating the pleadings and materials on record, by the impugned Ext.P6 order,

concluded that the allegations levelled in the application for an ad-interim order of injunction is a disputed question of fact. Whether the Appellate Authority had decided the matter on the basis of the facts available or whether there was any malafides is matter to be decided in the suit. Consequently the Appellate Court rejected the application.

9. The Honble Supreme Court in *Dorab Cawasji Warden vs Coomi Sorab Warden & Ors* [1990 KHC 756] had laid down the circumstances under which an interim mandatory injunction can be granted.

10. In the case on hand, both the Courts have concurrently

found that the case put forth by the petitioner is a question of fact and as the interim relief sought for in the suit and the application are identical, an order of interim mandatory injunction cannot be passed.

11. It is trite, an order of temporary mandatory injunction is essentially an equitable relief that can only be granted in cases of exceptional circumstances and by sound exercise of judicial OP(C)No.15/2023 6 discretion.

12. I do not find any ground or reason to upturn the concurrent findings of the courts below in Exts.P3 and P6 orders warranting interference by this Court under Article 227 of the Constitution of India.

The original petition is devoid of any merits and is dismissed. Sd/- C.S.DIAS  
JUDGE csl OP(C)No.15/2023 7 APPENDIX OF OP(C) 15/2023 PETITIONER'S  
EXHIBITS Exhibit P1 THE TRUE COPY OF THE PLAINT IN O.S. NO. THE  
PRINCIPAL MUNSIFF'S COURT, PALAKKAD DATED 16.12.2022 Exhibit P2 THE  
TRUE COPY OF THE I.A. NO.3042/2022 IN O.S. NO.652/2022 FILED BY THE  
PETITIONER DATED 16.12.2022 Exhibit P3 THE TRUE COPY OF THE ORDER  
IN I.A. NO.3042/2022 IN O.S. NO.652/2022 DATED 21.12.2022 Exhibit P4 THE  
TRUE COPY OF THE CIVIL MISCELLANEOUS APPEAL PREFERRED BY THE

PETITIONER DATED 26.12.2022 Exhibit P5 THE TRUE COPY OF THE IA FILED BY THE PETITIONER IN CMA NO.169 OF 2022 Exhibit P6 THE TRUE COPY OF THE ORDER PASSED IN I.A. NO.3/2022 IN C.M.A. NO.169/2022 DATED 27.12.2022

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