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(2010) 05 KL CK 0078

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14938 of 2010 (R)

Wilson — APPELLANT

Vs

Deepa and The Family Court, M. Ernakulam — RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2010) 05 KL CK 0078

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : T.G. Rajendran, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner herein was respondent No. 1 in O.P. No. 1332/2003 on the file of Family Court, Ernakulam. Exhibit P1 is the final order passed therein. Exhibit P1 directs the petitioner to pay certain amounts to his wife. It is directed therein that if the amount is not paid on or before 3.5.2006, the wife is entitled to recover custody of the child. That order has become final without challenge, admittedly. It is also seen that the said order was passed in pursuance of a provisional settlement. The child was handed over to the custody of the petitioner, on the basis of such provisional settlement, it is further indicated in Exhibit P1.

2. The amount due under Exhibit P1 has admittedly not been paid so far. In these circumstances, the wife has filed Exhibit P2 application (I.A. No. 971/2008) for return of custody of the child in terms of Exhibit P1 order. That application was opposed and Exhibit P3 counter affidavit has been filed. It is at this juncture that the petitioner has rushed to this Court.

3. What is the grievance of the petitioner? Admittedly, he has not paid the amounts due under Exhibit P1. The learned Counsel asserts that the petitioner is willing to pay the entire balance amount payable under Exhibit P1. If that be so,

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the petitioner must appear before the Family Court and offer to deposit the entire amount. If such amount is paid, needless to say, the Family Court must consider Exhibit P2 petition on its merits and pass appropriate orders. At any rate, we find no reason to invoke our extraordinary constitutional jurisdiction under Article 227 to interfere with the proceedings initiated on the basis of Exhibit P2 application. Needless to say, the Family Court shall pass a speaking order on Exhibit P2 application. Needless again to say that the petitioner''s option to challenge such order, if such order be against him shall not in any way be fettered by the dismissal of this Writ Petition.

4. With the above observations, this Writ Petition is dismissed.

5. Issue copy of this judgment to the learned Counsel for the petitioner straightaway.

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