



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 1742 OF 2026 (FC)

C/W

MISCELLANEOUS FIRST APPEAL NO. 1744 OF 2026

IN MFA No. 1742/2026

BETWEEN:

SMT. J N DIVYASHREE
D/O NANJIAH
AGED ABOUT 26 YEARS
R/A NO. 94, 5TH CROSS, E AND F BLOCK,
RAMAKRISHNA NAGARA, MYSURU-570022

...APPELLANT

(BY SRI. NAREN SHAKTHI SWAROOP, ADVOCATE FOR
SRI.M.N.UMASHANKAR., ADVOCATE)

AND:

SRI.S. ANOOP KUMAR
S/O J. SHANTHA KUMAR
AGED ABOUT 35 YEARS,
R/A NO. 2162, 6TH CROSS,
K BLOCK, KUVEMPUNAGARA,
MYSURU-570023
PRESENT ADDRESS
NO. 7652, 2ND PHASE, 4TH STAGE,
VIJAYANAGARA, MYSURU CITY - 570018

...RESPONDENT

(BY SRI.S.RUPESH KUMAR, ADVOCATE FOR C/RESPONDENT)



NC: 2026:KHC:35241-DB
MFA No. 1742 of 2026
C/W MFA No. 1744 of 2026

THIS MFA IS FILED U/S.19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DT.01.12.2025 PASSED IN MC NO. 1033/2024 ON THE FILE OF THE I ADDITIONAL PRL JUDGE, FAMILY COURT, MYSURU, ALLOWING THE PETITION FILED U/S 13(1)(i-a) OF THE HINDU MARRIAGE ACT, 1955.

IN MFA NO. 1744/2026

BETWEEN:

SMT. J.N DIVYASHREE
D/O.NANJIAH,
AGED ABOUT 28 YEARS
R/A 94, 5TH CROSS, E AND F BLOCK,
RAMAKRISHNA NAGARA
MYSURU-570022.

...APPELLANT

(BY SRI.NAREN SHAKTHI SWAROOP, ADVOCATE FOR
SRI.M.N.UMASHANKAR, ADVOCATE)

AND:

SRI. S ANOOP KUMAR
S/O J. SHANTHA KUMAR
AGED ABOUT 37 YEARS,
R/A 2162, 6TH CROSS, K BLOCK,
KUVEMPUNAGARA, MYSURU - 570 023
PRESENT ADDRESS
7652, 2ND PHASE, 4TH STAGE,
VIJAYANAGARA, MYSURU CITY 570018.

...RESPONDENT

(BY SRI.S.RUPESH KUMAR, ADVOCATE FOR CAVEATOR/
RESPONDENT)

THIS MFA IS FILED U/S.47(a) OF GUARDIANS WARDS ACT, AGAINST THE JUDGMENT AND DECREE DT.09.01.2026 PASSED IN G AND WC.NO. 68/2024 ON THE FILE OF THE I ADDITIONAL PRL JUDGE, FAMILY COURT, MYSURU, ALLOWING THE PETITION FILED U/S 7(a) AND (b) OF THE HINDU MARRIAGE ACT, 1955.



NC: 2026:KHC:35241-DB
MFA No. 1742 of 2026
C/W MFA No. 1744 of 2026

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M NADAF)

These two appeals being MFA No.1742/2026, by the respondent - wife, calling in question the Judgment and Decree dated 01.12.2025 passed by the I Addl. Prl. Judge, Family Court, Mysuru¹ in M.C No.1033/2024, thereby dissolving the marriage between the petitioner - husband and respondent - wife, which was solemnized on 24.04.2019 at Nithyananda Kalyana Mantapa, Vidyaranyapuram, Mysuru and registered before the Registrar of Marriages, Mysuru South vide No.MYS-HM142-2019-20 dated 03.05.2019 in CD No.MYSM20 and MFA No.1744/2026, by the respondent - wife/mother, assailing the order dated 09.01.2026 passed by the Family Court in G & WC No.68/2024, whereby directing the respondent -

¹ 'the Family Court', for short



wife/mother to handover the custody of minor ward by name Vihaan.A, to the custody of petitioner/ father, for his better future.

2. Though both the Judgments are passed in distinct proceedings, the parties to the *lis* being the same, with consent of learned counsel appearing for the respective parties, both the appeals are taken together for disposal, at the stage of admission itself.

3. The parties are referred to as per their ranking before the Family Court.

4. Facts germane to file these appeals are as under:

MFA No.1742/2026

AS PER THE PETITIONER:

4.1 The petitioner and respondent were husband and wife. Their marriage was solemnized on 24.04.2019 at Nithyananda Kalyana Mantapa, Vidyaranyapuram, Mysuru as per rites and customs prevailed in Hindu



community. The petitioner is a Software Consultant by profession and after the marriage, the respondent joined the petitioner at matrimonial home. From the wedlock, they have a male child born on 04.02.2020 by name Vihaan.A.

- 4.2 The petitioner was often and often losing his health and upon investigation, he was found diabetic and also diagnosed of food poisoning because of which he frequently fell ill and also lost his weight.
- 4.3 It is submitted that the petitioner's mother received a call from his neighbor stating that, some unknown person was frequently visiting the petitioner's house in his absence. Once, the petitioner's mother along with his maternal aunt reached the petitioner's house, to wish respondent on her birthday, they found a motorcycle bearing No.KA-04 JX-9751, was parked outside the compound. Both the mother and maternal aunt, went to the first floor where the



petitioner was residing and knocked the door, but there was no response from inside. Therefore, they called the respondent on her mobile phone and inspite of repeated calls, there was no response from the respondent. They waited for more than an hour and then, suddenly some unknown person pushed his mother and aunt and fled from the spot with his two wheeler. The petitioner's mother called the respondent's mother and both of them went to Ashokapuram Police Station and lodged a complaint against the unknown person. The police traced the said person and he was summoned to the Police Station, wherein the said person disclosed his name as Manoj @ Darshan and also stated that he is having relationship with the respondent from last two years and that he was frequently visiting the petitioner's house in his absence, to join the respondent.



4.4 In the Police Station, the petitioner secured the mobile phone of the respondent i.e., iPhone 12 Pro with IMEI No.353075113254564, IMEI2 No.353075113046176 and after verifying the mobile phone, he found several romantic chats of the respondent with said Manoj @ Darshan and also found that the respondent was having relationship with different persons. He also noticed that the respondent has shared her nude photographs with Manoj @ Darshan and apart from that, he found that the respondent made a conspiracy against him to kill him gradually by slow poisoning and for that, the respondent has Googled several tablets which can cause multiple damages to the human body gradually, such as Microcid tablet, Lonitab 2.5, Daridorexant and she was using the said tablets in the food of the petitioner, due to which he frequently fell ill and also lost weight and food poisoning was also reflected in his medical report.



4.5 The petitioner alleged that the respondent has hatched and preplanned to done away with the petitioner by slow poisoning him to death with an intention to lead her life with her paramour. After finding these things, the petitioner filed complaint before the Ashokapuram Police Station. The jurisdictional police advised both the parties to resolve the matter themselves by approaching the Family Court and closed the complaint.

4.6 Thereafter, the respondent went to her parents house and told that she is ready to take mutual consent divorce after settling the other issues, however, she changed her decision and came with her relations, attacked on the petitioner's house on 14.10.2024 at around 8:15 am, and forcibly snatched the child from his custody by assaulting his parents. In this regard, a Police Case was registered with the Vijayanagar Police Station in Cr.No.170/2024.



4.7 All these acts of the respondent such as, going against the marital obligations, especially the illicit relationship with different persons, caused mental harassment, resulting in cruelty to the petitioner, which made him to file the present petition seeking divorce.

AS PER THE RESPONDENT:

4.8 In response to the notice, the respondent appeared and filed her statement of objection. In the statement of objection, she has admitted solemnization of marriage and birth of male child Vihaan.A. However, denied all other allegations made in the petition, stating that all the documents were alleged against her were created by the petitioner to suit his claim. She has made a specific allegation that the petitioner demanded dowry at the time of marriage and received 500 grams of Gold ornaments with 2 Kg Silver articles and also costly silk apparels and Rs.75,000/- towards Watch and not satisfied



with the dowry given at the time of marriage, demanded further dowry.

4.9 She has taken a specific contention that the petitioner was suffering from Kidney problems along with thyroid, liver problem and even he is an acute diabetic and also suffering from blood pressure, for this he is taking insulin 4 times a day. He has also addicted to smoking and everyday he is consuming alcohol, which is the reason for deteriorating of his health. He also has breathing issue and he has not taken any proper medication for his health. The petitioner having all these problems even prior to marriage, however without disclosing the same to the respondent and by even hiding about his health condition, married the respondent. All the cases filed by the petitioner are pre-planned and based on falsehood. It is the petitioner who is causing both physical and mental harassment to the respondent,



by abusing her with filthy language and assaulting her mercilessly.

4.10 Further, she alleges that the family members of the petitioner by sitting together used to consume alcohol and asking the respondent to prepare food for them at that point of time. The petitioner himself taken the respondent and child and got separated from his family members and started residing at rented house. The Family members of the petitioner were making false allegations against her and used to ill-treat her and subjected to cruelty. The petitioner has demanded additional dowry of Rs.5,00,000/- and instructed her to bring the said amount from her mother, and unless she brings dowry, he will not be leading marital life with her and willfully deserted her by ill-treating and abusing her in filthy language.



4.11 It is her specific contention that the petitioner failed in fulfilling sexual desires of the respondent, he has failed to discharge his marital obligations and started suspecting her stating that she is having illicit relationship with other persons. He was insisting her for unnatural sexual activities and in this regard, he has tortured her mentally and physically. It is the petitioner who had an intention to kill the respondent, rather the respondent, as alleged in the petition. The respondent without any other alternative, since she was treated with all these cruelty, left the matrimonial home and started residing separately by taking shelter at her parental home. There is no cause of action for the petitioner to file the petition and sought to dismiss the petition.

4.12 The Family Court after completion of pleadings, framed two points for consideration, which reads as under:



- 1) *Whether the petitioner proves that he has been subjected to cruelty from the hands of respondent, hence, he is entitle for a decree of divorce against the respondent?*
- 2) *What decree or order?*

4.13 The petitioner in order to prove his case, examined himself as PW.1 and produced 17 documents, marked as Ex.P1 to P17. On the other hand, the respondent except cross-examining PW.1, neither adduced oral evidence nor produced any documents. Even, the respondent did not canvass any arguments.

4.14 The Family Court after completion of trial and appreciation of pleadings of both the parties, evidence both oral and documentary and after hearing arguments of learned counsel for the petitioner, answered Point No.1 in the Affirmative and proceeded to grant decree of divorce by dissolving the marriage solemnized between the petitioner and the respondent.



4.15 The Family Court reasoned its Judgment on the premise that the respondent though fully cross-examined the petitioner - PW.1, however for the best reasons known to her, did not enter into the witness box to substantiate her allegations and the suggestions put to PW.1 in the cross-examination. She did not lead any evidence to discredit the evidence led by the petitioner and the documents produced by him. The Family Court observed that the nude photographs which were produced as Ex.P.15 are all Selfie photographs and the respondent has not produced any contra evidence to support her case that the said photographs were created by the petitioner to suit his claim to succeed in getting the divorce.

4.16 The Family Court further observed in its Judgment that the respondent was having romantic chats with several persons, particularly at Paragraph No.20 i.e., Karthi Event which consists of 03 pages as per Ex.P8,



Vinay Adithya which consists of 14 sheets as per Ex.P9, Chethan which consists of 28 pages as per Ex.P10 and Seenu which consists of 09 pages as per Ex.P11. The petitioner in order to support his documentary evidence, filed Certificate under Section 63(2) of BSA Act with respect to Ex.P7 to P15 and has marked the said Certificate as Ex.P16. He has also produced the acknowledgment issued by Ashokapuram Police Station on the complaint lodged by his mother against unknown person on 05.10.2024, who was found in the house of her son with the respondent in his absence and after seeing her, he fled away from the spot on his motorcycle bearing No.KA-04 JX-9751, as per Ex.P17.

4.17 The Family Court further held that though PW.1 was cross-examined extensively, nothing worthwhile elicited, except the suggestions which has been denied by the petitioner. The respondent has not entered into witness box to support her contentions



that the photographs produced as well as the chats found at Ex.P7 to 9 are all created by the petitioner in order to suit his claim.

4.18 The Family Court further deliberated on the Certificate under Section 63(2) of BSA Act in Paragraph No.29, to hold that the electronic documents produced are supported with Certificate and came to a conclusion that the photographs produced are not edited or tampered in any manner by using any application and it is the original photographs taken by him from the mobile phone of the respondent i.e., iPhone 12 Pro. In the absence of any contra evidence to discredit the evidence of the petitioner by adducing convincing, cogent and corroborative evidence, the respondent failed to put forth her case in defence.

4.19 The family Court also observed that the respondent has even not chosen to deny the incident that had



taken place on 05.10.2024 at a rented house of the petitioner in his absence.

4.20 It is trite law that no positive or direct evidence of an illicit relationship can be brought before the Court. It is only on the basis of circumstantial evidence with support of documents to that effect leading to logical conclusion of infidelity. The Family Court at Paragraph No.31 of the Judgment has held that, Ex.P8 to 12 discloses that those conversations in the chats had taken place after the marriage of the respondent with the petitioner and during the subsistence of their marriage and these chats clearly show that the respondent is sending obscene messages and chats to different persons and she has contacts with other men and used to send obscene messages and chats. The said documents also prove that the respondent was leading immoral life, while she was leading marital life with the petitioner, and was sending obscene messages and pictures to said



unknown persons, amounts to cruelty on the petitioner. With these reasons, the Family Court concluded that the petitioner proved Point No.1 and answered the same in the Affirmative and proceeded to grant decree of divorce, dissolving the marriage solemnized between the petitioner and respondent on on 24.04.2019 at Nithyananda Kalyana Mantapa, Vidyaranyapuram, Mysuru and registered before the Registrar of Marriages, Mysuru South vide No.MYS-HM142-2019-20 dated 03.05.2019 in CD No.MYSM20. It is this Judgment and Decree passed by the Family Court is called in question in MFA No.1742/2026.

MFA No.1744/2026:

5. The petitioner - father filed petition seeking custody of the minor ward, who is said to have been taken forcibly from his custody by the respondent along with her family members. In that regard, a police complaint came to be filed before the Vijayanagar Police Station as per



Ex.P5. The allegations made in the petition are one and the same as they were made in petition filed seeking for divorce. As such, the same are not reiterated here.

5.1 In response to notice, the respondent appeared and filed statement of objections, which were also the reiteration of the statement of objections filed in petition seeking for divorce. As such, the same are not again reiterated here.

5.2 After completion of pleadings, the Family Court framed two points for consideration, which reads as under:

- 1) *Whether the petitioner proves that he is entitled for the custody of minor Ward by name Vihaan.A, as claimed in his petition?*
- 2) *What order?*

5.3 The petitioner, in order to prove his case, examined himself as PW.1 and produced five documents, marked as Ex.P1 to P5 and closed his side of



evidence. On the other hand, the respondent neither adduced oral evidence nor produced any documents. The respondent after commencement of trial, for the best reasons known to her, has not chosen to contest the matter.

5.4 The Family Court after considering the pleadings, evidence, both oral and documentary, proceeded to allow the petition directing the respondent to handover the custody of the minor Ward, Vihaan.A, to the custody of the petitioner/ father, for his better future.

5.5 The Family Court observed that the respondent - mother despite filing statement of objection prior to commencement of trial, has not chosen to contest the matter after commencement of trial. Though several opportunities were provided, the respondent has failed either to cross-examine the petitioner - PW.1 or came forward to lead evidence or produce



any documents on her behalf to deny the case of the petitioner in the statement of objections. She has admitted the fact that there is a compliant lodged by the petitioner - father with Vijayanagara Police Station against the respondent and family members alleging that they have forcibly taken the minor Ward from the custody of the petitioner & his parents.

5.6 The Family Court further observed that the entire evidence adduced by PW.1 remained unchallenged and there is nothing on record to disbelieve or discredit his evidence. The Family Court reasoned its findings to come to the conclusion that the petitioner has proved his case to give permanent custody of the child to him from Paragraph Nos.24 to 27, which reads as under:

"24. The evidence of PW.1 that the respondent has developed illicit relationship with one Darshan @ Manoj and even during his absence from his house, the said Darshan @ Manoj used to visit his house and stayed with this respondent and she has been caught red handed



in the hands of mother of this petitioner and maternal aunt is also remained unchallenged. The respondent has not chosen to deny the fact that the mother of the petitioner has also approached Ashokapuram police station and lodged compliant with respect to the same and in respect of said compliant the police summoned Darshan @ Manoj for enquiry and even in his presence the said Darshan @ Manoj has confessed that he is having illicit relationship with this respondent and his relationship was continued even after the marriage and regularly he was meeting this respondent in the absence of this petitioner and accordingly even on that particular day he came to meet this respondent in the absence of this petitioner at her house and he has been caught red handed in the hands of mother of this petitioner and his maternal aunt, is also remain unchallenged.

25. The evidence adduced by PW.1 that the character and conduct of this respondent is not good and as such his son is not safe in the hands of this respondent and moreover the respondent will not take care of the welfare of the minor Ward by providing education and healthy environment to the said Ward and for this reason he being the biological father of the minor ward is entitled for custody of the minor Ward for the better future of the minor Ward, is remain unchallenged.

26. As I have discussed supra, there is nothing on record to disbelieve the evidence of



PW.1. It is well settled principles of law that, while deciding the issue relating to the minor Ward under the provision of Guardian and Wards Act, the interest of the minor Ward is paramount important while considering the custody of the minor Ward and this Court by considering the welfare of the minor Ward has to pass appropriate order. In this case the evidence adduced by PW.1 before this Court clearly proves that the welfare of the minor Ward is safe in the hands of the petitioner and he being the biological father of the minor Ward will protect the interest of the minor Ward by providing him maintenance as well as by giving him a good education and also financial support required by him with good family atmosphere, required for a minor Ward for his complete development.

27. The Judgment relied by learned counsel for petitioner in support of his arguments reported in (2008) 7 Supreme Court Cases 673 in between Mausami Mottra Ganguli VS. Jayant Ganguli, wherein the Hon'ble Apex Court by considering the interest of the minor Ward and by holding that the interest of the minor Ward is paramount consideration given the permanent custody of the Ward to the father and granted visitation right to the mother, is amply applicable to the present case on hand. Merely because the respondent is the mother of minor Wards, the Wards cannot permitted to retain with the custody



*of the respondent against the interest of the minor Wards. As per the provisions of Hindu Law, the father is the guardian of the minor Wards. The petitioner being a biological father of the minor Wards protected and safeguarded the interest of the Wards and provide him bright future by giving good education and environment that which is very much required for the Wards for their overall development. Hence, by considering all these facts and evidence adduced by both the parties in the interest of the minor Wards, it is opined that the petitioner is entitled for reliefs claimed and petition is deserves to be allowed. However the respondent has got a right to visit he son on every weekends, during school holidays of the child with prior intimation to petitioner. Hence, Point No.1 is answered **in the Affirmative.**"*

5.7 It is this order passed by the Family Court is called in question in MFA No.1744/2026.

6. Heard, Sri.Naren Shakthi Swaroop, learned counsel appearing for Sri.M.N.Umashankar, learned counsel for the respondent/wife/mother and Sri.S.Rupesh Kumar, learned counsel appearing for the petitioner/husband/father.



7. Sri.Naresh Shakthi Swaroop, with all vehemence submits that, the wife was not accorded sufficient opportunities to lead her evidence, which has denied her to take an exception to the evidence led by the husband. He submits that she has cross-examined the petitioner - PW.1 fully, there were several admissions by the petitioner - husband. The photographs produced by the petitioner were created photographs. The chats between the respondent and several other persons are also created and concocted to suit his unholy claim. The Family Court has not considered these aspects of the matter, which has resulted in grave injustice to the wife/mother by granting divorce as well as handing over the permanent custody of Vihaan.A, to the husband/father.

7.1 Learned counsel submits that the Family Court in an haste, without affording reasonable opportunities to the respondent to present her case, passed the impugned Judgment and Decree in both the cases.



7.2 Learned counsel further submits that the petitioner - father filed petition under the provisions of Guardians and Wards Act, 1890. The respondent had to run after both the proceedings and in that view of the matter, she lost track of the proceedings. He submits that the wife filed an application seeking transfer of the matter in Misc. No.14/2025. However, during the pendency of the said petition, the Family Court passed the decree in an haste. In that view of the matter, the Judgment passed is without affording proper opportunities to the wife to lead evidence to save her marriage and the same is against the principles of natural justice. Decree of divorce is granted on the ground of cruelty alleged to have been caused by the respondent against the petitioner, however, it is the petitioner - husband, who has neglected of his marital obligation and caused cruelty to the respondent. All his allegations are baseless and even the documents produced are



created one. The cross-examination clearly suggests that the documents produced are created. There were several admissions by the petitioner with respect to documents, which the Family Court has failed to consider. The respondent was not provided sufficient opportunity to discredit the alleged chats and nude photographs. It is the specific case of respondent wife in her statement of objections that, all these documents were created by husband while they were living together as the phone was always with the husband and to prove this aspect, the respondent wife was denied reasonable opportunity by the Family Court.

7.3 In G & WC proceedings, the wife was neither given an opportunity to cross-examine Pw.1 nor to lead her evidence. The child is tender age child, and was just 4½ years at the time of filing of the petition in the year 2024. In that view of the matter, the custody normally should have been with the mother. The



Family Court has failed to consider this aspect of the matter and in an haste proceeded to grant custody directing the respondent - mother to handover the child permanently to the petitioner - father. The entire proceedings went on conducting without affording any reasonable opportunity to the respondent, amounting to violation of principles of natural justice and sought to dismiss the same and remand the matter by providing an opportunity to the respondent - wife - mother to lead her evidence in support of her case to save the marriage as well as custody of the child.

8. In contrast, Sri.S.Rupesh Kumar, learned counsel appearing for the petitioner/husband/ father argued in support of the Judgment and order passed by the Family Court. He submits that the contention of the appellant does not survive for consideration to accept the claim regarding not providing opportunities to lead evidence. He submits that the order sheet of the Family



Court speaks itself, the number of opportunities provided to the respondent, which were not properly availed by her. It is the respondent who is responsible for her lack of diligence in conducting the case, now it is not open for her to at the Family Court that, it has failed to afford proper and reasonable opportunity.

8.1 Learned counsel further submits that the order sheet maintained by the Family Court speaks in length from the date the evidence of the petitioner has been led. Several adjournments have been taken before proceeding to cross-examine the petitioner - husband. The husband was cross-examined on four occasions. Though opportunities were granted several times to lead evidence, however on one or the other reason, the wife escaped from entering the witness box and failed to lead evidence. She also filed application under Order 12 Rule 8 of CPC seeking certain documents to be produced by the petitioner - husband, to which the husband submitted



reply. The conduct of the respondent clearly shows that she is deliberately withholding herself from entering into witness box. The Family Court after considering the entire material available on record, both in the Matrimonial case as well as Custody case, proceeded to grant the relief as prayed for in the said petitions respectively. As such, both the orders neither suffers from any infirmity nor call for any interference at the hands of this Court and sought to dismiss both the appeals.

9. Having heard the learned counsel for the respective parties, perused the entire appeal memorandum in both the appeals and also TCR in MFA No.1742/2026 in divorce petition. The following only points would arise for our consideration:

- (1) Whether the Family Court has failed to provide reasonable opportunity to the respondent - wife/ mother to contest the*



matter both in Divorce petition as well as Custody petition?

- (2) *Whether the Family Court is right in granting decree of divorce, thereby dissolving the marriage between the petitioner - husband and respondent - wife?*
- (3) *Whether the Family Court is right in granting custody of the minor child Vihaan.A, to the petitioner - father?*

10. Our answer to the above points for consideration are as under:

Point No.1 : ***In the Negative.***

Point No.2 : ***In the Affirmative.***

Point No.3 : ***In the Affirmative,*** for the following:

REASONS

11. **POINT NO.1:** So far as the contention of Mr.Naren Shakthi Swaroop, on depriving the right of the



respondent - wife/ mother to contest the matter in both the petitions is concerned, in divorce petition, the respondent - wife has taken several adjournments to cross-examine PW.1 - petitioner / husband and lastly on 4th occasion she has cross-examined him fully.

12. The order sheet maintained by the Family Court clearly depicts that the petitioner/ husband after his examination in chief on 04.02.2025 by way of affidavit and marking Ex.P1 to P16, remained absent when the case was listed for cross-examination on 20.02.2025. The matter was accordingly adjourned to 04.03.2025. The petitioner/ husband was again remained absent, as such the matter was adjourned to 15.03.2025. On 15.03.2025, the petitioner/ husband, filed application seeking to produce additional documents and sought permission to lead further examination in chief. The said application came to be allowed and Ex.P7 to P17 were marked and the matter was adjourned to 25.03.2025 for cross-examination. On that day, at the request of respondent,



the matter was adjourned to 09.04.2025. On that day, respondent wife was absent and counsel for the respondent sought time on the ground that she filed power on behalf of respondent recently and required time to get the case papers ready, accordingly the matter was adjourned to 29.04.2025. On 29.04.2025, since the P.O was on leave, the matter was adjourned to 10.06.2025. On that day, the respondent cross-examined PW.1 and for further cross-examination, the matter was adjourned to 25.06.2025. Learned counsel for the respondent sought time as her senior was suffering from ill-health and the case was adjourned to 08.07.2025. On 08.07.2025, PW.1 was cross-examined and respondent again sought further time to cross-examine PW.1 and the said request was rejected and the matter was listed for respondent evidence on 18.07.2025. Thereafter, the respondent - wife filed an application under Order 12 Rule 8 of CPC, seeking direction to the petitioner - husband to produce certain documents. The petitioner husband filed his reply to the



said application stating that there are no such documents available with him sought in the application and the respondent wife instead of proving her case in accordance with the law, cannot insist on the documents from him, the respondent wife has to establish her case independently and he is not bound to answer the question mentioned in Sl.No.4 of the Notice as the same is not in issue in dispute before the Court.

13. Thereafter, the matter was listed on 30.07.2025, on that day, the respondent - wife filed an application praying to reopen the case of the petitioner and praying to recall PW.1 for the purpose of further cross-examination. The application was allowed, since PW.1 was present, he was fully cross-examined and for respondent side evidence, the matter was adjourned to 12.08.2025. On 12.08.2025, the respondent was absent and a request was made by her counsel, however as a last chance, the matter was adjourned to 20.08.2025. On 20.08.2025 also, the respondent remained absent and a



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request was made seeking further time. The Family Court observed that in spite of affording sufficient opportunities, the respondent has not chosen to lead evidence and rejected the request and respondent side evidence was taken as *nil* and the matter was posted for arguments on 04.09.2025.

14. For easy reference and brevity, the order sheet from 04.02.2025 till disposal of the case is extracted below:

<u>04.02.2025</u> P - HSK R- CLN PTNR. EVI.	Respondent present. Petitioner present and filed Affidavit in lieu of his chief examination and examined as PW-1. Ex.P.1 to Ex.P.6 documents marked. Cross examination of PW1 adjourned on request. Hence Posted for cross examination of PW1 by 20.02.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>20.02.2025</u> P - HSK R - CLN	Both parties are absent. PW.1 absent. His counsel absent.



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X of PW.1	No representation. Learned counsel for respondent present. To keep PW.1 present for the purpose of cross examination by 04.03.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>04.03.2025</u> P - HSK R - CLN X of PW.1	Petitioner absent. Respondent present. PW.1 absent. His counsel absent. No representation. Hence, to keep PW.1 present for the purpose of cross examination by 15.03.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>15.03.2025</u> P - HSK R - CLN X of PW.1	Respondent absent. Petitioner present. Learned counsel for petitioner filed application seeking permission to produce documents and sought permission to lead further chief examination and mark those documents. Learned counsel for respondent present. Heard. Perused the application and same is allowed. PW.1 present and further examined in part. Ex.P7 to Ex.P17 documents are



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	marked. Cross examination off PW.1 adjourned on request. Call on 25.03.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>25.03.2025</u> P - HSK R - CLN X of PW.1	Petitioner/ PW.1 present. Respondent absent. Learned counsel for respondent present and prays time on the ground that her senior counsel has gone out of station. Hence, cross examination of PW.1 adjourned as last chance by 09.04.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>09.04.2025</u> P - HSK R - CLN X of PW.1	Petitioner present. Respondent absent. Sri.CLN Advocae filed power for respondent along with NOC of previous counsel. Learned counsel for respondent prays time on the ground that today she filed power and to get the case papers ready, she required time. Hence, posted for cross examination of PW.1 as last chance by 29.04.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru



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<u>29.04.2025</u> P - HSK R - CLN X of PW.1	P.O is on CL/EL/Training/Vacation. Call on 10.06.2025. Sd/- I/c Family Court, Mysuru
<u>10.06.2025</u> P - HSK R - CLN X of PW.1	Both parties are present. PW.1 present and cross examined in part. Further cross examination of PW.1 adjourned on request. Call on 25.06.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>05.06.2025</u> P - HSK R - CLN X of PW.1	Both parties are present. PW.1 present. Learned counsel for respondent present and prays time on the ground that her senior counsel his suffering from ill health. Hence, cross examination of PW.1 by 08.07.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>08.07.2025</u> P - HSK R - CLN X of PW.1	Both parties are present. PW.1 present and further cross examined. Learned counsel for respondent prays to adjourn the case for further cross examination of PW.1. Heard. No grounds made out to adjourn



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	the case on the same stage for further cross examination of PW.1. In spite of sufficient opportunities to the respondent, she has no fully cross examined PW.1. Hence, prayer rejected. Further cross examination of PW.1 is taken as closed. Witness discharged. Petitioner side evidence closed. Respondent has taken notice under O.12 Rule 8 of CPC seeking issuance of direction to the petitioner to produce the documents. Posted for reply and the respondent side evidence by 18.07.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>18.07.2025</u> P - HSK R - CLN RESP. EVI.	Both parties are absent. Learned counsel for petitioner filed reply to the notice under taken U/O.12 Rule 8 of CPC. Learned counsel for respondent prays time for respondent side evidence. Hence, posted for respondent side evidence finally by 30.07.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru



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<u>30.07.2025</u> P - HSK R - CLN RESP. EVI.	Both parties are present. Learned counsel for respondent filed application U/Sec. 151 of CPC praying to reopen the case of the petitioner and U/O 18 Rule 17 R/w Sec.151 of CPC praying to recall PW.1 for the purpose of further cross examination. Learned counsel for petitioner present and submitted that application may be allowed. Heard both sides. Perused the IAs, both the applications are allowed. PW.1 present and further cross examined in full through in camera evidence. Petitioner side evidence closed. Learned counsel for respondent prays time. Hence, posted for respondent side evidence as last chance by 12.08.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>12.08.2025</u> P - HSK R - CLN RESP. EVI.	Petitioner present. Respondent absent. Learned counsel for respondent present and prays time on the ground that the relation of the respondent was expired and as such she was unable to appear



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	before this Court to give her evidence. Posted for respondent side evidence as last chance by 20.08.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>20.08.2025</u> P - HSK R - CLN RESP. EVI.	Petitioner present. Respondent absent. Learned counsel for respondent present and prays time for respondent side evidence. Heard. No grounds made out to adjourn the case on the same stage for respondent side evidence. In spite of opportunities, the respondent has no chosen to lead her evidence. Hence, prayer is rejected and respondent side evidence taken as nil. Posted for arguments on 04.09.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>04.09.2025</u> P - HSK R - CLN ARGUMENTS	Both parties are present. Learned counsels for petitioner present and prays time. Hence posted for arguments by 16.09.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru



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<u>16.09.2025</u> P - HSK R - CLN ARGUMENTS	Petitioner present. Respondent absent. Learned counsel for petitioner present and submitted his side argument on merit. As the respondent and her counsel absent. Case posted for respondent argument by 18.09.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>18.09.2025</u> P - HSK R - CLN RESP. ARGUMENTS	Petitioner present. Respondent absent. Her counsel absent. No representation. Case kept by. Again case called out at 3.12 pm. Petitioner present. Respondent absent. Her counsel absent. No representation. Even though there is no grounds made out to adjourn the case on the same stage for respondent side argument in the absence of respondent and her counsel. However, to grant one more opportunity to the respondent to address arguments, case adjourned for respondent side arguments as last chance by 26.09.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru



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<u>26.09.2025</u> P - HSK R - CLN RESP. ARGUMENTS	Petitioner present. Respondent absent. Her counsel absent. No representation. Case kept by. Again case called out at 12:33 pm. Petitioner present. Respondent absent. Her counsel absent. No representation. No grounds made out to adjourn the case on the same stage for respondent side arguments in the absence of respondent and her counsel. In spite of opportunity, the respondent has not chosen to submit her side of arguments. Hence, respondent side arguments taken as nil. Posted for further arguments if any by, 10.10.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>10.10.2025</u> P - HSK R - CLN For Further hearing	Both parties are present. Sri.C.V. Advocate filed power for respondent along with NOC of previous counsel. Case kept by. Again case called out at 3.30 pm. Petitioner present.



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	Respondent absent. Learned counsel for respondent prays time to submit his arguments on the ground today he filed vakalath for the respondent. Perused the order sheet, the Court has granted ample opportunity to the respondent to submit his arguments. But however, the respondent has failed to submit her arguments. Learned counsel for petitioner present and seriously objected to grant adjournment on the ground that the respondent throughout the proceedings appeared but however she has not intentionally led her evidence and even she has not submitted her side of arguments. Hence, prays to reject the prayer for adjournment. Perused the order sheet, as this Court has granted ample opportunity to the respondent, even this Court by an order dated 26.09.2025 taken the respondent side argument as nil. In such being the case, once again adjourning the case on the same stage does not arise. However, by reserving the right of arguments of the respondent with a direction to file written arguments with due notice to the petitioner. Case posted for judgment by 10.11.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>10.11.2025</u> P - HSK	Both parties are present.



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R - CV JUDGMENT	Judgment not ready. Judgment by 01.12.2025. Sd/- I Addl. Prl Judge, Family Court, Mysuru
<u>01.12.2025</u> P - HSK R - CV FOR JUDGMENT	Judgment pronounced in the open Court, vide separate judgment <u>ORDER</u> The petition filed U/s 13(1)(i-a) of Hindu Marriage Act, is allowed with cost. Consequently, the marriage solemnized between the petitioner and respondent on 24.04.2019 at Nithyananda Kalyana Mantapa, Vidyananyapuram, Mysuru and registered before Registrar of Marriages, Mysuru South vide No.MYS- HM142-2019-20 dated 03.05.2019 in CD No.MYSM20, is hereby dissolved. Both parties are liberated from the bondage of marriage. Draw decree accordingly. Office to furnish free copy of the decree to both parties as contemplated under Sec.23(4) of H.M.Act. Sd/- I Addl. Prl Judge, Family Court, Mysuru



15. It is not the case of the respondent wife that immediately after rejecting the prayer to lead evidence on 20.08.2025, the Family Court passed the Judgment. As could be seen from the order sheet, after 20.08.2025, matter was listed on 06 occasions providing opportunity to submit her arguments. Ultimately, the judgment came to be passed in the month of December 2025. The Family Court has taken nearly four months time from the date of rejecting the prayer of respondent till passing the Judgment, upon affording opportunity to both the sides to canvass their arguments. The Order sheet of the Family Court speaks about the opportunities granted to the respondent wife, which she has failed to avail.

16. A perusal of the order sheet in divorce petition as well as order passed in G & WC clearly shows that despite providing several opportunities, the respondent has not availed the same to lead her evidence to disrupt the case of the petitioner / husband / father, by producing any corroborative or cogent evidence in support of her



contention that the photographs produced are all created, concocted and the allegations made are baseless. In that view of the matter, we have no other option, except to hold that the respondent wife withheld herself from entering into witness box, perhaps to withhold herself from cross-examination. In that view of the matter, we find no substance in the argument of Sri.Naren Shakthi Swaroop, that the Family Court has failed to afford reasonable opportunity to the respondent wife to prove her case to save the marriage or to save the custody of the child. Accordingly, we answer Point No.1 in the ***Negative***, against the wife and in favor of the husband.

17. **POINT NO.2**: Mr.Naren Shakthi Swaroop, with all vehemence submitted that the documents produced are created and there are certain admissions by the petitioner - husband in the cross-examination, which the Family Court has failed to consider. As observed supra, the respondent has not led any evidence on her own to contradict the evidence of husband either oral evidence or



documentary. The documents produced on its own speaks that they are selfie photographs. The electronic documents are supported with the Certificate. The veracity of the same has not been destructed by leading any evidence. If the respondent wife has any doubt or suspicion regarding the same, ought to have sought for forensic test of the same in order to support her contention. No such attempt has been made by the wife. In the absence of any contra evidence, we are of the considered opinion that the Family Court on the available evidence, has properly considered the entire evidence, especially from Paragraph Nos.20, 29 and 31 of its Judgment, to come to the conclusion that the conduct of the wife during the marital relationship was objectionable, as she was having relationship with other person, out of marital tie, which seriously caused mental torture and cruelty to the husband and rightly so considered and granted divorce. As such there is no infirmity found which requires any interference. So far as opportunity, we have already answered the conduct of the



respondent wife in her failure to avail the opportunities accorded. In that view of the matter, we answer Point No.2 in the ***Affirmative***, against the wife and in favor of the husband.

18. **POINT NO.3:** At the first instance, the arguments advanced by Mr.Naren Shakthi Swaroop, appear to be persuasive/ appealable, particularly in light of Section 6 of the Guardians and Wards Act, which recognizes that, although the father is the natural guardian, the custody of a minor child below the age of five years ordinarily remains with the mother. However, a perusal of the allegations made in both the divorce petition as well as custody, the said contention of learned counsel cannot be countenanced. The Child is at very tender age. The Family Court in the divorce petition filed by the father/husband against the mother/wife, granted divorce on the ground of cruelty, in view of objectionable relationship of the wife/mother with some other persons,



out of the marriage, when the marriage was still subsisting with the husband/ father.

19. A well cultured healthy environment/ atmosphere is very much required for the nourishment and development of tender aged child. The child is now 6½ years. The Courts stepping into the parents' *patriae* jurisdiction are duty bound to consider the paramount welfare of the child as the primary object, rather the egoistic claim made by the parents. In normal circumstances, considering the tender age of the child, we would have considered the contention of the learned counsel for the respondent/ mother, but for the conduct of the wife having extra marital relationship with somebody else, that too, during the subsistence of marriage, which was proved in divorce petition and the same also taken into consideration by the Family Court while considering the case of minor's custody to the husband/father carefully at Paragraph Nos.24 to 27, which we have already extracted above, the atmosphere/ environment with the



mother is not congenial to the healthy/ better future of the minor Ward. Merely because the respondent is a mother, cannot be a reason to permit her to retain the custody of the minor Ward. The welfare and healthy development of the child would not be safer with the mother in the better interest of the child. A minor cannot be given to the custody of a parent wherein the interest of the minor Ward would be jeopardized.

20. The petitioner /husband being a biological father of the minor, the interest of minor Ward would be better protected and safeguarded to give him a bright future by providing good education and environment, which is very much required for the overall development of the Ward and better safeguarded, if the custody is given to him.

21. It is trite law that the welfare of the minor is considered as the absolute and paramount consideration, overriding strict statutory technicalities and parental



rights. The Courts stepping into parents' *patria* jurisdiction are duty bound to prioritize the child's best interests, focusing on their moral, ethical, physical, and emotional well-being and development of the child. The facts of the case, makes it very clear that the better interest of the child is safeguarded with the biological father i.e., the petitioner, rather with the mother. However, at the very same time, it cannot be lost sight that the appellant herein is the mother. In that view of the matter, she can be afforded visitation rights through video calls on every alternative day for 15 to 20 minutes.

22. It is on record that the child was with the father and his family members and as per the record i.e., FIR at Ex.P5, the child was alleged to have been forcibly taken from the custody of the petitioner/ husband/ father by the family members of respondent/ wife/ mother. In view of the allegations and counter-allegations, evidence produced and proved in divorce petition as well as G & WC petition as the same is not controverted by leading cogent and



corroborative evidence by the wife/ mother by entering into witness box and by producing supportive documents, we find no infirmity in the order passed by the Family Court in granting custody of child to the petitioner / father. As we have already answered the question of opportunities denied as alleged by learned counsel for the wife in Point No.1, the reiteration of the same is not required in this point. Accordingly, we answer Point No.3 in the ***Affirmative.***

23. For the foregoing reasons, we proceed to pass the following:

ORDER

- (i) Both the appeals filed by the respondent/ wife/ mother are ***dismissed.***
- (ii) Considering the fact that the appellant herein is mother, she is given a visitation rights, only to make video calls and talk/ converse with the child for 15 to 20



minutes, every alternative day, between
7:00 pm and 9:00 pm.

- (iii) The petitioner herein i.e., the father, shall
not deny the visitation rights through
video calls, provided in this order.
- (iv) Any denial would avail the mother/
appellant herein to move an application
before the Family Court or this Court
seeking modification of visitation rights.
- (v) Given the facts and circumstances of the
case, no order as to costs.

24. In view of dismissal of the appeals, pending
interlocutory applications, if any, stand disposed of.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE