

(2015) 06 KL CK 0156

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8659 of 2015 (F)

Rabeeha

APPELLANT

Vs

Ministry of External Affairs and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 RCR(Civil) 760

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : S. Shanavas Khan and S. Indu, for the Appellant; N. Nagaresh, Assist S.G., Advocates for the Respondent

Final Decision : Disposed off

Judgement

K. Vinod Chandran, J—The petitioner is the wife of the 3rd respondent, who seeks for issuance of a Passport to the minor child born in their wedlock by name Ahsana E. The petitioner has filed an application before the 2nd respondent for issuance of a Passport to the minor child, which has been rejected by an endorsement in Ext. P4 that either a consent should be obtained from the father of the minor child or an order from the competent Court. The petitioner has approached this Court under Article 226 of the Constitution of India claiming that the petitioner has filed an application before the Family Court, Ernakulam for divorce as O.P. No. 758 of 2014 and divorce has been sought on the ground of desertion. While, the proceedings before the Family Court are pending, the petitioner seeks to get the Passport in the name of the minor child, since she intends to travel abroad for employment, as deputed by her employer.

2. The learned Assistant Solicitor General of India, appearing for the respondents 1 and 2, would however contend that, as per the Passport Manual, 2010, the requirement is that when divorce action is pending between the parties, the Passport Issuing Authority has to insist on the consent of both the parents or alternatively the applicant should obtain an order from the Court for issuance of

the Passport to the child.

3. The issue with respect to the rejection of issuance of a Passport, on consent not being obtained from the other parent was considered by this Court in Juvairiya Vs. Regional Passport Officer, (2014) 2 KHC 53 : (2014) 2 KLJ 246 : (2014) 1 KLT 990 : (2014) 2 RCR(Civil) 487 , wherein it was held that, if the affidavit as required under the Passport Rules, 1980 (for brevity, Rules of 1980) is submitted, then, necessarily the Passport Officer would have to issue the Passport in the name of the minor child. At the outset, it is to be noticed that the 3rd respondent, who is the father of the minor child, was impleaded herein and despite service of notice, none appears for him before this Court. Since a divorce application is pending between the petitioner and the 3rd respondent, the affidavit filed by the petitioner under Annexure "G" of the Rules of 1980 may not be proper and the petitioner would be required to file an affidavit under Annexure "C" before the Passport Issuing Authority. On such application being filed specifically showing the reason for consent being obtained; which happens to be the desertion of the petitioner and the minor child by the 3rd respondent; after issuing notice to the father of the minor child, the application has to be considered, as has been laid down in the afore cited judgment. The petitioner shall accordingly file a proper affidavit along with a fresh application before the Passport Issuing Authority and the Passport Issuing Authority shall immediately issue notice to the father and finalise the proceedings at any rate within a period of one month from receipt of the application, along with the affidavit, as mentioned herein above.

The writ petition is disposed of.