

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2012

(CC 6494/2012)

(From the judgement and order dated 22/06/2011 in MA No.953/2009 of The HIGH COURT OF KERALA AT ERNAKULAM)

CHERIAN ABRAHAM

Petitioner(s)

VERSUS

JEEJA CHERIAN

Respondent(s)

With I.A.1 (C/delay in filing SLP and office report)

Date: 18/01/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. K. Rajeev, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

This petition is directed against the order of the Division Bench of the Kerala High Court whereby the appeal filed by the petitioner against the order of Family Court, Ernakulam in the matter of custody of the minor child was partly allowed along with Mat. Appeal No. 856 of 2009.

We have heard learned counsel for the petitioner for some time and carefully perused the record. Para 4 to 6 of the impugned order read as under:

4. We note that the child has completed 5 years now. We have had occasion to interact with the child. The child has been in the custody of the mother for a ly long period of time. Notwithstanding the acrimony between the spouses, we note that the child has been brought up in such a manner that he readily goes to his father. We are happy that the child has been well groomed and moulded and that is evident from the fact that he is not making any attempt to resist his being handed over to the custody of his father. Even on the latest occasion, we find that even though the child was meeting his father after a long gap of time, he had gone to his father very easily and we must certainly appreciate the manner in which the child has been brought up by his mother. We have no hesitation to agree with the Family Court that the custody of the 5 year old child is best left to the mother at this juncture. The court below had directed that the arrangement should continue till the child attains the age of 7 years. We are persuaded to agree that such arrangement can continue till the child attains

the age of 9 years. Any change regarding the directions regarding custody if found necessary can be sought after the child completes the age of 9 years. We do hope that by then, the child will be able to give an informed response to the court trying to ascertain the best interests of the child. In these circumstances, we find no merit in the challenge raised by the appellant/husband against the impugned order.

5. Coming to the grievance raised by the mother about the payment of air fare for the child, we do agree that the father who wants to have interactions with the child must be obliged to pay the air fare of the child. Though there is a request made that the father may be compelled to pay air fare of a person who accompanies the child, we are of the opinion that no such specific direction need be issued. It is sufficient, we are satisfied, if the father is made liable to pay the air fare up and down of the child. Such payment shall be made on the date when the child is produced before the Family Court every year.

6. We are satisfied that the impugned order passed by the Family Court regarding the custody of the child can be upheld subject to the above modifications. The child has been handed over to the father by the mother on 13.06.2011. The child shall be returned to the mother on 01.07.2011. The mother shall be liable to hand over custody of the child only during the annual vacation in June, 2012."

In our view, the impugned order does not suffer from any legal infirmity requiring interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed.

Learned counsel for the parties gave out that the wife has gone to Malaysia with child. Therefore, it is made clear that as and when she returns to India, the petitioner shall be entitled to exercise his right of visitation.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master