2025:KER:29544

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

MAT.APPEAL NO. 288 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 24.01.2025 IN I.A.NO.3 OF 2023 IN OP NO.197 OF 2018 OF FAMILY COURT, THALASSERY

APPELLANT/RESPONDENT/RESPONDENT:

[redacted]

BY ADVS.
D.ARUN BOSE
K.VISWAN
P.S.POOJA

RESPONDENT/PETITIONER/PETITIONER:

[redacted]

BY ADVS.
V.A.HAKEEM
HABNAM HAKEEM(K/002100/2023)
SIVALAKSHMI.K(K/496/2013)
ALKA MARIA MARTIN(K/001291/2025)
RAHUL O.(K/1407/2025)

OTHER PRESENT:

SRI V A HAKEEM

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 02.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

2025:KER:29544

C.R

JUDGMENT

Devan Ramachandran, J.

Parental conflicts are not mere legal matters; they are reflections of interpersonal problems between couples, which require interpersonal solutions.

2. Unfortunately, it are the children involved, who are forced to share or bear the dysfunction that occurs in such scenario; exacerbated by the often noticed fact that their interests are seen with less priority by the parents, as they deal with the emotional and psychological side to it.

3. Often, in the maelstrom of emotions, the children are sometimes forgotten; and this can be devastating for them and leave scars on their psyche permanently.

4. Husband and wife can and may fight; but one cannot fathom how they, as parents, can fight.

5. Husband and wife can be separated or divorced; but, as parents, their bond is interminable, till death part them.

6. Unfortunately, this is lost to most couples in matrimonial strife.

7. Children who see hostility between parents are shown to have lower satisfaction levels in their own relationships in future; with some reporting negative views on family structures, marriage and relationships in general.

8. It is also well documented that smaller children who have gone through high conflict of their parents are less able to solve problems, negotiate interpersonal relationships and have higher levels of social anxiety. They are also known to experience higher fear of abandonment and rejection – which may lead to traits of Complex Trauma and Personality Disorder.

9. The Hon'ble Supreme Court, in ***Lahari Sakhamuri v. Sobhan Kodali*** [2019 KHC 6335] has spoken lucidly on the travails of children caught in the cross fire of their parents conflict *ut infra*:

> *"52. Divorce and custody battles can become quagmire and it is heart wrenching to see that the innocent child is the ultimate sufferer who gets caught up in the legal and psychological battle between the parents. The eventful agreement about custody may often be a reflection of the parents' interests, rather than the child's. The issue in a child custody dispute is what will become of the child, but ordinarily the child is not a true participant in the process.*

While the best-interests principle requires that the primary focus be on the interests of the child, the child ordinarily does not define those interests himself or does he have representation in the ordinary sense.

53. The child's psychological balance is deeply affected through the marital disruption and adjustment for changes is affected by the way parents continue positive relationships with their children. To focus on the child rights in case of parental conflict is a proactive step towards looking into this special situation demanding a specific articulation of child rights."

10. The prologue above is written since, somewhere along the line, when dealing with the increasing numbers of matrimonial issues, courts – not deliberately, but in the quest to maintain expedience and for lack of adequate time – many a time, tend not to look at the plight of children with the requisite empathy. The parents – consumed by their personal emotions – invariably overlook the trauma of the children and fight for their custody and other arrangements, with vigour and passion, often unseen in other type of litigations.

11. The distressing repercussion is that children are forced to attend Courts many a times, disturbing their lives and

education, even when they have had no contribution to the conflict between their parents and being tenebriously trapped in a scenario, over which they have no control or escape.

12. As we will explain presently in the paragraphs to follow, children loathe appearance in courts – which they have unreservedly told us in several cases - which they find to be dehumanizing, terrorizing, humiliating and demeaning their very being.

13. Therefore, exercising *parens patriae* role – as we are expected to do – we proceed not merely to answer the rival contentions in this case, but to lay down future guidelines for Family Courts in such matters.

14. First, a wood cut of the facts involved.

15. The petitioner challenges the order of the learned Family Court, Thalassery, in I.A.No.3/2023 in O.P.No.197/2018.

16. Compendiously, the above mentioned Original Petition was filed by the respondent seeking permanent custody of his 9 year old child; and the same was decreed on the basis of consent of the parties, whereby, the petitioner was given his permanent custody on the condition that she hands him over to the father on

certain specified days every week and during the holidays.

17. The afore order was, thereafter, modified once, altering the place of exchange of the child; but, thereafter, on the allegation that the petitioner - mother was violating the order, the respondent - father moved the above I.A; while, the former moved I.A.No.2/2022, also seeking its modification, on the assertion that the child is unwilling to go with the latter. Both these applications were heard together, leading to the impugned order of the learned Family Court, by which, the earlier arrangement was wholly altered and the child ordered to be kept in custody by the father, with the petitioner - mother merely obtaining his interim custody for a few days, as specified therein.

18. Smt.P.S.Pooja – learned counsel for the appellant, argued that the arrangement now settled by the learned Family Court is untenable and contrary to the wishes of the child and that it creates excruciating trauma to him. She insisted that the child is unwilling to go the father, which had persuaded her client to file I.A.No.2/2022; but that the learned Family Court peremptorily rejected the same, allowing the application of the respondent, even after recording that the child was reluctant to enter the

chambers of the learned Judge for interaction. She asserted that the child is already deeply disturbed, being dragged from Court to Court; and that it is, therefore, that he refused to even see the learned Judge, when he was produced before the Court. She thus prayed that the impugned order be set aside.

19. Sri.V.A.Hakkeem – learned counsel for the respondent, in response, alleged that the child has been tutored by the mother and that it is solely, therefore, that he is exhibiting reluctance to go to his client. He insisted that the child is comfortable with his father and hence that the learned Family Court has made no error in having issued the impugned order; and concluded, predicating that the learned Court had no other option, but to have issued the impugned order, because, of the recalcitrance shown by the mother in obeying its earlier directions, which is manifest from the fact that the child was never given in custody to his client even though so specifically ordered.

20. The afore dialectal submissions being recorded, the parties were before us personally today, along with the child, as was offered by their learned counsel, when this matter was considered earlier on 25.03.2025.

21. We heard this matter in the morning and saw that the child was clinging on to the mother; but we suggested that he spend some time with the father and then called the case in our Chambers in the afternoon session. However, the child still exhibited extreme unwillingness to leave his mother, clinging on to her with more force than before; and then recounted to us certain incidents in his life, which he said had caused him shock and angst. Though the incidents stated by the child were not really grave, we notice that he has been unmistakably traumatised; and he then explained to us that he abhors going to Courts and further that he even "hates" us for having "summoned" him again.

22. We were rather taken aback by the turn of events; and the learned counsel for the parties admitted that, on an earlier occasion, when their clients had approached this Court, the child had been produced before another Bench and that the said Bench had interacted with him, to note that his stress was unbearable, thus promising him that he would not be called again to any Court. We understand that the child feels betrayed; but must record that we were not kept aware of the earlier proceedings

between the parties until now.

23. As said above, the child appears to be more terrified and agonized not on account of the proceedings between his parents; but because, he has been caught in between and has been forced to appear in Courts every now and then. He undoubtedly hates this, telling us specifically that he feels dehumanized and stigmatized, being paraded in front of people as a virtual chattel of dispute between his parents. His expression was luculent that he feels let down even by the legal system – which is expected to support and protect him - in being treated in such fashion; and told us, as he was walking away, that he will never enter a Court again, even if called.

24. The records further reveal that the child is suffering from "Attention Deficit Hyperactivity Disorder" (ADHD), and that he is obtaining professional assistance for the same. Add of this, the trauma and stigmatisation that he had had to endure all these years, has made his condition tenuous and very saddening.

25. Suffice to say, the child refused to even leave his mother's hands, or to remove himself from her lap and did not agree to our repeated suggestions and persuasion to even shake

hands with his father, much less talk to him. When we insisted further, he started crying inconsolably, telling us that he does not trust us, for pushing him to such an excruciating situation.

26. We surely feel sorry for the child and our hearts go out to him.

27. This is a classic example of the harrowing and tortuous trauma that a child suffers when his parents are litigating over his custody. Our experience has shown that children are unwilling to go to Courts, or to be taken there under orders; and many of them have told us, in unequivocal expression of angst, that they feel that they are being paraded as articles, rather than as humans. Even when custody arrangements are made, with the place of exchange being fixed as the Court premises, or the Office of the Chief Ministerial Officer (CMO), we have found similar dread being expressed by children; and hence this Bench has been very cautious in our approach, ensuring that the place of exchange is a neutral one and never the premises of Courts, as far as it is so possible.

28. Most often in matrimonial litigations, one misses to sufficiently recognise the obvious fallout of the strife between the

parents and the horrific effect it has on the children; though, interestingly, both sides rely on the concept of "welfare of the child" as the final weapon to fight each other. This is an enigma, and we would assume that this is because the parties are often consumed by the passion of the litigation and the nuances of the controversy presented, rather than by the realities of life. The pernicious effect of all this on the children is apodictic; and, as we have said above, the reaction of child in this case is a rude eye-opener even for us.

29. The tears that rolled down the cheeks of the child; the call for deliverance which he made before us in his innocent tenor; and his remonstrance in being called into Courts, to be dehumanized every time, surely, requires us to sit up and take notice.

30. It is irrefragable, therefore, that we cannot offer approval to the order now impugned; and that it will be imprudent for us to even suggest that the child go with the father in permanent custody. The arrangement earlier settled by the learned Family Court was certainly enough for both the parents to have shared custody of the child; and its modification was

unnecessary; but we understand the learned Family Court did so only because it was under the incorrect impression that it is the mother who was refusing to let the child be with the father. The fact remains to the contrary, as we have seen; and as long as the child is obdurately unwilling to go to the father, his claim for his permanent custody remains untenable. This ought to have been better assessed by the learned Family Court since, it has recorded that the child was unwilling to interact with it, even when he was produced before it, thus limpidly indicating that all was not well with him.

31. In the above circumstances, we allow this appeal and set aside the impugned order, thus restoring the judgment and decree of the learned Family Court earlier issued; consequently, directing the parties to abide by it. We also set aside the modification earlier made by the learned Family Court, directing the place of exchange of the child to be the Munsiff Court at Kannur and restoring it to be in front of the "Mahatma Mandiram", Kannur, as is in the decree.

32. Though the specific controversy at hand has been so answered, we deem it unexpendable that we leave an epilogue

for guidance of the learned Family Courts, for future reference since, the exposure of children to the judicial system - be that for interaction or for other purposes - ought to be empathetically recognised by the Courts to leave a trail of distress in them in the future.

33. We, therefore, order that, except in exceptional and unavoidable circumstances, the presence of children in Court Halls and in public areas of the Court premises - even for the purpose of counselling, or such other statutory proceedings - be ordered sparingly and with great caution. Even in cases where children are so asked to be produced, every care ought to be employed to ensure that they are treated with the highest amount of dignity and privacy that any child would require; and are not made to wait *ad infinitum* for the proceedings to get over, but given preference, subject to the workload of the Court.

34. When it comes to the place of exchange of the child for interim or final custody, we order that the use of the Court premises – which we understand, is essentially to enter such appearance in the registers maintained by it - be avoided, unless exceptional reason is recorded; and a neutral place be thought of

– preferably as per consent of parties - since this will, to a large extent, reduce the strain of the children and their fear, which they unfortunately endure on account of being forced to submit themselves to processes, over which they have no control on and which they did not seek.

35. To paraphrase, it is only in unavoidable circumstances, when the situation so expressly warrants, and to be recorded in writing, that the place of exchange be ordered to be the Court premises; and in all other situations, we direct that an apposite neutral place be identified and fixed.

We direct the Registry of this Court to circulate a copy of this judgment to all the learned Family Courts for compliance.

Sd/-
DEVAN RAMACHANDRAN,
JUDGE

Sd/-
M.B. SNEHALATHA,
JUDGE

Mms/SAS