

Sumi S., vs Anwar,

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Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Tr.P(C)/392/2021

Appellant : SUMI S.,

Respondent : ANWAR,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944 TR.P(C) NO. 392 OF 2021 IN OP(G&W) 270/2020 OF FAMILY COURT, CHAVARA PETITIONER: SUMI S., AGED 24 YEARS W/O. ANWAR MUHAMMED, CHAKKALAYIL VEEDU, PADA NORTH, KARUNAGAPPALLY P.O. KARUNAGAPALLY , KOLLAM DISTRICT 690 518. BY ADVS. E.RAFEEK GOKUL DAS V.V.H. RESPONDENT: ANWAR, AGED 32 YEARS S/O. MUHAMMED KUNJU, SABEENA MANZIL, PADA NORTH KARUNAGAPPALLY P.O. KARUNAGAPPALLY DISTRICT 690 518. BY ADVS. A.SALINI LAL R.SUNIL KUMAR THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.03.2023, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

Dated this the 1st day of March, 2023

ORDER

The transfer petition is filed under Section 24 of the Code of Civil Procedure, 1908 (in short, 'C.P.C.'), to transfer O.P.(G&W)No.270/2020(Annexure-I) from the Family Court, Chavara to the Family Court, Malappuram.

2. The petitioners case, in brief, in the

memorandum of transfer petition is that, she is the wife of the respondent. They have a daughter named Aira, born in their wedlock on 19.07.2016. The respondent has filed Annexure-I, against the petitioner, for the permanent custody of the child. The petitioner has filed Annexure-II objection in Annexure-I petition. The petitioner is pursuing her MBBS course in M.E.S. College, Perinthalmanna. Even before the filing of

Annexure-I petition, the petitioner had filed M.C.No.38/2020 before the Judicial First Class -:3:- Magistrate Court-I, Karunagappally, against the respondent and his family members, invoking the provisions of the Protection of Women from Domestic Violence Act, 2005. The complaint is pending consideration. At the instance of the respondent, an

order has been passed by the Family Court in

I.A.No.7/2020, restraining the petitioner from taking the child out of Kerala. Due to the said order, the petitioner is unable to take the child outside the

jurisdiction of the Family Court, Chavara. The respondent is repeatedly filing frivolous petitions against the petitioner. The petitioner desires to have the custody of her child with her while she is staying in Perinthalmanna. Therefore, it would be convenient for the petitioner and the child, if Annexure-I is transferred from the Family Court, Chavara to the

Family Court, Malappuram. Hence, the transfer -:4:- petition.

3. The respondent has filed a counter affidavit, denying the allegations in the transfer petition. He has contended that the allegation that the child is residing with the petitioner in Perinthalmanna is false. The child is residing with the petitioners parents in Chithara, Kollam and is studying in A.P.R.M. Central School, Chithara, as evidenced by Annexure-R1(a) certificate. The sole intention of the petitioner in filing the transfer petition is to deny the respondent from having the custody of his child.

4. The petitioner has filed a reply affidavit, denying the allegations in the counter affidavit. It is contended that the petitioner's parents take the child from Chithara to Perinthalmanna every weekend, which is causing inconvenience to the child. Hence, the transfer petition may be allowed. -:5:-

5. Heard; Sri. Gokul Das V.V.H, the learned counsel appearing for the petitioner and Sri.R. Sunil Kumar, the learned counsel appearing for the respondent.

6. The question is whether Annexure-I proceedings is to be transferred?.

7. On an analysis of the pleadings and materials

on record, it is evident that Annexure-I petition is filed before the Family Court, Chavara, by the respondent against the petitioner, for the permanent custody of the child of the couple.

8. Admittedly, the child is residing with the

parents of the petitioner in Chithara, within the jurisdiction of the Family Court, Chavara, and is studying in A.P.R.M. Central School, as evidenced by Annexure-R1(a) certificate.

9. The sole ground for the transfer of -:6:-

Annexure-I proceeding, is to facilitate the petitioner to prosecute the proceeding from the Family Court, Malappuram because the petitioner is pursuing her third year MBBS course in Perinthalmanna.

10. It is to be remembered, Annexure-I is filed for the custody of the child.

11. Section 9 of the Guardian and Wards Act, 1890, specifically provides that an original petition under the Act is to be filed in the Court within whose jurisdiction the child ordinarily resides.

12. The above stipulation in the statute is incorporated to avoid inconvenience to the child.

13. Indisputably, the child is residing with the parents of the petitioner, as the petitioner is pursuing her studies in medicine. Even if the proceeding is transferred, the child will continue to reside in Chithara and the respondent will have to exercise his -:7:-

custodial rights in Chithara itself. Therefore, I am of the definite view that it is convenience of the child that has to be given top most priority and not the convenience of the petitioner, whose personal appearance can be dispensed with.

14. The law with respect to transfer of

proceedings, particularly matrimonial disputes, is no longer res integra, in view of the categorical declaration of law by the Hon'ble Supreme Court in Sumitha Sing V. Kumar Sanjay and another [(2001) 10 SCC 41], Mona Aresh Goel V. Aresh Satya Goel [(2000) 9 SCC 255], Vaishali Shridhar Jagtap V. Shridhar Vishwanath Jagtap [AIR 2016 SC 3584], Santhini V. Vijaya Venkatesh [2017 (4) KLT 415 (SC)], N.C.V. Aiswarya v. A.S. Sharavana Karthik Sha [2022(5) KHC 185] and Valsal Nisha v. Rajesh Soman Nair [2020(8) KLR 475]. The Hon'ble Supreme Court has - :8:-

held that it is the convenience of the woman and

children that has to be looked into, while ordering the transfer of a case from one Court to another.

15. In the light of the law laid down in the

afore-cited decisions and taking into account the fact the child is only a six year old girl and is residing with the parents of the petitioner within the jurisdiction of the Family Court, Chavara, I am not inclined to exercise the discretionary powers of this Court under Section 24 of the C.P.C. and order the transfer of Annexure-I proceeding on the mere asking of the

petitioner, which would certainly cause severe inconvenience to the child and the respondent. The transfer petition is meritless and is filed without any bonafides.

Resultantly, reserving the right of the petitioner to move the Family Court, Chavara, and seek for the -:9:- dispensation of her personal appearance, the transfer petition is dismissed. Sd/- C.S.DIAS,JUDGE DST/01.03.23 //True copy/ P.A.To Judge -:10:- APPENDIX PETITIONER ANNEXURES ANNEXURE I TRUE COPY OF THE PETITION IN O.P.(G&W), NO. KOLLAM DISTRICT. ANNEXURE II TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN O.P.(G&W) NO. 270/2020 BEFORE THE FAMILY COURT, CHAVARA, KOLLAM DISTRICT. ANNEXURE III TRUE COPY OF THE COMPUTER PRINT OUT OF THE

PROCEEDINGS FROM THE ECOURTS, GOV.IN WEBSITE IN OP. (G&W) NO. 270/2020 BEFORE THE FAMILY COURT, CHAVARA KOLLAM DISTRICT. RESPONDENT ANNEXURES ANNEXURE R1 (A) THE TRUE COPY OF THE ADMISSION RECEIPTS AS WELL AS OTHER RECEIPTS RELATIONG TO THE FEE OF THE MINOR CHILD AT APPRM CENTRAL SCHOOL CHITHARA

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