**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 6TH DAY OF DECEMBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 4204 OF 2023 (GM-FC)**

**BETWEEN:**

1. SRI. MAHADEVASWAMY H.M. @ BILIYAPPA
   AGED 38 YEARS
   S/O MAHADEVA NAYAKA
   RESIDING AT NO.1488
   KYATAMARANAHALLI
   ASHWATHKATTE ROAD, UDAYAGIRI
   MYSORE 570019

...PETITIONER

(BY SRI. PALLAVA R., ADVOCATE)

**AND:**

1. SMT. DIVYA C
   AGED ABOUT 33 YEARS
   W/O MAHADEVASWAMY H. M. @ BILIYAPPA
   RESIDING AT NO 4C -2
   ADHISHAKTHI ROAD
   9TH BLOCK, KYATAMARANAHALLI
   MYSORE 570019

Digitally signed by PADMAVATHI B K
Location: HIGH COURT OF KARNATAKA

...RESPONDENT

(BY SRI. H.C. SHIVARAMU, ADVOCATE)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 07/02/2023 PASSED BY THE III ADDITIONAL

PRINCIPAL JUDGE, FAMILY COURT, MYSURU ON I.A.NO. 05 IN M.C. NO. 987/2022, WHICH IS GIVEN HEREIN AT ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is before this Court, seeking the following prayers:

> *"a) Issue an appropriate Writ or Order and quash the Order dated 07.02.2023 passed by the III Additional Principal Judge, Family Court, Mysuru on I.A.No. 05 in M.C.No.987/2022, which is given herein at ANNEXURE-'A'; and*
>
> *b) Reject the I.A. No. 05 dated 11.01.2023 filed by the Respondent herein under Section 26 of the Hindu Marriage Act, 1955 in M.C.No.987/2022 on the file III Additional Principal Judge, Family Court, Mysuru, which is given herein at ANNEXURE-'F';*
>
> *c) Pass any other or further Orders as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.*

2. Heard Sri. Pallava R., learned counsel appearing for the petitioner, Sri. H.C. Shivaramu, learned counsel appearing for the respondent and have perused the material on record.

3. This Court has passed a slew of orders with regard to custody being retained with the mother and also interacted with the child and the mother in the Chambers. This has

resulted in the father agreeing for the child to be in the interim custody of the mother and him having the visitation rights. The act of the father merits appreciation.

4. The petition is thus disposed in the light of the memo being filed by the petitioner-husband and the mother. The memo reads as follows:

***"MEMO***

*It is submitted that by Order dated 23.11.2023, this Hon'ble Court directed the parties herein to explore the possibility of settlement insofar as the visitation rights with respect to the subject child and report the same by today.*

*It is submitted that the Petitioner after due deliberation on the issue is agreeable for disposal of the above case on the following terms:*

*i. That the interim custody of the subject child as ordered by the III. Addl. Family Court, Mysuru by Order dated 07.02.2023 in M.C.No.987/2022 may continue in favour of the Respondent herein provided and subject to the Petitioner being granted the visitation rights with respect to the subject child on every Saturday and Sunday (both days inclusive);*

*ii. Further, that the Petitioner be reserved liberty by this Hon'ble Court to seek permanent custody of the subject child with all contentions and kept open by filing appropriate petition to that effect before the jurisdictional Family Court;*

*iii. That in the event of breach of the undertaking herein on part of the Respondent to grant visitation of the subject child on every Saturday and Sunday, then the jurisdictional Family Court i.e., III Addl. Family Court, Mysuru where M.C.No.987/2022 is pending be directed to enforce the same without*

*the Petitioner having to approach this Hon'ble Court for enforcement of the visitation rights.*

***WHEREFORE**, it is prayed that this Hon'ble Court be pleased to accept the above memo on record and dispose the above case on the aforesaid terms in the interest of justice and equity."*

In the light of the memo, the petitioner-father is entitled to seek permanent custody before the concerned Court, which the Court would consider after permitting objections to be filed by the mother and hearing of the matter.

5. Till such time, the custody that is with the mother and the visitation that is sought by the father in terms of the memo, shall operate.

6. It is made clear that, if there is any breach of undertaking in the memo that is filed before this Court, the mother would run the risk of losing custody of the child.

With the aforesaid observations, the petition stands disposed.

**Sd/-**
**JUDGE**

SJK
List No.: 1 Sl No.: 5