

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 05TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

WRIT PETITION NO. 103228 OF 2025 (GM-FC)

BETWEEN:

[REDACTED]

...PETITIONER

(BY SRI S.V.YAJI, ADVOCATE.)

AND:

[REDACTED]

...RESPONDENT

(BY SRI TEJPAL A. KAMAL, ADVOCATE.)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE IMPUGNED ORDER ON I.A.NO.II DATED 03/02/2025, PASSED BY THE ADDITIONAL SENIOR CIVIL JUDGE, KARWAR, IN M.C.18/2020, ALLOWING THE APPLICATION VIDE ANNEXURE-J TO THE WRIT PETITION. CONSEQUENTLY, THE APPLICATION FILED BY THE RESPONDENT AT I.A.NO.II DATED 12/12/2020 VIDE ANNEXURE-B MAY KINDLY BE DISMISSED AND THE RESPONDENT MAY BE DIRECTED BY AN ORDER OF MANDAMUS TO DEPOSIT THE MAINTENANCE AND SHALL

CONTINUE THE PAYMENT OF MAINTENANCE AMOUNT REGULARLY PURSUANT TO THE COURT ORDER AND ISSUE A WRIT OF MANDAMUS, DIRECTING TO THE TRIAL COURT TO PASS APPROPRIATE ORDER ON THE APPLICATION FILED BY THE PETITIONER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE TO MEET THE ENDS OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.09.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS JUSTICE RAJESHWARI N.HEGDE

CAV ORDER

This petition is filed assailing the impugned order dated 03.02.2025, passed on I.A.No.2 by the learned Additional Senior Civil Judge, Karwar (hereinafter referred to as 'the trial Court'), in M.C.No.18/2020, whereby the application filed by respondent No.2 came to be allowed. The petitioner has sought issuance of a writ of certiorari to quash the said order, vide Annexure-J to the writ petition, and consequently, to dismiss the application dated 12.12.2020 filed by respondent No.2, vide Annexure-B. The petitioner has further sought a direction to the respondent-husband to deposit the maintenance amount and to continue paying the maintenance regularly in terms of the order passed by the Court. The petitioner has also

sought issuance of a writ of mandamus directing the respondent-authorities to pass appropriate orders on the application filed by the petitioner, in the facts and circumstances of the case.

2. For the sake of convenience, the parties are referred to as the 'husband' and the 'wife'.

3. The facts of the case, in brief, are that the wife, who is the petitioner herein, filed a petition in M.C.No.18/2020 seeking dissolution of her marriage with the respondent-husband under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). During the pendency of the said matrimonial case, the husband filed an application under Section 26 of the Act seeking visitation rights in respect of their child. The wife, who is the petitioner herein, opposed the said application. The trial Court allowed the application filed by the husband, namely, I.A.No.2. The operative portion of the impugned order reads as under:

"ORDER

- i) *I.A.No.II filed by the respondent under Section 26 of Hindu Marriage Act, 1955 is allowed.*
- ii) *Respondent is permitted and allowed to have uninterrupted visitation with the child Akshara who is in the custody of the petitioner twice a month on every 1st and 3rd of Saturday and interact with the child for 3 hours only at the time and place convenient to both the parties at Karwar, for initial period of 3 months.*
- iii) *Respondent is permitted and allowed to have 10 minutes daily uninterrupted video call with the child between 8 P.M. to 9 P.M. from Monday to Friday.*
- iv) *Respondent is permitted and allowed to meet the child on her birthday at her school premises or any convenient place during lunch hours for 1 hour.*
- v) *Respondent is permitted and allowed to attend all the school events of child along with his parents and grand parents whenever required by the school.*
- vi) *Respondent is permitted and allowed to take the child only during summer vacation for a period of 10 days from the commencement of school vacation and the respondent shall handover the child to the petitioner after completion of 10 days of vacation with due care and protection. The petitioner shall handover custody of the child during such time and cooperate the respondent in that regard.*

vii) The petitioner shall ensure the aforesaid visitation rights of the respondent forthwith till disposal of the petition.

4. Being aggrieved by the said impugned order, the wife/petitioner herein is before this Court by filing the present writ petition.

5. The petitioner contended that the order passed by the trial Court granting visitation rights to the respondent-husband twice a month for a period of three hours is contrary to law and the facts and circumstances of the case. It is further contended that the direction issued by the trial Court to the petitioner to permit the child to have a video call with the respondent every day for ten minutes amounts to interference with the child's studies. It is also contended that the trial Court erred in permitting the respondent to meet the child on her birthday at the school premises during the lunch hour for one hour, which would cause inconvenience to the child and other family members.

5.1. It is further contended that the trial Court has not passed any order regarding the amenities to be provided to the child while she is in the custody of the respondent. The trial Court has also failed to consider the objections filed by the petitioner regarding the visitation rights sought by the respondent, which has resulted in miscarriage of justice. It is contended that though the respondent had sought visitation rights in respect of the minor child once a month, the trial Court has granted visitation rights twice a month, which is beyond the prayer made by the respondent.

5.2. It is further contended that the trial Court has not considered the availability of network connectivity and the device required for conducting video calls. It is also contended that the trial Court has not considered the expenses to be incurred by the petitioner and the child in connection with each visit and that the respondent ought to have been directed to bear such expenses.

5.3. It is further contended that the trial Court has not considered the fact that frequent visitation and video calls with a child who is studying in LKG are impracticable and may adversely affect the health and well-being of the child, besides causing emotional distress and mental trauma. It is contended that the trial Court has failed to keep in view the welfare of the child, which is the paramount consideration while determining matters relating to custody and visitation. It is further contended that the respondent has failed to discharge his legal and moral obligation towards the maintenance of the child. The trial Court has also failed to consider the safety and security of the child, who is only four years old and is not in a position to independently engage in a conversation through WhatsApp.

6. Therefore, the petitioner contended that the impugned order passed by the trial Court is arbitrary, perverse and capricious and has resulted in miscarriage of justice. Hence, the present petition has been filed.

7. In response to the notice, the respondent-husband appeared before this Court and resisted the petition by filing his statement of objections.

8. The petitioner/wife has relied upon the following judgments in support of her case.

- i) Order of Hon'ble Supreme Court in Petitions for Special Leave to Appeal (C) Nos.2899-2900/2023, in the case of [REDACTED] vs. [REDACTED], dated 25.11.2024.
- ii) Order of this Court dated 29.07.2024, in the case of H.P.Komala vs. N.Ravikumar, in W.P.No.11721/2020 (GM-FC).

9. The respondent has relied upon the following judgments in support of his case.

- i) Order of Orissa High Court dated 14.05.2025, in the case of Manjusha Singhania vs. Nimish Singhania, in W.P.(C) No.28784/2019.
- ii) Order of Hyderabad High Court dated 18.09.2026 in W.P.No.29562/2025 (CNR No.HBHC010588332025).

10. Heard the arguments of Sri S.V. Yaji, learned counsel for the petitioner, and Sri Tejpal A. Kamal, learned

counsel for the respondent, and perused the material placed on record.

11. The facts of the case, in brief, are that the marriage of the petitioner was solemnized with the respondent on 04.12.2017, and out of their wedlock, a child was born on 30.01.2019. It is contended that, after the birth of the child, matrimonial disputes arose between the parties. The petitioner-wife has been residing separately from the respondent-husband along with the child. She filed M.C.No.18/2020 seeking dissolution of her marriage with the respondent-husband on the ground of cruelty. During the pendency of the said petition, the respondent-husband filed I.A.No.2 seeking visitation rights to meet his child, who was residing with the petitioner-wife. The said application was filed by the husband on 12.12.2020.

12. On a perusal of the records, it is seen that the petitioner-wife had earlier filed I.A.No.5 under Section 24 of the Act seeking maintenance from her husband. The

said application was allowed and maintenance of ₹40,000/- per month was awarded to her vide order dated 23.11.2021. Being aggrieved by the said order granting maintenance to the wife, the husband preferred W.P.No.105360/2021 before this Court. The wife also filed W.P.No.102083/2022 seeking enhancement of maintenance. This Court dismissed the writ petition filed by the husband and partly allowed the writ petition filed by the wife, enhancing the maintenance from ₹40,000/- to ₹60,000/- per month, vide order dated 16.12.2022. Being aggrieved by the said order passed by this Court, the husband preferred an SLP before the Hon'ble Supreme Court in SLP No.2732/2023. The order passed in the said SLP has been produced by the petitioner herein along with the present writ petition as Annexure-E.

13. In the said SLP proceedings, the trial Court was directed to pass an appropriate order on the visitation rights within a period of one month, vide order dated 25.11.2024. Pursuant to the said direction issued by the Hon'ble Supreme Court, the trial Court proceeded to

consider I.A.No.2 filed by the husband seeking visitation rights and passed the impugned order, whereby visitation rights were granted to the husband. The wife was directed to permit the husband to meet the child twice a month, on every first and third Saturday, and to interact with the child for a period of three hours at a place convenient to both parties.

14. Further, the husband was permitted to have a ten-minute video call with the child every day between 8.00 p.m. and 9.00 p.m., from Monday to Friday. The husband was also permitted to meet the child on her birthday at the school premises or at any other convenient place during the lunch hour for a period of one hour. He was further permitted to attend the school events of the child whenever required by the school. In addition, he was permitted to take the child with him during the summer vacation for a period of ten days from the commencement of the school vacation. The wife was directed to hand over the child to the husband for the said period of ten days,

after which the husband was directed to hand over the child back to the wife and to co-operate with her.

15. Learned counsel for the petitioner argued that, since the child is very tender age of 4 years, it is very difficult for the child to interact with his father through video call. Further it is also contented that, the respondent being the father of the child and husband of the petitioner, owe the responsibility to pay maintenance to them. He has not complied with the order of this Court granting maintenance of ₹60,000/- per month together for the wife and child. As the respondent is not paying the maintenance, according to the petitioner, he is not entitled to visit the child and thereby it is argued that the very impugned order passed by the trial Court is arbitrary and unsustainable.

16. Per contra, learned counsel for respondent/husband submitted that, despite the order passed by the trial Court, the petitioner/wife has not at all co-operating with the respondent to visit the child and the

very order passed by the trial Court is not obliged by the wife. Therefore, it is contended that the trial Court has rightly passed the order and hence, prayed for dismissal of the petition.

17. Learned counsel for the petitioner submitted that, the respondent is in arrears of maintenance, unless he pays the arrears of maintenance, he cannot seek any execution of the said impugned order seeking visitation rights.

18. Regarding non payment of the maintenance is concerned, learned counsel for the respondent has filed the affidavit stating that, he has paid the arrears of maintenance and he has not been any due. The affidavit is placed before this Court, vide affidavit dated 16.09.2026.

19. Insofar as this affidavit is concerned, learned counsel for the petitioner/wife contended that, this Court ordered to pay total maintenance of ₹60,000/- per month together for the child and the wife. But he has paid only ₹25,000/- per month stating that, it is for the

maintenance of the child. He cannot bifurcate the maintenance by paying only ₹25,000/- per month and ₹20,000/- per month. Therefore, it is contented that unless the husband has paid the total arrears of maintenance, he cannot seek visitation rights.

20. On a perusal of the proceedings of this case, both the parties have agitated the matter by filing writs, wife had filed seeking enhancement of the maintenance and husband had filed seeking rejection of the maintenance. However, this Court has granted maintenance to the wife and child directing the respondent to pay maintenance of ₹60,000/- together for the wife and the child. The respondent has the obligation to comply the order of this Court. Therefore, the respondent husband is directed to pay all the arrears of maintenance to the wife as per the order passed by this Court in W.P.No.102083/2022, dated 16.12.2022.

21. Further, insofar as visitation rights is concerned, this Court in W.P.No.102085/2022, by order dated 16.12.2022 has observed as under:

“As far as the visitation rights are concerned, the trial Court has granted permission to the husband to visit the child on every Saturday or Sunday or a public holiday once in a month, is reasonable and proper. However, it is also pointed out that if the child is comfortable with the father after a couple of visits, it would be open for the husband to seek for any modification of the visitation rights.”

22. The aforesaid order was passed in the year 2022. Subsequently, the application filed by the husband, namely, I.A.No.2, came to be allowed by the trial Court vide order dated 03.02.2025, whereby visitation rights were granted to the husband/respondent.

23. Learned counsel for the petitioner submitted that, insofar as the direction contained at Sl.No.2 of the impugned order is concerned, the trial Court had directed that the arrangement would operate “only for three months”. The said period of three months has already elapsed and, therefore, according to the learned counsel,

the said direction is no longer capable of being enforced. Insofar as the direction contained at Sl.No.3 is concerned, learned counsel for the petitioner submitted that it is highly inconvenient for the respondent to interact with the child through video calls, as the child is only four years old and is of a very tender age.

24. Further, learned counsel for the petitioner argued that the respondent-husband has been directed to pay maintenance of ₹60,000/- per month towards the maintenance of the petitioner-wife and the child. However, the respondent has not been regularly paying the maintenance amount and is stated to have paid only ₹20,000/- per month towards the maintenance of the child, by unilaterally bifurcating the amount of maintenance payable to the petitioner-wife and the child. It was contended that the respondent cannot unilaterally bifurcate the maintenance amount fixed by this Court.

25. Learned counsel for the petitioner further argued that when the husband has willfully violated the

order directing him to pay maintenance and has failed to comply with the said order, he cannot seek to enforce the visitation rights granted in his favour or advance arguments before this Court. In support of the said contention, learned counsel has placed reliance upon the judgment of the co-ordinate Bench of this Court in ***W.P.No.11721/2020 (supra)***.

26. This Court has perused the said judgment, wherein it has been observed as under:

This Court is coming across several judgments where the husband will not pay maintenance as ordered by the Court and which attains finality but he insists for proceeding with the main case. In some cases the parties are not in a position to meet their basic necessities and the opposite parties in spite of not obeying the orders of the Court or enjoying the further orders passed by the Court. Therefore, the Court while exercising the jurisdiction either stay the proceedings or strike of the pleadings.

27. Taking into consideration the observations made in the aforesaid judgment, learned counsel for the petitioner argued that, in the present case also, the respondent-husband has failed to pay the maintenance in

terms of the order passed by this Court, while at the same time contesting the present petition. It was therefore contended that the respondent, having failed to comply with the order relating to payment of maintenance, cannot seek enforcement of the visitation rights granted in his favour. Accordingly, learned counsel for the petitioner categorically contended that the impugned order passed by the trial Court is liable to be set aside.

28. Per contra, learned counsel for the respondent-husband argued that the matrimonial petition seeking dissolution of marriage was filed by the wife and not by the husband. He submitted that, after the birth of the child, the petitioner-wife has never permitted the respondent to meet or see the child. He further submitted that he has complied with the order passed by the Court directing payment of maintenance and has paid the maintenance due towards the child up to date, as stated in the affidavit filed by him.

29. It was contended that, despite the order passed by the trial Court granting visitation rights to the respondent, the petitioner-wife has failed to comply with the said order. She has not even disclosed her address or the place where the respondent is required to meet the child. According to the learned counsel, the petitioner is only receiving the maintenance amount while deliberately avoiding and obstructing the visitation rights granted to the respondent-husband. Therefore, learned counsel submitted that the trial Court was justified in granting visitation rights to the respondent-husband and prayed for dismissal of the writ petition by confirming the visitation rights granted under the impugned order.

30. In support of his submissions, learned counsel for the respondent has relied upon the judgment in the case of ***Manjusha Singhania (supra)***, wherein it has been observed as under:

The child is always the victim in the custody battles and in the fight of egos and acrimonies between two spouses, but the childhood of such child is the verse sufferer and

such childhood is spoiled due to the alter egos of the spouses. It is a matter of fact that the child especially of tender years requires love, affection, company, protection and guidance of both the parents and these are not only the requirement of the child, but also his/her basic human rights and need. Further, the child should not be denied with proper care and affection, merely because his/her parents are at war with each other. The child is not an inanimate object which can be tossed from one parent to other. One parent should not be denied to contact to visit child and cogent reasons must be assigned while refusing visitation right of either of the spouses to their child.

It is further observed that:

There is allegation by the wife against the husband that she has not been paid with maintenance and thereby, visitation right should not have been granted to the husband, however, such contention is insignificant because the visitation right of the child is considered on a different pedestal of welfare of the child which is paramount in considering the application for visitation right.

31. Relying upon the aforesaid observations made in the said judgment, as well as the observations made in the order of the High Court of Hyderabad referred to supra, learned counsel for the respondent-husband submitted that, even assuming that there are any arrears

of maintenance payable by the respondent, the same cannot, by itself, be a ground to deny him visitation rights in respect of his child.

32. Having considered the facts and circumstances of the case and the submissions made by the learned counsel for the parties, this Court is of the considered view that, the respondent-husband, being the father of the child, cannot be denied an opportunity to maintain a relationship with his child. The respondent has also filed an affidavit stating that he has paid the maintenance due towards the child up to date. In the circumstances, this Court is of the opinion that the respondent is entitled to visitation rights in respect of the child. However, while exercising such rights, the welfare and best interests of the child shall remain the paramount consideration.

33. Insofar as the impugned order passed by the trial Court is concerned, having regard to the change in circumstances and the present age and needs of the child, this Court is of the view that it is necessary to modify the

arrangement ordered by the trial Court, keeping in view the welfare and best interest of the child as well as the convenience of both parties. Accordingly, the impugned order is modified as follows:

a) The respondent-husband is permitted to visit and meet the child on any Saturday or Sunday or public holiday, for three hours on each day, subject to a maximum of three days in a month, at a mutually convenient place.

b) The respondent-husband is permitted to attend the school events of the child whenever such events are organised by the school.

c) The respondent-husband is permitted to meet the child on her birthday at the school premises or at any other mutually convenient place for a period of one hour.

d) The respondent-husband is permitted to take the child with him during the summer vacation for a period of ten days from the commencement of the school vacation. Upon completion of the said period, he shall hand over the child to the custody of the petitioner-wife. During the period of his custody, the respondent-husband shall ensure the safety, welfare and proper care of the child.

e) The petitioner-wife shall co-operate with the respondent-husband in facilitating the visitation rights granted to him under this order and shall not obstruct or prevent such visitation, subject to the terms and conditions contained herein.

34. The writ petition stands ***disposed of*** accordingly.

**Sd/-
(RAJESHWARI N.HEGDE)
JUDGE**

MRK
CT-CMU