

KAHV300002342023



IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C AT HANGAL

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Senior Civil Judge & JMFC.,
Hangal.

Dated this the 17th day of February, 2024.

G & WC No.04/2023

Petitioner: Mohammad Hussain,
S/o Shaikhshavali Bellari,
Aged 34 years, Private Service.
R/at Kumabar Street, Panchkacheri Road,
Dharwad-580001

(Party in person)

V/s

Respondents: 1. Smt.Mubeena Banu,
W/o Khawajamoinuddin Keni,
Aged 26 years, Private Service,
R/at of Chidambarnagar,
Hangal -581104, Haveri District.
Smt. Mubeena Banu,
W/o Niyaz Ahamad Yeligar,
R/at of Balagalpete village,
Hangal -581104, Haveri District.
2. Niyaz Ahamad Yaligar,
S/o Nazeer Ahamed Yaligar,
Aged 28 years, Business,
R/at of Yaligar Oni,
Post Balagalpete village,
Hangal -581104, Haveri District.

3. Khawajamoinuddin Keni,
Aged 50 years, Business,
R/at of of Chidambarnagar,
Hangal -581104, Haveri District.

**(Respondents No.1 and 3 by: Sri.B.S.Dalavai,
Advocate and respondent No.2 by Sri.P.S.Katler,
Advocate)**

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| 1. Provision under which the application is filed : | Under Section 151 of CPC |
| 2. Relief sought for : | To permit him to take the minor daughter for vacation trip |
| 3. The date on which the application is filed : | 16.09.2023 |
| 4. Number of the application : | IA.No.III |
| 5. The date on which the objection is filed by opponents : | 18.11.2023 |
| 6. The date on which the orders were passed on the said application : | 17.02.2024 |

ORDERS PASSED ON IA NO.III

The petitioner who appears in person has filed IA.No.III under Section 151 of CPC., seeking for interim permission for him to take his minor daughter by name Bibi Ayesha for vacation trip for one week.

2. The application is supported with the affidavit of the petitioner wherein he has stated that, he is the natural father of minor Bibi Ayesha and he has filed this application seeking permission to go for vacation trip along with his daughter. His minor daughter Bibi Ayesha is innocent and holiday trips will make her happier and smarter and there will be best childhood memories. It is also stated that, the trip activities are essential for the overall development of the child. The Hon'ble Supreme Court has laid down guidelines about considering the welfare of the child and he being a good father wants his daughter to get exposure of new things, places as well as social environment. His daughter cannot develop to be a productive member of tomorrow's society unless an environment which is good for her is provided. As per study, children's vacation trip with their parents will help to strengthen bonds and relationships, boosting the confidence and learning new skills which is necessary for the development of child and also stated that, while traveling children learn educational researches. This method of education boosts their imagination and helps with their linguistic development, literacy and social skills. If his daughter Bibi Ayesha is permitted to go for vacation trip it will help her to enjoy her childhood. The child should grow with care of both the parents. Hence, prayed to permit him go for vacation trips for one week to visit historical places with his daughter in the

interest of justice and welfare of the child. Hence, prayed to allow the application.

3. The learned counsel for respondents No.1 and 3 filed objection contending that, the application is not maintainable. Admittedly, the petitioner is natural father of the child but, there is a criminal case pending against the petitioner before Dharwad Court and mother of the minor child is witness in the said case and if the petitioner takes the child with him and there will be inducement of the witnesses which may harm to the prosecution case. Hence, prayed to dismiss the application with heavy costs.

4. Thereafter, heard arguments addressed by the petitioner who appears in person and the learned counsel for respondents No.1 and 3 and perused the case papers. After hearing the arguments and on perusal of case the papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the petitioner has made out sufficient grounds to permit him to go for a vacation trip with his minor daughter Bibi Ayesha for one week?
 2. What order?
5. The findings on the above points are as hereunder:

Point No.1: In the Negative

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:** This is the petition filed by the petitioner by name Mohamman Hussain S/o Shaikhshavali Bellari party in person against the respondents under Section 7 and 25 of Guardians and Wards Act to declare him as guardian of his minor daughter Bibi Ayesha and for her custody. The 1st respondent is the mother of Bibi Ayesha and 2nd respondent is the 2nd husband of the 1st respondent and the 3rd respondent is the father of the 1st respondent. It is an admitted fact that, the marriage of the petitioner with the 1st respondent was solemnized on 16.04.2018. It is also an admitted fact that, minor child Bibi Ayesha is born out of wedlock of petitioner and the 1st respondent. It is also an admitted fact that, now the petitioner and the 1st respondent are not residing together and they have separated from each other. It is also an admitted fact that, minor child Bibi Ayesha is now residing along with her mother. It is to be noted that, the present application is filed to permit the petitioner to go for vacation trip with his minor child Bibi Ayesha for one week in order to visit the historical places, zoo as well as pilgrimage. It is pertinent to note that, at the time of the filing petition the petitioner had maintained IA.No.1 under Section 12 of Guardian and Wards Act 1890, seeking for visitation right of his minor child Bibi Ayesha. On merits this court partly allowed the said application on 12.07.2021. The petitioner was

permitted to visit his minor daughter Bibi Ayesha on every 1st and 15th day of every month in between 10.00 am to 1.00 pm for three hours in the office of CDPO Hangal Taluk. The petitioner also permitted to make phone call to the minor daughter on every Sunday through video call.

7. The objection raised by respondents No.1 and 3 is that, the 1st respondent has filed a criminal case against the petitioner herein and if the child is permitted to go for vacation trip with the petitioner, then there will be inducement by him, which may affect the prosecution case which is pending before Dharwad Court. The petitioner has filed written-argument in this application. He has relied upon the guidelines issued by Hon'ble High Court of Karnataka, in the case reported in **ILR 2021 KARNATAKA 4894** Between: Smt.Jyothi Priya V/s Shri Paul Godwin. The same decision was also relied upon by the petitioner at the time of filing IA.No.1. It is necessary to look into the said guidelines which are as follows:

ILR 2021 KARNATAKA 4894

Between: Smt.Jyothi Priya V/s Shri Paul Goodwin J.,
Wherein the Hon'ble High Court of Karnataka has held that:

“The Hon'ble High Court of Karnataka has issued some guidelines to be followed at the time of dealing with an application filed under Section 12 of Guardians and Wards Act:

Family courts must dispose of the interim custody applications within a period of 30 days.

The following legal principles have been enunciated in various cases before the Apex Court and other High Courts and shall serve as guidelines for interim custody orders by the family courts

- 1. The separation of the minor from the parent during the pendency of the case is detrimental to the welfare of the child.*
- 2. Notwithstanding allegations made by either party, interim custody applications must be decided on the sole basis of the welfare of the child.*
- 3. There exists no indefeasible right to deny custody of either parent of the minor.*
- 4. Whenever such interim custody applications are filed, the respective family courts must dispose of such cases within a reasonable time period of not more than thirty days.*

The first principle encompasses the basic human right of the minor to have the love and affection of both parents. A young child cannot be denied the care, affection, love or protection of either parent solely because the parents are at wit's end with each other (filing for divorce). He/she cannot be tossed around from one parent to the other as this may have traumatic and psychosomatic effects on the child. Sufficient visitation rights (if they are in the same town or city) contact rights (if they live in different states or countries) are to be granted to the parent who is not given interim custody of the minor, because it is

important in ensuring that the minor does not lose social, physical and psychosocial contact with this parent who is not in interim custody. It is in the best interests of the child for the parents to equally share parental responsibility while determining the best interests of the child.

With respect to the second principle, the Supreme Court has laid down that the only consideration when it comes to the custody of the minor is his/her welfare. The court shall have to deal with conflicting demands from either parent but insofar as the interim custody order is concerned, the rights of either parent are not relevant in such custodial adjudication and neither are their allegations against one another.

The welfare and interest of the child becomes the determining factor for the court's granting of custody. This includes the child's contentment, health, education, intellectual development and favourable surroundings which are to be given due weight age, but the child's moral and ethical values are as important, if not more so, than the aforementioned physical comforts. Application of this principle must exist in interim custody orders to protect children in broken homes and ensure that they are looked out for.

The third principle rejects the idea of an indefeasible right to deny a parent custody of the minor. The view of one spouse alone, cannot be the only thing taken into consideration. Only in extreme circumstances can a parent be denied visitation rights/ contact and the reasons must be assigned for the same. No one parent can claim a superior

right to retain custody of the minor as such generalizations harm the needs of the child which is to have both parents in their life. During the pendency of the case, interim custody must be shared, in that visitation/contact rights to the party not in interim custody cannot be arbitrarily rejected. The need for speedy disposal of such interim custody applications is emphasized in the fourth principle. In the interests and welfare of the minor, the interim custody applications must be disposed of quickly by the family courts so as to reduce the burden and emotional toll on the minor.

While considering the interim measures, especially when parents are residing in two different states, it would be advisable to permit the non-custodial parent to have physical visitation rights at-least once in 15 days for at least 2 days including a day/night exclusively with such parent. Of course, in case of non-custodial parent living abroad, various kinds of contact right such as speaking over phone/video can be adopted.

The court being the parents patriae (parent of the nation) has onerous duty to ensure that the right of the child is not abused and to protect the right of the child and ensure that the custodial parent does not use the child as a pawn to gain any advantage against the adversary in the litigation. The approach of the Court has to be holistic wherein emotional, physical, psychological and social development of the child has to be considered since the health of the child is paramount.

8. Admittedly, the court is bound to follow the aforementioned guidelines and by applying the same principles this court has partly allowed the application of the petitioner and permitted him to have visitation rights. Further the duty is cast upon the court to see the foremost care and interest of the child. The court is to act like a guardian as well as a parent of the minor child when there arose dispute between the biological parents. It is an admitted fact that, the petitioner is the natural father of minor Bibi Ayesha. In the written-argument the petitioner has stated that, the 1st respondent being natural mother of minor Bibi Ayesha has abandoned the child and residing along with her 2nd husband. These facts to be come out at the time of going for trial. It is to be noted that, already this court has provided an opportunity for the petitioner to visit his daughter on two days in a month. Now it is necessary to note that, the minor child i.e., Bibi Ayesha is born on 18.06.2019. Such being the case now minor Bibi Ayesha will be aged 4½ years. It is an admitted fact that, there is a criminal case filed by the 1st respondent against the petitioner. If the petitioner is permitted to take the child for a vacation trip for one week then it is necessary to direct the 1st respondent to accompany the child. But, there are allegations made by the 1st petitioner against her husband. Such being the case there is every possibility of the child getting disturbed by both the parents. Rather than enjoying the vacation trip there

will be more chance of developing hatred towards both parents. Then again it will give rise to other complications which may affect the mind of the child. On the basis of the above discussions this court comes to the conclusion that, the petitioner has not made out any grounds to permit him to go for vacation trip with his minor daughter. Hence, point No.1 is answered in the Negative.

9. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

ORDER

IA.No.III filed by the petitioner under Section 151 of CPC is hereby rejected with costs of Rs.300/-.

(Dictated to the Stenographer, transcribed and computerized by him on the computer, transcript corrected and pronounced by me in the open court on this the 17th day of February, 2024.)

Sd/-

(Anitha)

Senior Civil Judge and JMFC,
Hangal