



2025:KER:18299

WP(C) NO. 4509 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.S.DIAS

WEDNESDAY, THE 5TH DAY OF MARCH 2025 / 14TH PHALGUNA, 1946

WP(C) NO. 4509 OF 2025

PETITIONERS:

- 1 AMMU AJIT
AGED 43 YEARS
W/O SANTHOSH R.V, VRINDAVAN, DIWANS ROAD, NEAR TDM
HALL, KOCHI, MG ROAD, ERNAKULAM, KERALA, NOW
RESIDING AT FLAT NO. 5054, PRESTIGE NEPTUNE'S
COURTYARD, MARINE DRIVE, KOCHI, PIN - 682018

- 2 SANTHOSH RV
AGED 44 YEARS
RESIDING AT FLAT NO. 5054, PRESTIGE NEPTUNE'S
COURTYARD, MARINE DRIVE, KOCHI, PIN - 682018

BY ADVS.
A.PARVATHI MENON
P.SANJAY
P.K.MURALYKRISHNAN
BIJU MEENATTOOR
PAUL VARGHESE (PALLATH)
KIRAN NARAYANAN
RAHUL RAJ P.
MUHAMMED BILAL.V.A
MEERA R. MENON

RESPONDENTS:

- 1 CENTRAL ADOPTION RESOURCE AGENCY
REPRESENTED BY IT'S MEMBER SECRETARY & CEO,
MINISTRY OF WOMEN & CHILD DEVELOPMENT, WEST BLOCK
8 WING 2 1ST FLOOR, R.K PURAM, NEW DELHI, PIN -
110066



- 2 STATE ADOPTION RESOURCE AGENCY
REPRESENTED BY IT'S MEMBER SECRETARY, DIRECTORATE
OF WOMEN AND CHILD DEVELOPMENT, POOJAPPURA,
THIRUVANANTHAPURAM, PIN - 695012
- 3 CHILD WELFARE COMMITTEE
ERNAKULAM, REPRESENTED BY IT'S CHAIRMAN, 287R+MGC
BORSTAL SCHOOL, SEAPORT - AIRPORT RD, ECHAMUKU,
KUNNUMPURAM, PADAMUGHAL, VAZHAKKALA, KAKKANAD,
KOCHI, KERALA, PIN - 682037
- 4 DISTRICT CHILD PROTECTION UNIT
ERNAKULAM, REPRESENTED BY CHILD PROTECTION
OFFICER, CIVIL STATION, THRIKKAKARA, KAKKANAD,
KOCHI, KERALA, PIN - 682030
- 5 PREM CHANDER
S/O SUNDARAMOORTHY, SAKTHI VEEDU, KIZHAKKETHARA,
KUNNISERY POST, ERUMAYUR, PALAKKAD, NOW RESIDING
AT 1 C, SURYA APARTMENT, FLORICAN HILL ROAD,
MALAPARAMBA, KOZHIKODE, PIN - 673009

BY ADVS.

RAJESH SIVARAMANKUTTY

K.V.ANTONY (K/522/2015)

VIJINA K. (K/229/2016)

ISAAC GEORGE (K/000586/2017)

ARUL MURALIDHARAN (K/000853/2018)

GOVERNMENT PLEADER SMT. VIDYA KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28.02.2025 THE COURT ON 05.03.2025 DELIVERED THE
FOLLOWING:



“C.R”

C.S.DIAS,J.

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W.P.(C)No.4509 of 2025

Dated this the 5th day of March, 2025

JUDGMENT

1. The petitioners' case, in brief, is as follows:

(i) The first petitioner was married to the fifth respondent and a son was born in their wedlock on 13.3.2007. Their relationship got strained, which led to litigations. Eventually, by Ext.P1 judgment passed by this Court, the marriage between the petitioner and the fifth respondent was dissolved on mutual consent, and all the cases between them were dismissed. As per the terms of the compromise, the permanent custody of the child was given to the first



petitioner, and interim custody of the child was given to the fifth respondent.

- (ii) Later, disputes again arose between the parties regarding the child's custody, which was settled by Ext.P6 judgment passed by the Hon'ble Supreme Court.
- (iii) Since February 2016, the fifth respondent has not attempted to visit or contact the child. He registered himself on a Kerala Matrimony site, stating that he has no children from his previous marriage, virtually disowning his child. While exercising the visitorial right over the child, the fifth respondent picked up a quarrel with the first petitioner, and a crime was registered. The fifth respondent, his mother and his brother have filed an application before this Court to quash the



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criminal proceedings, which is still pending consideration.

- (iv) The first petitioner has got married to the second petitioner. The child shares a close bond with the second petitioner. Accordingly, the petitioners registered their names with the Central Resource Adoption Agency and the State Adoption Resource Agency, the respondents 1 and 2, for step-parent adoption of the child. They also applied to the Child Welfare Committee — the third respondent — seeking consent for the step-parent adoption. The second respondent had issued notice to the fifth respondent for his consent, but he objected to the adoption. Then, the first respondent suggested that the petitioners to get the right of the fifth respondent to visit the



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child revoked by the Family Court. The petitioners submitted a detailed explanation to the first respondent to relax the adoption regulations. The child has also submitted a letter to the third respondent, expressing his full consent for the adoption. However, by Ext.P16 order, the third respondent has declined the second petitioner's request for adoption due to the objection raised by the fifth respondent.

- (v) The fifth respondent is involved in a fraud and forgery case in the United Kingdom. He is also an accused in a crime registered by the Palakkad Police Station. Even though he attempted to get the proceedings quashed by this Court, the application was dismissed. He has now appealed to the Hon'ble Supreme Court.



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(vi) The fifth respondent has neglected the welfare of the child. Given the fifth respondent's criminal background, it is unsafe to leave the child in his custody. This is a fit case for the first respondent to invoke Regulation 63 and relax the procedure under the Adoption Regulations, 2022 ('Regulations' for short). Hence, Ext.P16 order may be quashed, and the adoption regulations may be relaxed.

2. The fifth respondent has filed a counter affidavit, contending as follows:

(i) The second petitioner is a Christian, and the child is a Hindu; therefore, the child cannot be placed for adoption under the Hindu Adoption and Maintenance Act. Similarly, under Section 56 (2) of the



Juvenile Justice (Care and Protection of Children) Act, 2015 ('Act', for short), an adoption is permissible only between relatives. As the second petitioner is not a relative of the child, the adoption under the Act is also not permissible. As per Regulation 55(2), the consent of the fifth respondent is mandatory and cannot be relaxed.

- (ii) As per the compromise conditions recorded in Ext.P1 judgment, the interim custody of the child is given to the fifth respondent. The first petitioner had made an oral undertaking before the Honourable Supreme Court that she would not object to the fifth respondent talking to the child over the phone.
- (iii) It is only due to willful acts, omission and



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commission by the petitioners that the fifth respondent is unable to establish a bond with his child. Even though the fifth respondent has attempted to connect with his child, the same resulted in him facing criminal charges.

- (iv) The fifth respondent sent gifts to the child. He also attempted to provide financial support to the child, but the first petitioner rejected the same. He also tried to have custody of his child during vacations, which the first petitioner denied. The first petitioner has blocked all communications between the child and the fifth respondent.
- (v) In Ext.R5(c), the fifth respondent has submitted his objections to the petitioners' adoption request. The fifth



respondent is of the fond hope that he will be able to speak to his son when he attains majority. The writ petition may be dismissed by upholding Ext.P16 order.

3. Heard; Smt. A Parvathy Menon, the learned counsel for the petitioners, Sri. T.C. Krishna, the learned Deputy Solicitor General of India, Smt. Vidya Kuriakose, the learned Government Pleader and Sri. Rajesh Sivaramankutty, the learned counsel for the fifth respondent.

4. By Ext.P1 judgment, this Court dissolved the marriage between the first petitioner and the fifth respondent and ordered the child's custody to be shared between the parties. In the subsequent round of litigation, by Ext.P6 order, the Hon'ble Supreme Court ordered the first petitioner to facilitate the fifth respondent to contact the child over the phone. After that, the first petitioner got married to the second



petitioner, who now wants to adopt the child as his son under the step-parent category as per the provisions of the Act.

5. Sub-Sections (1) to (3) of Section 56 of the Act lays down how an adoption can be resorted to, and it reads as follows:

"56. Adoption.— (1) Adoption shall be resorted to for ensuring right to family for the orphan, abandoned and **surrendered children**, as per the provisions of this Act, the rules made thereunder and the adoption regulations framed by the Authority,

(2) Adoption of a child from a relative by another relative, irrespective of their religion, can be made as per the provisions of this Act and the adoption regulations framed by the Authority.

(3) Nothing in this Act shall apply to the adoption of children made under the provisions of the Hindu Adoption and Maintenance Act, 1956 (78 of 1956). **** **

6. By exercising the powers conferred under Section 68 (c) of the Act, the first respondent has framed the Adoption Regulations, 2022.

7. Regulation 2 (26) defines a step-parent as a parent who is married to a child's father or mother but is not that child's biological father or mother.



8. Regulation 4 lays down the category of children eligible for adoption, which reads thus:

"4. Child eligible for adoption.- The following shall be eligible for adoption, namely:-

(a) any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee;

(b) a child of a relative defined under sub-section (52) of section 2 of the Act;

(c) child or children of spouse from earlier marriage, surrendered by the biological parents for adoption by the step-parent".

(emphasis given)

9. Regulation 7 (22) stipulates that the surrender of the child by the biological parent for adoption by the step-parent shall be made before the Child Welfare Committee in the format provided under Schedule XX.

10. Regulation 55 deals with adoption by a step-parent, and it reads as under:

"55. Adoption by step-parent.- (1) The couple (step-parent and one of the biological parents) shall register on the Designated portal with the required documents as specified in Schedule VI.

(2) Consent of the biological parents and the step-parent adopting the child or children shall be as provided in the Schedule XX.

(3) In case the custody of the child is under litigation, the adoption process shall be initiated only after the finalisation of the case by the Court concerned.



(4) The step-parent or the couple shall receive due verification by the District Child Protection Unit.

(5) The State Adoption Resource Agency shall further refer the case to the Authority for necessary approval following which pre-approval certificate shall be issued by the State Adoption Resource Agency as provided in the Schedule XXV.

(6) If the prospective adoptive parents have a foreign passport, the case shall be referred to the Authority for expert advice.

(7) The biological parent and the step-parent shall file an application with the District Magistrate of the district through the District Child Protection Unit where the child is habitually residing, as per format provided in the Schedule XXXII, after due verification from the District Child Protection Unit and approval by State Adoption Resource Agency.

(8) The District Child Protection Unit shall obtain a certified copy of the adoption order from the District Magistrate concerned and furnish a copy of the same online to the Authority and the adoptive parents through the Designated Portal.

(9) In case of inter-country adoption by step parent, the process has to be followed as outlined in inter-country relative adoption and requisite consent form has to be signed before the Child Welfare Committee as provided in the Schedule XX and further Family Background Report has to be completed as provided in the Schedule XXI.

11. In view of the framework of the Act and the corresponding regulations, if a step-parent has to adopt his step-child, the child has to be surrendered by the biological parent by jointly executing a consent letter with the step-parent in the form specified in Schedule XX of the Regulations. Furthermore, the consent form has to



be attested by witnesses and then certified by the three members of the Child Welfare Committee. Therefore, as per the scheme of the Act and the Regulations, the Child Welfare Committee's jurisdiction in a step-parent adoption is limited to the certification of the consent letter and nothing more.

12. Upon the certification of the consent letter, the application has to be verified by the District Child Protection Unit and the State Adoption Resource Agency and then be referred to the Central Adoption Resource Authority, who in turn has to issue a pre-approval letter in the form mentioned in Schedule XXV, certifying that the biological parent's consent has been obtained. Only after getting the pre-approval letter can the biological parent and the step-parent file a joint application before the District Magistrate under Regulation 55 (7).

13. Analysing the scheme of the statute, it is imperative that the biological parent surrenders the child



as prescribed under Section 56 (1) of the Act read with Regulation 4 (c).

14. It is pertinent to note that, under Regulation 55 (3), if the right to have custody of the child is under litigation, the adoption process can be initiated only after the litigation is finalised.

15. In the case at hand, the fifth respondent has been granted the child's custodial rights as per Exts.P1 and P6 orders. Notably, the fifth respondent has neither given his consent for the adoption nor indicated his willingness; instead, he has expressly opposed the adoption. It is considering the stipulation under Regulation 55 (3) that the first respondent directed the petitioners to approach the Family Court and get the fifth respondent's right to have the custody of the child revoked.

16. As already observed, the Child Welfare Committee's jurisdiction concerning a step-parent



adoption is limited to certifying the joint consent letter of the biological parent and the step-parent. Under Regulation 55 (7), the competent authority to pass an adoption order is the District Magistrate, provided all the statutory prerequisites are fulfilled.

17. In the current situation, given that the fifth respondent has not signed the consent letter and has objected to the adoption, there is no illegality in Ext.P16 order passed by the Child Welfare Committee.

18. The petitioners' next contention is that the first respondent has the power to relax any regulation under Regulation 63.

19. A reading of Regulation 63 shows that the 1st respondent is only empowered to relax any Regulation and not the provisions of the Act. One of the foremost processes for adoption is to get the child declared as an orphan, abandoned or surrendered child as per the mandate under Section 56 of the Act. The said



declaration is substantive in nature and not a procedural formality. The first respondent is not empowered to relax a substantive provision of the Act.

20. In this context, it is relevant to refer to the definition of adoption and its effect as per the provisions of the Act.

21. Sub-Section (2) of Section 2 of the Act defines adoption as the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.

22. Section 63 of the Act lays down the effect of adoption, which reads as follows:

"63. **Effect of adoption.** - A child in respect of whom an adoption order is issued by the District Magistrate, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family:



Provided that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.”

23. The above provisions demonstrate that once an adoption order is passed, the child is irrevocably and permanently severed from his biological parent and becomes the lawful child of his adoptive parent. Adoption carries significant legal implications, including the inheritance and succession rights of the parent and the child. The moment the adoption order is passed, the child’s ties with his family of birth is displaced.

24. Given the consequences associated with adoption, particularly concerning the substantive rights of the biological parents and child, Regulation 55 (3) has been incorporated mandating that if there is any litigation regarding the custody rights of the child, the adoption process can be commenced only after the



litigation is finalised.

25. In the present case, the fifth respondent has the right to have custody of his child, which will continue till the child attains majority or until the order is modified or cancelled by the competent court. The substantive and intrinsic statutory right of the fifth respondent to have custody of his child is not a matter that can be relaxed and waived by the first respondent under Regulation 63; instead, it is a matter which can only be decided by a civil court. If not, it would have serious repercussions because in child custody cases, a biological parent can easily be denied custody by resorting to adoption without the consent of the biological parent. The power conferred on the first respondent under Regulation 63 can only be understood in the context of relaxing the procedural requirements prescribed under the Regulations and not for waiving substantive rights of the parties under the Act. Thus, as long as the biological parent does not give



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his consent to the adoption, the adoption by the step-parent cannot be permitted. Accordingly, the petitioners' request to direct the first respondent to relax the stipulation of obtaining consent from the fifth respondent cannot be permitted. The writ petition is meritless and is consequently dismissed.

Sd/-

C.S.DIAS, JUDGE

rmm/1/3/2025



APPENDIX OF WP(C) 4509/2025

PETITIONER EXHIBITS

- Exhibit P-1 TRUE COPY OF JUDGMENT IN O.P(FC) NO. 434/ 2014 DATED 19.09.2014
- Exhibit P-2 TRUE COPY OF THE ORDER DATED 06.02.2016 BY THE LEARNED FAMILY COURT, ERNAKULAM
- Exhibit P-3 TRUE COPY OF JUDGMENT IN OP (FC) 53/2016 DATED 06.04.2016
- Exhibit P-4 TRUE COPY OF THE ORDER IN O.P 1631/2015 DATED 03.12.2016
- Exhibit P-5 TRUE COPY OF THE ORDER IN E.P 73/2015 DATED 03.12.2016
- Exhibit P-6 TRUE COPY OF THE JUDGMENT OF HONOURABLE SUPREME COURT DATED 25.07.2016
- Exhibit P-7 TRUE COPY OF THE RELEVANT PAGE FROM THE MATRIMONY SITE DATED NILL
- Exhibit P-8 TRUE COPY OF THE REGISTRATION RECEIPT DATED 04.12.2023
- Exhibit P-9 TRUE COPY OF THE REQUEST TO THE 3RD RESPONDENT DATED 10.04.2024
- Exhibit P-10 TRUE COPY OF THE LETTER OF OBJECTION ISSUED BY THE 2ND RESPONDENT TO THE 1ST PETITIONER DATED 23.08.2024
- Exhibit P-11 TRUE COPY OF THE E-MAIL DATED 24.09.2024 FROM THE 1ST RESPONDENT
- Exhibit P-12 TRUE COPY OF E-MAIL SENT BY 1ST PETITIONER TO THE 1ST RESPONDENT DATED 30.09.2024



- Exhibit P-13 TRUE COPY OF E-MAIL SENT BY 1ST PETITIONER TO 1ST RESPONDENT DATED 01.11.2024
- Exhibit P-14 TRUE COPY OF THE LETTER BY MINOR AARYAN TO THE 3RD RESPONDENT DATED 18.04.2024
- Exhibit P-15 TRUE COPY OF COMMUNICATION SENT BY 1ST RESPONDENT TO 2ND AND 3RD RESPONDENTS DATED 02.12.2024
- Exhibit P-16 TRUE COPY OF 3RD RESPONDENT'S ORDER DATED 22.01.2025
- Exhibit P-17 TRUE COPY OF E-MAIL SEND BY 1ST PETITIONER TO THE 1ST RESPONDENT DATED 22.01.2025
- Exhibit P-18 TRUE COPY OF JUDGMENT IN CRL.M.C NO. 4484/ 2021 DATED 12.12.2022
- Exhibit P-19 TRUE COPY OF THE HONOURABLE SUPREME COURT'S ORDER DATED 10.02.2023
- Exhibit P-20 TRUE COPY OF ADVOCATE RAJESH PANANGAD'S WITNESS STATEMENT DATED 29.09.2021
- Exhibit P-21 TRUE COPY OF THE OBJECTIONS FILED BY ADV. RAJESH PANANGAD BEFORE THE BAR COUNCIL OF KERALA DATED 29.10.2022
- Exhibit P-22 TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER BEFORE THE INDIAN HIGH COMMISSION IN UK DATED 08.06.2015
- Exhibit P-23 TRUE COPY OF THE COMPLAINT PREFERRED BY THE PETITIONER BEFORE THE REVENUE AUTHORITIES DATED 08.06.2015
- Exhibit P-24 PHOTOGRAPHS OF AARYAN WITH THE SECOND PETITIONER AND HIS SIBLINGS DATED NILL
- Exhibit P25 series TRUE COPIES OF SEVERAL FEE RECEIPTS OF



Exhibit P26 TRUE COPY OF OFFER LETTER FROM THE
UNIVERSITY OF MANCHESTER DATED
23.11.2024

RESPONDENT EXHIBITS

Exhibit R5(a) A true copy of the chat history in
WhatsApp number +918129039666

Exhibit R5(b) A true copy of the email dated 29-5-2015
sent by the 1st Petitioner to 5th
Respondent

Exhibit R5(c) A true copy of the objection to the
adoption request of petitioners made by
Respondent dated 9-1-2025 before the 3rd
respondent

PETITIONER EXHIBITS

Exhibit P27 True copy of the affidavit of the 5th
respondent's brother, dated 25.2.25