
(2015) 05 KL CK 0035
In the High Court Of Kerala
Case No : W.A. No. 855 of 2015

Hadi Amaan V.R.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 KHC 451

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : M. Shaju Purushothaman and K.S. Rajesh, for the Appellant; N. Nagaresh, Assistant Solicitor General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, C.J—Heard the learned counsel for the appellant and Sri N. Nagaresh, the learned Assistant Solicitor General appearing for the respondent. This appeal has been filed against the order dated 18th of March, 2015 passed in W.P. (C) No. 6078/2015 by which the Court issued the following direction;

"The petitioner is required to implead the father of the petitioner, that is husband of Soumya Jaleel, in the party array forthwith."

2. Appellant/petitioner had made an application for passport. Appellant's case in the writ petition was that the appellant is in the custody of his mother and his father had divorced his mother on 27th of April, 2009. Petitioner's case is that an affidavit to that effect is already filed by his mother. But the Passport Officer did not proceed with the application. In the above background, the writ petition was filed.

3. A statement was filed by the Assistant Solicitor General in the writ petition taking various pleas. Learned Single Judge passed an order directing the petitioner to implead the father against which he is aggrieved and has come up in appeal. Learned counsel for the appellant submits that father is not a

necessary party and ought not have been directed to be impleaded. He submits that affidavit having been filed by the mother, Passport Officer was obliged to proceed further with the application. He has placed reliance on the judgment of this Court reported in Juvairiya Vs. Regional Passport Officer, (2014) 2 KHC 53 : (2014) 2 KLJ 246 : (2014) 1 KLT 990 : (2014) 2 RCR(Civil) 487 .

4. Learned Assistant Solicitor General appearing for the respondent submits that the judgment relied on by the appellant was a case where there was an agreement between the mother and father regarding the custody of the child and further in the said case, a decision was taken by the Passport Officer, which was impugned.

5. We have considered the submission of the learned counsel for the parties and perused the records.

6. The appellant had filed the writ petition seeking a mandamus to the Passport Officer to decide the application on the facts stated in the writ petition. A statement was filed by ASG where various pleas have been taken, in which, paragraphs 3, 5 and 8, being relevant, are extracted below;

"3. Petitioner is the son of Soumya Jaleel. He was born on 13/04/2004 as per Ext. P3. His parents are divorced as per averments in para 1 of the petition. The purported communication of talaq is Ext. P1. The mother approached the 2nd respondent to apply for the child's passport. She was advised to produce a clear Court order granting custody of the child exclusively to her without any visitation rights to the father, or alternately, the consent of the father.

5. The petitioner's mother claims to be divorced on 27/04/2009. As per provisions in the Passport Rules, 1980, she has to produce either a divorce decree issued by a Court having jurisdiction, or at the least a certificate of talaq issued by a Qazi. Ext. P1, which is the communication of talaq, does not adhere to the provisions laid out in the rules. The signatories to the communication of talaq are private individuals and the document lacks legal sanctity. There is no way for the PIA to establish its facticity. The respondent was thus justified in asking for a document of divorce which is sanctified by law.

8. Regarding Ext. P2 submitted by the petitioner, it is submitted that Annexure-G is not accepted summarily in all cases where the applicant parent is unable to obtain the consent of the other parent. Annexure-G is accepted only on the merits of each case, which is decided by the PIA, after personal interview. Several instances of minor children being used as pawns to settle emotional scores by divorced parents have come to the notice of the respondents. It is therefore only proper, that a passport is issued to the minor child only with the knowledge of both the parents."

7. Taking into account all relevant facts and circumstances, learned Single Judge directed the petitioner to implead the father in the writ petition. The Court exercising jurisdiction under Article 226 of the Constitution of India has every

jurisdiction to direct impleadment of any person whose presence is necessary or proper for disposal of the case. In the present case, where there is no mention of any order of custody or any proceedings between the father and mother, direction of the Court to implead the father cannot be said to be an error in exercise of jurisdiction by writ Court. The judgment of which learned counsel for the appellant has placed reliance was a case where divorce was effected on 14/05/2013 and agreement regarding custody of children was entered into between the petitioner and her husband. An affidavit was filed by the mother as required by application. The application was rejected on the ground that no consent has been produced. In the above background, Court proceeded and held that in the facts of the said case, consent of father is not necessary and Passport Officer committed an error in rejecting the application on the said ground. The said case has no application to the facts of the present case. In the said judgment, the issue as to whether writ Court can direct for impleadment of father was not an issue. The issue was as to whether the consent of father should be annexed along with the passport application. The present case is one where the appellant had come up against an interlocutory order passed by the learned Single Judge directing for impleadment of father. The order does not decide any of the rights of the appellant nor can be said to be prejudicially affecting the appellant in any manner. We do not find any error in the order, which is impugned in the writ appeal, which may warrant interference by us in exercise of writ jurisdiction.

Writ appeal is dismissed.