



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 622 OF 2025 (GM-FC)

BETWEEN:

SRI. DILIP KUMAR YADAV,
S/O. BALARAM YADAV,
AGED ABOUT 44 YEARS,
R/AT A13-402,
SPARKLET MEGAPOLIS,
HINJEWADI, PHASE-3
PUNE-411 057.

...PETITIONER

(BY SMT. PRATHIMA S.K., ADVOCATE)

AND:

SMT. PRAGYA YADAV
W/O. DILIP KUMAR YADAV,
AGED ABOUT 41 YEARS,
R/AT TOWER-7, FLAT- 1104,
L AND T RAINTREE BOULEVARD,
BENGALURU-560 092.

...RESPONDENT

(BY SRI. SAJI MALAYIL, ADVOCATE)



THIS PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTION TO THE HONBLE V ADDL. PRL. JUDGE, FAMILY COURT AT BANGALORE IN G AND WC NO. 230/2024 AND SET ASIDE THE ORDER DATED: 30.10.2024 ON IA NO. 5 FILED BY THE PETITIONER UNDER SEC. 9 OF GUARDINA AND WARDS ACT R/W ORDER VII RULE 11(d) R/W SEC 151 OF CPC SEEKING REJECTION OF PETITION IN G AND WC NO. 230/2024 VIDE ANNEXURE-J AND CONSEQUENTLY ALLOW THE I.A.NO.5.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 15.07.2025, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CAV ORDER

Aggrieved by the order passed in I.A.No.5 in G&WC.No.230/2024 dated 30.10.2024 by the V Additional Principal Judge, Family Court, Bengaluru, whereby the Family Court had rejected I.A.No.5, the petitioner/father is before this Court.

2. The parties are referred to as father and mother for the sake of convenience.

3. The mother had filed G&WC.No.230/2024 under Section 9 of the Guardians and Wards Act read with Order VII Rule 11(d) read with Section 151 of CPC to reject the petition as the Family Court has no territorial jurisdiction as the child is ordinarily residing in Pune, Maharashtra State. In the petition, it is stated that the marriage between both the parties took place on 12.02.2011 at Hariyali Marriage Garden, Bundi, Rajasthan. At the time of marriage, the mother was working as Test Analyst at Infosys and the father was working as Team Lead, Infosys. The mother has stated about how the marriage has taken place and what are all the differences between the parties. On 19.01.2014, they were blessed with a daughter. In



the entire petition, the mother had pleaded about the disputes between the parties and how the father has harassed her. It is stated that on 22.03.2023, both the parties were living in a one BHK house and as the child was growing up, the mother had requested the father to shift to a bigger house. Then the father immediately agreed to shift to a bigger apartment only on the condition that the mother must bear all the rent, deposit, electricity bills, furniture costs and groceries. It is stated that from March 2023 till April 2024, entire expenses for rent, groceries and electricity bills, furniture costs along with the daily needs such as clothes, shopping and extracurricular classes for minor daughter has always been borne by the mother.

4. It is stated that in the month of January 2024, the mother requested the father to equally contribute towards the household expenses as she was getting financially overburdened. The father is drawing handsome salary of Rs.60,00,000/- per annum and apart from that, he was also getting income of Rs.22,000/- monthly from house they had let out on rent. After repeated requests and pleadings, he would



transfer the amount to the mother's account. Whenever the mother asked for money to meet day to day expenses, the father would scream at her. It is stated that on 17.03.2024, the mother's friend along with her 10 year old son came to her home at Pune in order to invite the couple for her son's birthday party. During such time, the father was angry at the mother for spending money on cab and food expenses during the time of her recent outings to movies and malls along with the daughter. He vented out his anger to her friend in front of her son and also their minor daughter. He started cursing her that she is wasting money on outing, she would soon fall sick and get bedridden for 6-7 months. He verbally abused the mother in front of her friend. The mother's friend was scared due to such behaviour of the father and left the place immediately.

5. It is stated that on 18.04.2024, the father took a week's leave from work and the mother was working. As the father was free at home, he started fighting with the mother on silliest issues and was interrupting in her work. When she requested him to move to a different room as she was unable



to concentrate on her work, he started physically harming the mother. He sat on her legs, even though he very well knew that she was suffering from Arthritis. He harmed the mother by twisting her hands out of anger. He abused and cursed her by saying "why don't you die? Every time you return from deathbed?" This incident was life threatening to the mother and anything could have happened. While both the parties were fighting, their daughter was attending her online Kathak class and all these abuses were audible to her class. She was so upset that day and the mother was shattered by the incident. Subsequent to the said incident, the mother's knee pain increased even more and it started to create fear in her mind about her safety and it was also causing mental agony to the daughter. Hence, the mother was forced to leave the matrimonial house. On 22.04.2024, the mother along with her daughter travelled to her parents' place in Bundi, Rajasthan and stayed there for 15 days. Since her parents were shifting to Bangalore to her brother's house, she decided to move to Bangalore to her brother's house as it was not safe for her to stay at Pune along with her daughter as the father's family is highly influential. Accordingly, on 08.05.2024, the mother



travelled to Bangalore and stayed at her brother's house. Subsequently, during the month of June 2024, she rented a house at Hebbal, Bengaluru for herself and her minor daughter.

6. It is further stated that on 24.05.2024, the mother visited her daughter's school at Blue Ridge Public School, Pune, along with her brother for the TC process and filled the TC form and she was informed by the school that it would take two weeks to process it. It was required to start her admission in Bangalore's Vibgyor School as per the process mentioned by the school. The mother had planned to visit again and collect the TC, as she had already informed the father about changing her daughter's school and had also told him not to deposit the school fees of her daughter for the upcoming academic year. Subsequently, the father visited the school in Pune to check if the mother had filed for the TC request and when he came to know that the mother had submitted the TC form, he created a ruckus at the school premises. Further, he called the school principal and teachers and got the CCTV video of the mother and her brother visiting the school. He has emailed the school



authorities not to issue the TC of the daughter without his approval.

7. It is further stated that ever since 22.04.2024, the father was not bothered to call the mother to know the welfare of the minor daughter. But after knowing that the minor child is enrolled at a school in Bengaluru, he has repeatedly called the mother and threatened her saying "I will see how you will stay in Bangalore, no schools in India will allow my daughter to take exams without me consenting for TC, which I will never do". It is stated that on 16.06.2024, the mother visited her brother's house. During such time, the father along with his elder brother and his friend visited her brother's house. The mother requested them to come after June 29th, as her brother is out of town and he will be available only after June 29th. But he refused to leave the place and he was adamant to meet the child and take her with him. Hence with no other option, she called the Police. After sometime, two constables visited there and the mother told the father to meet the child in the presence of the Police. But he refused to meet the child and left the place, threatening the mother that he will meet his child



only in the police station. Then the father along with his brother and friend rushed to the police station. Even the mother along with her sister-in-law went to the police station and narrated the incident to the police. The father inconsiderate about the minor child, kept on the incident to bring the minor daughter to the police station. The police inspector then intervened and told him that kids could not be brought to the police station as it is not an appropriate place for them to visit. Then after being advised by the police inspector, the father met the child at the mother's brother's house. While leaving, the father threatened that he will take away the child from her soon.

8. It is stated that the minor child is in her custody and she has been taking care of her and she is capable of looking after the welfare of the child. Further, the minor child is presently studying in Vibgyor School, Bengaluru in the 5th grade. She has admitted the child for the academic year 2024-2025 by paying annual fee of Rs.1,13,120/- (part payment). It is stated that the cause of action arose on 12.02.2011 when the marriage of the father and mother took place on 22.04.2024, when they started living separately. It is stated



that the child is residing in Bengaluru and the Family Court, Bengaluru has got the jurisdiction to try and dispose of the matter.

9. The father has filed I.A.No.5 under Section 9 of the Guardians and Wards Act read with Order VII Rule 11(d) read with Section 151 of CPC to reject this petition as the Courts at Bengaluru have no jurisdiction as the daughter is an ordinary resident of Pune. Till April 2024, she was residing in Pune and this petition was filed on 28.06.2024 and the Courts at Bangalore have no jurisdiction.

10. By order impugned, the application filed by the father was rejected by the Family Court. While rejecting the application, the Family Court had considered the judgment that is relied on by the learned counsel for the mother in case of ***Sri.Dr.Vishal Khakhandaki Vs. Smt. Dr.Ashwini Khakhandaki*** arising out of ***CP.No.100179/2016 dated 06.10.2017***, wherein originally the father was resident of Belagavi and since he took up an employment at Bengaluru, he and the mother started to reside at Bengaluru. Thereafter, both of them agreed to move to Belagavi. Hence, he moved to



Belagavi along with his minor son in the month of May 2016. But the mother who had agreed in the beginning to relocate the son to Belagavi, changed her mind and refused to come over to Belagavi and started to live in PG hostel at Bengaluru. Thereafter, the father filed divorce proceedings at Family Court, Bengaluru. In those circumstances, the Co-ordinate Bench of this Court had held that in the case of school going child, the ordinary residence is where he goes to school and lives with his parents. Convenience of the child must also be considered. If the proceedings are permitted to go at Bengaluru, whenever the Court directs for production of the child, he has to undertake to travel from Belagavi to Bengaluru, which is not practical and feasible in the interest of the child. Under such circumstances, it has come to the conclusion that Belagavi is the place where the child resides ordinarily and the Court at Belagavi should only decide with regard to the custody.

11. Considering the said judgment, the Family Court had observed that at the time of filing of the petition, the child was residing in Bengaluru along with his mother and now also she is residing and going to school at Bengaluru. The Family Court



had held that it has got the territorial jurisdiction to try the case. Accordingly, I.A.No.5 filed by the father was rejected.

12. Learned counsel appearing for the father submits that the Courts at Bengaluru have no territorial jurisdiction and the Family Court without assigning any reasons had rejected I.A.No.5. In spite of the fact that the minor child's ordinary place of residence was Pune and it is beyond the jurisdiction of the Court at Bengaluru to decide the custody petition. It is argued that the judgment which is relied on by the Family Court is contrary to Section 9 of the Guardians and Wards Act. It is argued that in the light of the judgment of the Hon'ble Apex Court in case of ***Ruchi Majoo Vs. Sanjeev Majoo***¹ and the judgments of the various High Courts and also the undisputed fact that child is residing in the jurisdiction of Pune from the time of her birth and studying in Blue Ridge School, Pune and the Family Court ought to have allowed the I.A. The mother is trying to shuttle the child from Pune to Bangalore to suit her own agenda. It is submitted that Bangalore is neither the workplace nor place of habitual residence of the mother or

¹ (2011) 6 SCC 479



the father. However, she has unilaterally chosen to move to Bangalore by keeping away the minor child from the father. It is submitted that the minor child was doing extremely well in terms of her academic pursuits as well as extracurricular activities. It is submitted that at any stretch of imagination, the ordinary residence of the child cannot be construed as Bengaluru and the Courts at Bengaluru have no jurisdiction.

13. Learned counsel for the petitioner had relied on the judgement in case of ***Samiulla Saheb Vs. Mohammed Sameer*** arising out of ***WP.No.6789/2023*** dated ***22.04.2024*** and the judgment in the case of ***Mr.K.U.Pooviah @ Vivek Vs. Mrs. Namitha Pooviah*** arising out of ***WP.No.3376/2013*** dated ***13.12.2013***. Paragraph Nos.19 and 20 of the Judgment reads as follows:

"19. The reference made to an alleged letter of the respondent, vide Annexure-F, in view of the above, has no relevance to decide the jurisdiction of the Family Court, Bangalore, to entertain and decide the case.

20. The view taken by the Family Court, Bangalore, to dismiss I.A.No.6, in the factual background, noticed supra, cannot be termed illegal. The court below has correctly exercised the jurisdiction vested in it and no grave injustice has occasioned to the petitioner on account of the dismissal of I.A.No.6. No case exists for interference in exercise of the



jurisdiction under Article 227 of the Constitution, especially principles (4), (6) and (7), laid down in para 38 of the decision in the case of SURYA DEV RAI VS. RAM CHANDER RAI, reported in (2003)6 SCC 675.

In the result, the writ petition being devoid of merit is dismissed with no order as to costs."

14. Learned counsel appearing for the mother has argued in similar line as per the stand taken in the petition. It is submitted that the Family Court had rightly passed the order considering the fact that the child is studying in Bengaluru in Vibgyor School. He had relied on the judgment of this Court in case of ***Sri.Dr.Vishal Khakhandaki*** referred supra. He relied on paragraph Nos.21, 26 and 29 of the judgment of the Hon'ble Apex Court in case of ***Ruchi Majoo*** referred supra which reads as follows:

"21. The Guardians and Wards Court upon consideration of the matter dismissed the application filed by the respondent holding that the material on record sufficiently showed that the respondent husband had consented to the arrangement whereby the appellant wife was to continue living in Delhi in order to explore career options in dental medicine and that the minor was to remain in the custody of his mother and was to be admitted to a School in Delhi. The Court further held that since there were serious allegations regarding the conduct of the respondent husband and his habits, the question whether the interest of minor would be served better by his mother as a guardian had to be looked into.



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22. It is in the light of the above averments that the question whether the Courts at Delhi have the jurisdiction to entertain a petition for custody of the minor shall have to be answered.

26. We may before doing so examine the true purpose of the expression 'ordinarily resident' appearing in Section 9(1). This expression has been used in different contexts and statutes and has often come up for interpretation. Since liberal interpretation is the first and the foremost rule of interpretation it would be useful to understand the literal meaning of the two words that comprise the expression. The word 'ordinary' has been defined by the Black's Law Dictionary as follows:

"Ordinary (Adj.) :Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterized by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

29. In Jagir Kaur v. Jaswant Singh, this Court was dealing with a case under Section 488 Cr.P.C. and the question of jurisdiction of the Court to entertain a petition for maintenance. The Court noticed a near unanimity of opinion as to what is meant by the use of the word "resides" appearing in the provision and held that "resides" implied something more than a flying visit to, or casual stay at a particular place. The legal position was summed up in the following words: (AIR p. 1524, para 8)

"8. ...Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases thereon, we would define the word "resides" thus: a person resides in a place if he through choice makes it his abode permanently or even temporarily; whether a person has chosen to make a particular place his abode depends upon the facts of each case."

15. The undisputed facts in this case are that the parties were residing in Pune till April 2024 and the child was born in



Pune. In view of the disputes between the parties, the mother went along with the child to Rajasthan and later she moved to Bangalore. Then in the month of June 2024, she filed the petition seeking custody of the child. All these are the admitted facts as they are stated by the mother in the petition filed seeking custody of the child. Before dwelling into the merits of the matter, it is appropriate to look at Section 9(1) of the Guardians and Wards Act.

"9. Court having jurisdiction to entertain application.— (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."

16. The expression 'ordinarily resides' is not defined in the Act. The Hon'ble Apex Court and also several other High Courts in catena of judgments have considered what is the ordinary residence of a minor child. The Courts have consistently held that a child's mere physical presence in a new place, especially due to unilateral relocation does not automatically create ordinary residence for jurisdictional purposes. Jurisdiction cannot be artificially created by removing the child to another place. The Hon'ble Apex Court deprecated



the practice of unilateral removal of child and parent cannot take advantage of his or her own wrong and observed that welfare of the child includes stability, continuity and protection from forum shopping, illegal/unilateral removal cannot become the foundation of jurisdiction.

17. Family disputes often produce collateral damage in the form of custody battles over minor children. The Courts are coming across the cases where one parent unilaterally removes the child from the shared matrimonial home and relocates to another city or states. Thereafter initiates custody or guardianship proceedings in the new place. This poses serious concern relating to jurisdiction, forum shopping, abuse of legal process and the welfare and stability of the children. Custody litigation can never be permitted to become a strategic weapon in matrimonial warfare. The law has evolved clear principles to discourage unilateral child removal and to prevent jurisdiction from being artificially created by such conduct. No doubt, in child custody matters the welfare of the child is paramount consideration.



18. The jurisdiction is the threshold issue, then comes the question of welfare of the child. The Courts have a responsibility to strike a fine balance between parental rights to custody and child's rights to stability and relationship with both the parents. It is settled law that where statutory language is clear mandatory and unambiguous, the Courts are bound to give effect to it as enacted. The Hon'ble Apex Court in case of ***Padma Sundar Rao Vs. State of Tamilnadu***² held that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature not a plaything of interpretation. The word "shall" be used in the provision leaves no discretion to the Court.

19. Coming to the facts and circumstances of the case, till April 2024, the ordinary residence of the child was in Pune. Because of the disputes, the mother has come down to Bangalore and she wants to settle in Bangalore. Just because the mother has taken a decision to settle in Bangalore, it will not become the ordinary place of residence of the minor. Even in case of ***Sri.Dr.Vishal Khakhandaki*** referred supra which

² 2002 (3) SCC 533



the respondent was relying on, the Court was considering a transfer petition. In the considered opinion of this Court, an order that is passed in a transfer petition cannot be applied to a petition that is filed on the original side. In the light of the settled law, the ordinary residence of the child is in Pune. When the statute in clear and unequivocal term says that the case has to be instituted where the ward ordinarily resides, there cannot be any interpretation of any manner by the Court. After instituting the suit, if the mother has any inconvenience, she could have sought for a transfer from Pune to Bangalore.

20. In this case, considering the very pleadings in the petition filed by the mother, this Court is of the view that the Courts at Bangalore have no jurisdiction. By leaving father in Pune in the month of April 2024 and coming to Bangalore, applying for the TC, she joins the child in the school at Bengaluru and immediately files the petition in the month of June 2024. Till April the ordinary place of residence of the child is Pune. At any stretch of imagination, Bengaluru cannot be termed as an ordinary residence of the child. Hence, the Courts at Bengaluru have no jurisdiction. The Family Court has failed



to consider all these aspects. In view of the above discussion,
this Court is passing the following:

ORDER

- i. The order passed in I.A.No.5 in G&WC.No.230/2024 dated 30.10.2024 by the V Additional Principal Judge, Family Court, Bengaluru, is ***set aside*** and I.A.No.5 is ***allowed***.
- ii. The petition shall be presented before the appropriate Court which is having jurisdiction within a period of 8 weeks from the date of receipt of the copy of the order.
- iii. Accordingly, the writ petition is ***allowed***.
- iv. All I.As. in this petition shall stand closed.

Sd/-
JUSTICE LALITHA KANNEGANTI

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List No.: 1 Sl No.: 3