

Don Paul vs Tisa Don

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Court : Kerala

Decided On : Mar-07-2023

Judge : Honourable Mr. Justice Anil K.Narendran, Honourable Mr. Justice P.G. Ajithkumar

Appeal No. : RP/193/2023

Appellant : Don Paul

Respondent : Tisa Don

Judgement :

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 7TH DAY OF MARCH 2023 / 16TH PHALGUNA, 1944 R.P.NO. 211 OF 2023 AGAINST THE JUDGMENT DATED 11.01.2023 IN MAT.APPEAL NO.216 OF 2019 OF HIGH COURT OF KERALA REVIEW PETITIONER: TISA DON AGED 35 YEARS, D/O. GEORGE KURIAKOSE, PALAKKAL HOUSE, BUS STAND ROAD, VAIKOM P.O., KOTTAYAM DISTRICT, PIN - 686141. BY ADVS. ABRAHAM P.GEORGE M.SANTHY RESPONDENT: DON PAUL AGED 41 YEARS, S/O. PAUL PAUL, THENGUMPALLY HOUSE, MANJOOR P.O.,

KOTHANELLOOR VILLAGE, KOTTAYAM, PIN - 686603. THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 07.03.2023, ALONG WITH RP.193/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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 7TH DAY OF MARCH 2023 / 16TH PHALGUNA, 1944 RP NO. 193 OF 2023 AGAINST THE JUDGMENT DATED 11.01.2023 IN MAT.APPEAL NO.216 OF 2019 OF HIGH COURT OF KERALA

REVIEW PETITIONER: DON PAUL AGED 40 YEARS, S/O. PAUL PAUL, THENGUMPALLY HOUSE, MANJOOR P.O. KOTHANALLOOR VILLAGE, KOTTAYAM, PIN - 686603. BY ADVS. ABDUL JALEEL.A M.A.SULFIA RESPONDENT: TISA DON AGED 35 YEARS D/O. GEORGE KUIAKOSE PALACKAL HOUSE, BUS STAND ROAD, VAIKOM P.O. KOTTAYAM DISTRICT., PIN - THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 07.03.2023, ALONG WITH RP.211/2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

P.G. Ajithkumar, J.

The appellant has filed R.P.No.193 of 2023 and the respondent has filed R.P.No.211 of 2023. The appeal was disposed of as per the judgment dated 11.01.2023. The operative part of the judgment reads as follows:-

11. xx xx Taking all such aspects into account, we find that the order of the Family Court allowing the respondent to retain custody of the child is not liable to be interfered with. However, there shall be a direction regarding the entitlement of the appellant to have interim custody of the

child. We direct that the appellant shall be allowed to have interaction with the child on every Saturday between 10.00 a.m. and 3.00 p.m. The appellant shall be given custody of the child for five days each during Onam and Christmas holidays. During the summer vacation, he shall be allowed to have custody of the child for 15 days. Periods of such custody shall be during the first half and second half alternately. The custody shall be given and taken back in the premises of the St. George Church, Thalayolaparambu. The appeal is disposed of accordingly.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

3. The appellant wants to review the judgment insofar

as it relates to the timing of the interaction allowed to him on Saturdays, his right to have video call to the child and non- specification of the period of holiday custody. The respondent seeks to review the judgment insofar as it relates to the right of interaction given to the appellant on every Saturday. The respondent wants to limit the right of the appellant for interaction with the child to first and third Saturdays.

4. Considering the relief sought for in the review

petitions, we are of the view that the reason stated in both the petitions need not be deliberated upon in detail. The review sought is with respect to the directions regarding custody of the child, and not based on any error of fact or law. Modifications to the custody order are sought essentially for suiting the custody to the convenience of the respective parties. Of course, the learned counsel appearing for the appellant would submit that by denying the respondent an opportunity to interact with the child through video call is in disregard of the law laid down in *Yashita Sahu v. State of Rajasthan* [(2020) 3 SCC 67], which we have relied on in the judgment dated 11.01.2023.

5. An order regarding custody of a child has to be

passed taking into account facts and circumstances of each case. Therefore, provision for video call is not an invariable rule. So absence of making a provision

for video call in this case cannot be said to be an error apparent on the face of the record. However, considering the entire facts and circumstances of this case, we are of the view that a few modifications to the directions regarding the custody of the child in the judgment dated 11.01.2023 will be appropriate and amiable to the welfare of the child. The appellant can be allowed to have interaction with the child on every Saturday from 9 a.m. to 5 p.m. The appellant can also be allowed to make video calls on every Tuesday and Thursday for 10 minutes between 8.00 p.m. and 8.30 p.m. Period of custody of the child to be given to the appellant during Onam and Christmas holidays shall be the first five days of the holidays and during summer vacation shall be the first 15 days of the vacation. With the aforesaid modifications to the judgment dated 11.01.2023 in Mat.Appeal No.216 of 2019, R.P.No.193 of 2023 is disposed of and R.P.No.211 of 2023 is dismissed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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