



NC: 2024:KHC:10246
WP No. 25812 of 2023
C/W WP No. 13634 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 25812 OF 2023 (GM-FC)

C/W

WRIT PETITION NO. 13634 OF 2022 (GM-FC)

IN W.P.NO. 25812/2023

BETWEEN:

PAVAN PADEKAL,
S/O ISHWARA BHAT .P,
AGED ABOUT 37 YEARS,
R/AT "KSHITHIJA",
4-44/46 PRASHANTH BAGH,
ALAPE PADIL,
MANGALORE- 575 007.

...PETITIONER

(BY SRI.DHYAN CHINNAPPA, SENIOR COUNSEL A/W
SRI. JOSEPH ANTHONY., ADVOCATE)

AND:

DR. NIVEDITHA T.G.,
D/O LATE T.G.BHAT,
AGED ABOUT 36 YEARS,
R/AT DOOR NO.3-238-2,
"CHIRANTHANA" SANTOSH NAGAR,
KUTHAR PADAV, MUNNUR VILLAGE,
MANGALORE TALUK - 575 017.

...RESPONDENT

(BY SRI. UDAY HOLLA, SENIOR COUNSEL A/W
SRI. CHANDRANATH ARIGA K., ADVOCATE)





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THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED OCTOBER 3, 2023 PASSED BY THE PRINCIPAL FAMILY COURT, DAKSHINA KANNADA, MANGALORE ON INTERLOCUTORY APPLICATION NO.XX FILED BY THE PETITIONER UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 AND CONSEQUENTLY ALLOW THE INTERLOCUTORY APPLICATION NO.XX FILED UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 BY GRANTING CUSTODY OF MINOR DAUGHTERS NAISHA PADEKAL AND NAINIKA PADEKAL(ANNEXURE A) AND ETC.,

IN W.P.NO.13634/2022

BETWEEN:

PAVAN PADEKAL,
S/O ISHWARA BHAT.P,
AGED ABOUT 37 YEARS,
R/AT "KSHITHIJA",
4-44/46 PRASHANTH BAGH,
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WP No. 25812 of 2023
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THIS WP IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE IMPUGNED ORDER PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT D.K. MANGALURU DATED 15.06.2022 G AND WC NO.2/2022 ANNEXURE-A ON INTERLOCUTORY APPLICATION II FILED BY THE PETITIONER ON 10.02.2022 IN G AND WC.NO.2/2022 ANNEXURE-B THEREBY MODIFYING THE IMPUGNED ORDER BY GRANTING ADDITIONAL TIME OF 8(EIGHT) HOURS IN TOTAL TO THE PETITIONER DURING THE WEEKENDS I.E., 4 (FOUR) HOURS ON SATURDAYS AND 4(FOUR) HOURS ON SUNDAYS FOR SPENDING TIME WITH THE MINOR DAUGHTERS AND ETC.,

THESE PETITIONS, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

W.P.No.25812/2023 is filed aggrieved by the order in I.A.No.20 dated 03.10.2023 in G & WC.No.02/2022 on the file of the Principal Judge, Family Court, Dakshina Kannada, Mangaluru and W.P.13634/2022 is filed aggrieved by the order in I.A.No.2 dated 15.06.2022 on the file of the Principal Judge, Family Court, Dakshina Kannada, Mangaluru.

2. I.A.No.2 is filed seeking interim custody or in alternative for visitation rights of the minor children who are the daughters, aged about 7 years and 4 years, who



are in the custody of the respondent/wife. The Court below had passed an order whereby the father is given the visitation rights on all Sundays for two hours, between 4.00 p.m. and 8.00 p.m.

3. When it comes to I.A.No.20, it is the case of the father that in W.P.No.13634/2022, this Court had extended the visitation rights granted by the Court below and after the orders were passed by this Court, the mother has taken the children to the United Kingdom, without obtaining any permission from this Court and without the knowledge of the father. Then the father had to go to the U.K. and basing on the orders passed by the Court in U.K., the children came to India and the mother has also come along with the children. It is the case that in this interregnum period, he has lost 30 days of visitation rights and the same was disputed by the respondent by filing objections to the same.



4. Learned Senior Counsel appearing for the respondent submits that in fact, after coming from U.K., the husband had enjoyed more than 30 hours of visitation rights and it is submitted that the Court had passed an order giving the custody of the children for half of the vacation during Summer, Christmas and Dasara Vacations they have not questioned the same, as it is the intention of the respondent/wife that the children should also have the company and affection of the father. It is further submitted that the father cannot calculate in terms of these hours, when he already had enjoyed more hours of visitation rights. The same is disputed by the learned counsel who is appearing for the father and both of them had extensively submitted arguments drawing the attention of the Court to the orders passed by this Court and the U.K. Court.

5. While considering a petition which is concerning the minor children, this Court exercising the Parens Patriae



Jurisdiction have to look at the ultimate welfare of the children. The admitted facts are that when the father is having the custody of the children during the vacation, the mother had no objection with regard to any of the safety and welfare of the children. As he is having the custody of children during the vacation and when it comes to the week, this Court had granted the visitation rights on Sunday between 9.00 a.m. to 7.00 pm., both the father and the children are comfortable and no complaints are forthcoming. This Court deems it appropriate to give overnight custody of the children to the father, so that it will help them to develop more bonding which is required for the overall development of the children.

6. Both learned counsel for the petitioner/husband and learned counsel for the respondent/wife have agreed for the said arrangements and the modification of the order.



7. In the light of the above discussion, this Court deems it appropriate to dispose of these Writ Petitions in the following manner:

ORDER

- i. Father can exercise his visitation rights on Saturday, i.e., after the school hours, the father is permitted to pick-up the children from the school on **every Saturday and on Sunday by 2.00 p.m.*, he has to drop the children at the mother's place.
- ii. During the time when the children are with the father, the mother is always at liberty to talk to the children and the father, if necessary and if the children wants to talk with the mother he should facilitate them to talk with her.
- iii. Considering the disputes between the parties and the pending litigation before the Court

* Corrected vide court order dated: 16/07/2024.



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below, the Court below shall dispose of the pending cases as expeditiously as possible.

This arrangement is till the disposal of the petition or till any modification is sought parties are at liberty to file appropriate application before the Court below if any modification is required.

Sd/-
Judge

BN
List No.: 1 Sl No.: 12