

Don Paul vs Tisa Don

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Court : Kerala

Decided On : Apr-05-2023

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

Appeal No. : Con.Case(C)/881/2023

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 WEDNESDAY, THE 5TH DAY OF APRIL 2023 / 15TH CHAITHRA, 1945 CON.CASE(C) NO. 881 OF 2023 AGAINST THE ORDER DATED 07.03.2023 IN R.P.NO.193 OF 2023 IN MAT.APPEAL NO.216 OF 2019 OF THE HIGH COURT OF KERALA PETITIONER: DON PAUL AGED 40 YEARS S/O LATE PAUL PAUL, THENGUMAPALLY HOUSE, MANJOOR PO, MANJOOR VILLAGE, KOTTAYAM, PIN - 686603. BY ADVS. M.A.SULFIA ABDUL JALEEL.A RESPONDENT: TISA DON AGED 35 YEARS D/O GEORGE KURIAKOSE, PALACKAL HOUSE, BUS STAND

ROAD, VAIKOM P.O KOTTAYAM DISTRICT, PIN - 686141. BY ADV ABRAHAM P.GEORGE THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 05.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

P.G. Ajithkumar, J.

The appellant in Mat.Appeal No.216 of 2019 has filed this petition for initiating action for contempt under Section 12 of the Contempt of Court Act, 1971 against the respondent.

2. Mat.Appeal No.216 of 2019 was disposed of as per the judgment dated 11.01.2023. The petitioner filed Review Petition No.193 of 2023 in that appeal. As per the

order dated 07.03.2023 in that review petition, the

petitioner was allowed to have interim custody of his child Elena Maria Don, aged 7 years for the first 15 days during the summer vacation; besides interim custody during holidays. The petitioner alleges that the respondent did not comply with the said direction in the order dated 07.03.2023. Hence, he filed this petition.

3. Heard the learned counsel appearing for the petitioner.

4. The petitioner has filed Mat.Appeal No.216 of 2019 challenging the judgment and decree dated 30.01.2019 of the Family Court, Kottayam at Ettumanoor in O.P.No.810 of 2015. That appeal was disposed of by the

judgment dated 11.01.2023. The petitioner as well the

respondents filed review petition, which were disposed of as per the order dated 07.03.2023.

5. When the appeal is disposed of, the decree of the

Family Court merges with the decree in the appeal. Here, the decree in Mat.Appeal No.216 of 2019 stands modified in terms of the order dated 07.03.2023 in R.P.Nos.193 and 211 of 2023. That modified decree is an executable decree. The essential purpose of filing this petition is to see that the decree is enforced. Effective remedy for enforcement of the decree, including that under Section 25 of the Guardian and Wards Act, 1890 by approaching the Family Court is available to the petitioner. Since the decree is executable,

an action for contempt is not the immediate and appropriate remedy. In such circumstances, this petition is dismissed and this Cont.Case is closed. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF CON.CASE(C) 881/2023 PETITIONER ANNEXURES Annexure A1 THE CERTIFIED COPY OF ORDER DATED 2023 IN MAT APPEAL NO 216/2019 Annexure A2 THE TRUE COPY OF THE JUDGMENT DATED

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