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**IN THE COURT OF THE SENIOR CIVIL JUDGE &  
J.M.F.C., AT CHANNAPATNA.**

**: PRESENT :**

**SMT.SHUBHA, B.A.L., L.L.B.,**  
Senior Civil Judge & JMFC.,  
Channapatna.

**DATED THIS THE 01<sup>st</sup> DAY OF JULY 2023**

**G & W.C.No.03/2022**

**PETITIONER:**

Smt.Rakshitha M.A. D/o  
Ankegowda, W/o Sudhakar,  
Aged about 28 years, R/at  
Kodambahalli Village,  
Virupakshipura Hobli,  
Channapatna Taluk,  
Ramanagara District.

**(By Sri.K.T.T., Advocate)**  
**V/S**

**RESPONDENT:**

Sri.Sudhakar S/o D.Madaiah,  
Aged about 36 years, R/at  
No.421/1, Negila Nilaya,  
Mahadeshwara Nagara,  
Kanakapura Town,  
Ramanagara District.

**(Represented by Sri.S.B.,  
Advocate)**

**IN I.A.NO.II****APPLICANT/PETITIONER :**

Smt.Rakshitha M.A.

**V/S**

**OPPONENT/RESPONDENT:**

Sri.Sudhakar

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**ORDERS ON I.A NO.II**

The above application i.e., I.A.No.II is filed on behalf of the applicant/petitioner under Section 151 of Civil Procedure Code, praying this court to direct the respondent to handover custody of child to petitioner considering the welfare of the minor child in the interest of justice and equity.



2. The above application is supported with the Affidavit of the petitioner wherein she has submitted that she has filed this petition seeking custody of child. That her child was not attending school regularly, the same is made known to her through the Attendance Register maintained by the School from July to December 2022. That her daughter is now aged about 7 years and admitted to school for 1<sup>st</sup> standard. That in the early age if she abstain from school, definitely she will not get good education. That she has to be provided with good education as such her custody should be given to her, otherwise, child will abstain from getting education and good environment. That if the custody of minor child given to her, no harm or injury will be caused to other side. Accordingly, the petitioner has prayed to allow the above application.

3. On the other hand, the respondent has filed objection to the above application and submitted that the application is not maintainable under law and denied the entire averments made in the Affidavit. That the allegations made in the application are all concocted,



with an intention to get illegal gain for herself and cause mental harassment to the respondent. That due to sudden abandonment by the petitioner, the child has suffered anguish due to which our minor daughter went through several health issues. That, due to fear, his daughter refused to go to school and he enquired with the school authorities, came to know that the relatives of the petitioner have tried to meet the child in the school and also tried to kidnap her from the school premises. That the daughter was also injured due to dog bite and had few injuries on her leg and the doctor advised us to keep her away from the dusty place and to give her complete bed rest to recover completely. That the minor daughter was diagnosed with Recurring Respirator Infections since October and again she Written Statement retained back home as per Doctor's advice and he made all arrangements to give education to the daughter at home. That being a father, he never had the intention to keep out daughter away from school or providing education to her. That the petitioner is least concern about the welfare of the child. That the child at the hands of the petitioner was ill-treated at slightest



instance and was subjected to cruelty, ill-founded whims and fancies of the eccentric petitioner.

4. It is further submitted that, in the month of July 2021, the Petitioner threw, abandoned and left the matrimonial home by deserting me and daughter Thanisha S. who was then aged 5 years without any valid readaughters. That from the day one when Petitioner left the matrimonial home, the child has been under my care and custody and also of my parents. Now the daughter is 7 years old. That the Respondent is taking care of the child and overall expenses to till educational expenses to give her the best life. That the child is quite comfortable in his care and custody and also he can think in a better way to protect the interest of the child in all respects. That he is a loving and affectionate father and is very close to his minor child. That the Petitioner filed two false criminal case against me. That on 10.08.2022 when the child was brought before the court, the child was not ready and feeling uncomfortable with the Petitioner and after reaching back home in the night the health of the child got upset and had high fever.



5. He further submitted that, the Petitioner and her family members have several times tried to take a child illegally from the custody of Respondent and threatened him with dire consequences. After that, I lodged a complaint against the relatives of the Petitioner and FIR was registered on 08.02.2023 bearing Crime No.54/2023. That the Petitioner has concealed the true facts and approached this court with unclean hands by putting false and fabricated allegations against him. That for the best interest of minor child, the custody shall remain with him, as he is well aware of her medical history, her likes and dislikes and she is quite comfortable in his care and custody. Hence, prayed to dismiss the above application.

6. I have heard the arguments of learned advocate for the petitioner/applicant and opponent/respondent on I.A. No.II. Now the points that arise for my consideration is:

**POINTS**

- 1) Whether the petitioner has made out a good ground to get the custody of the minor ward Thanisha S. ?



- 2) Whether the interest of the minor ward will be protected if the minor ward is given to the custody of the petitioner/mother ?
- 3) What order ?

7. My findings to the above points are as follows:-

- Point No.1 : Affirmative.  
Point No.2 : Affirmative.  
Point No.3 : As per the final order for the following :

### **REASONS**

8. **POINT NO.1 & 2** :- These points are interrelated to each other, in order to avoid repetition of the facts they are taken up together.

9. The above application i.e., I.A.No.II is filed on behalf of the applicant/petitioner under Section 151 of Civil Procedure Code, praying this court to direct the respondent to handover the custody of child to petitioner taking into consideration of welfare of child in future in the interest of justice and equity.



10. In this case, the petitioner has sought the interim custody of the minor ward Thanisha S. on the ground that the said Thanisha S. was continuously absent to the school from July to November 2022. The Petitioner has submitted that she being a mother, is in a better position to see to it that the minor ward goes to the school regularly. In support of her contention, the petitioner has produced the Attendance Register which shows that the minor ward Thanisha S. is continuously absent since from July to November 2022. The respondent has submitted in the affidavit that, the minor child was not feeling well and once she was injured due to dog bite. As such he could not send the child to the School.

11. The medical documents produced by the respondent shows that the minor ward was suffering from respiratory infections. As such the explanation of the respondent can be accepted. However, the emotion of the petitioner who is a mother of that child also to be taken into consideration. It is submitted during the argument by the petitioner that, it is only in the school, she was able to see the face of her daughter and the said opportunity



was also taken away due to the absence of said Thanisha S. to the school.

12. In this case the learned Advocate for the respondent has furnished decision reported in **(2017)3 - S.C.C. - 231 (Vivek Singh vs. Romani Singh)** and argued that in this case also the welfare of the child will be protected in the hands of respondent.

13. The respondent counsel has also relied on another decision reported in **(2008)9 - S.C.C. - 413 (Nil Ratan Kundu & Anr. vs. Abhijit Kundu)**, wherein at paragraph 56, it is observed as follows:

***"In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents.***



***In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor."***

14. The learned Advocate for the petitioner has relied upon the following decisions:

***(a) A.I.R. - 1982 - S.C. - 1276.***

***(b) (1971)1 - M.L.J. - 307.***

***(c) A.I.R. - 2009 -S.C. - 557.***

***(d) I.L.R. - 2001(4) - Kar - 4925.***

***(e) (1999)4 - S.C.C. - 348.***



15. I have perused all the decisions. In all the above decisions, the Hon'ble Apex Court as well as High Court held that the welfare of the child is a paramount consideration in so far as custody of the child is concerned. It can be observed from the documents furnished by the petitioner and respondent that since from July 2021, the minor ward is deprived from the love and care of her mother. Whatever may be the differences between the petitioner and respondent, but the child should not suffer because of the said mis-understanding of her parents.

16. In this case, I have personally called the minor ward and had a talk with the baby girl. Upon my enquiry, I found that the child is not in a position to decide as to with whom she will be comfortable. Since the child is with the respondent since from July 2021, at present, the child is more attached with her father i.e., respondent. But if the child is allowed to reside with the petitioner, then she will be more comfortable with the petitioner also. It is only because of the distance, the child is now more attached with the respondent. Since the minor



ward is a girl aged 7 ½ years, the interest of the minor girl will be more protected if she is given to the interim custody of petitioner. It is the mother who can take care of all little things of the minor girl. Moreover, the respondent may not be available to the minor girl all the time because of his work. But as far as petitioner is concerned, she is not doing any job. Therefore, she will be available all the day to take care of the minor child.

17. Hence, I am of the opinion that the petitioner is entitled for the interim custody of the minor ward in the best interest of the child. However, visitation rights has to be given to the respondent in the interest of justice and equity since all these days the minor child was with the respondent. The petitioner shall co-operate with the respondent and send the child to the house of the respondent during the summer holidays and Sundays. Hence, with these observations, I answered the above **point Nos.1 and 2 in the Affirmative.**



18. **POINT NO.3** :- In view of my findings given on Point No.1 and 2 for the reasons discussed herein above paragraphs, I proceed to pass the following:

**ORDER**

The I.A.No.II filed on behalf of the applicant/petitioner under Section 151 of Civil Procedure Code, is hereby allowed.

The custody of minor ward Thanisha S. is hereby given to the petitioner.

However, the visitation right is given to the Respondent during the summer holidays and all Sundays till the disposal of this Petition on merits.

The Respondent is permitted to take the minor ward Thanisha S. on every Sunday at his convenient time and to bring back the child to her mother's house within 7 PM of every Sunday.



The petitioner is hereby directed to allow the respondent to exercise his visitation rights as granted by this court.

(Dictated to the Typist Copyist on computer, then corrected, initialed and pronounced by me in the open court on this the **1<sup>st</sup> day of September 2023**)

(SHUBHA)  
**Senior Civil Judge & JMFC.,  
Channapatna.**