

Deepesh Kumar Vs. Shyama

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Court : Kerala

Decided On : May-17-2010

Judge : R. Basant and; M.C. Hari Rani, JJ.

Appeal No. : WP (C) No. 13335 of 2010 (R)

Appellant : Deepesh Kumar

Respondent : Shyama

Advocate for Def. : No Appearance

Advocate for Pet/Ap. : Johnson Gomez, Adv.

Disposition : Petition dismissed

Judgement :

R. Basant, J.

1. This writ petition is directed against an interim order passed by the Family Court in an application for interim custody of a minor child.

2. The writ petitioner was the petitioner before the court below and the respondent is his wife, the mother of the child. The child is aged 3 years and is a female child. The mother keeps the custody of the child now and the father had filed the O.P for custody of the child. Pending disposal of the O.P, interim custody of the minor

child was sought. The court below, by the impugned order, did not accept the prayer of the petitioner/father for interim custody of the child; but the court below took note of the submission that the father of the appellant is seriously ill and hence permitted the appellant to have custody of the child from 11 a.m. till 5 p.m. on a specified date. The other requests were turned down.

3. The petitioner claims to be aggrieved by the impugned order. What is his grievance? The learned Counsel for the petitioner submits that interim custody of the child must have been given to the petitioner. We find no merit whatsoever in that contention. The child is aged 3 years only. It is a female child. The child needs to be in the custody of the mother now. We find absolutely no reason to invoke our extraordinary constitutional jurisdiction to interfere with the impugned order rejecting the prayer of the petitioner for interim custody of the minor child.

4. The learned Counsel for the petitioner submits that atleast visitation rights must have been granted to the appellant/petitioner. We are satisfied that observations to that effect can be made. We make it clear that it shall be open to the petitioner to apply before the court below for visitation rights and the court below shall consider the same on merits and pass appropriate directions.

5. With the above observations, this writ petition is dismissed.

6. The learned Counsel for the petitioner submits that certain observations/conclusions made by the court below in the impugned interim order might stand against the petitioner later in the course of the proceedings. We find the said apprehension to be totally unjustified. The conclusions and expression of opinion in the impugned interim order shall not, in any way, influence the court below when it takes up the original petition for final disposal on merits or when it considers later applications for visitorial rights.