

Reserved on : 05.08.2026

Pronounced on : 12.08.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

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

MISCELLANEOUS FIRST APPEAL NO.2564 OF 2024 (SMA)

BETWEEN:

MRS. SUPRIYA PEREIRA,
AGED ABOUT 35 YEARS,
W/O ALLWYN MICHEL FURTHADO,
D/OL JERORNE PEREIRA
R/AT ANTHONY NAGARA,
NAGANAHALLI VILLAGE,
HEGGADADEVANAKOTE TALUK,
MYSURU DISTRICT - 571 114.

NOW R/AT C/O APSAR ALI KHAN
886, ASHRAYA LAYOUT,
KUMARASWAMY NILAYA,
3RD CROSS, BOGADI 2ND STAGE,
ANANDA NAGARA,
MYSURU - 570 002.

...APPELLANT

(BY SMT. S. SUSHEELA, SR. ADVOCATE FOR
SMT. DHANALAKSHMI Y., ADVOCATE)

AND:

MR. ALLWYN MICHEL FURTADO,
AGED ABOUT 38 YEARS,
S/O MICHAEL
R/AT NURANI MASZID,
MICHAEL VILLA,
OLD HARIPURA ROAD,

SAMTA NAGAR MIRJA,
SANGLI MIRAJ KUPWAED,
MIRAJ, SANGLI,
MAHARASHTRA - 416 410.

...RESPONDENT
(BY SRI. ALLWYN MICHEAL FURTADO, PARTY-IN-PERSON)

THIS MFA IS FILED UNDER SECTION 39 OF SPECIAL MARRIAGE ACT, 1954, AGAINST THE JUDGMENT AND DECREE DATED: 26.02.2024 PASSED IN M.C.NO.857/2021 ON THE FILE OF THE III ADDITIONAL PRINCIPAL FAMILY JUDGE, MYSURU, DISMISSING THE PETITION FILED UNDER SECTION 27(1)(D) OF SPECIAL MARRIAGE ACT, 1954.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE T.M. NADAF** PRONOUNCED THE FOLLOWING:

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

CAV JUDGMENT

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

This Miscellaneous First Appeal by the petitioner/wife/mother under Section 39 of Special Marriages Act, 1954¹, calling in question the judgment and

¹ "SMA, 1954" for short

decree dated 26.02.2024, passed by the III Additional Principal Family Judge, Mysuru² in MC.No.857/2021.

2. The FC under the impugned judgment and decree dismissed the petition filed by the petitioner seeking dissolution of marriage under Section 27(1)(D) of Special Marriage Act, 1954. However, allowed I.A.No.17 filed under Section 151 of CPC read with Section 38 of SMA, 1954 and directed the petitioner to hand over the custody of minor child Ciya Furtado to respondent forthwith, however granting visitation rights to the petitioner.

3. Heard Smt.S.Susheela, learned Senior counsel assisted by Smt.Dhanalakshmi.Y, learned counsel for appellant and Sri. Allwyn Michael Furtado, part-in-person.

4. Smt. Susheela, learned Senior Counsel at the outset submits that the petitioner is not pressing this appeal against the dismissal of her petition seeking for divorce. The appellant is much aggrieved by the order on

² "FC" for short

I.A.No.17, granting permanent custody of minor child to the respondent.

5. Sri.Allwyn Michael Furtado, who has appeared as party-in-person fairly submits that he too is interested in the welfare of the child and he is waiting for his wife to come and join him and he is not interested in dissolution of marriage and his intention is to save marriage for the benefit of healthy marital life as well as welfare of the child.

6. We express our appreciation to this submission made by the husband-Sri Allwyn Michael Furtado. Sri.Furtado further submits that he is native of Miraj, in the State of Maharashtra and now because of his wife and children residing in Bengaluru, he is residing in Bengaluru and working. He fairly submits that he is single in Bengaluru and nobody resides with him in his residence. If the child's custody is given, he would return back to Miraj, wherein there are family members and will take care of the child.

7. Admittedly, the child is a minor girl child aged about 7 years. A female child requires constant care and nurture of the mother. In view of the sensitivity involved in the case, and considering the fact that the respondent/father now is single in his home, the order of custody of the child may not be in the welfare and interest of the child. In family disputes, when it comes to the custody of the wards, the Court exercising its jurisdiction as *parens patriae* has to consider the paramount welfare and interest of the child. In view of the fact that the minor ward is a girl child, we are of the opinion that the order passed by the FC allowing I.A.No.17 appears to be harsh on both the child as well as mother and not in the paramount interest of the child.

8. It is germane to mention here that the child is a special child, which is also noticed by the FC and the child requires constant treatment, continuous care, love and affection of the mother. The solitary incident is that the mother left the child with day care for some reason. The FC overweighed on the receipt at Ex.P15 stated to be

receipts dated 31.11.2022, 21.09.2022 and 01.09.2022, showing that the mother left the child in daycare without following medical advise, cannot be a circumstance to detach the child from mother and hand over the custody to the father, who is admittedly not from local place and no one except him in home at Bengaluru. He is admittedly having his residence at Miraj in Maharashtra State.

9. The FC further swayed with the statement of the mother that she is residing along with the child in Bengaluru and this is the reason to hand over the custody of the child on the premise that, the mother being a single woman is not able to look after the girl child who is a special child. It is equally true that the husband is also living alone in Bengaluru. It is further noticed and not disputed that the husband is paying Rs.15,000/- p.m., towards maintenance of child. In that view of the matter, we modify the order passed by the FC, keeping intact the order on application filed under Section 27(1)(D) of SMA, 1954 with all hope that the love and affection towards child may bring back the bridge, burning all the previous

disparities/differences between the husband and wife and work out more towards bonding a healthy marital life to reconcile and reunite. In that view of the matter, the order passed by the FC on I.ANo.17 is set aside and modified granting the petitioner/father following visitation rights.

- i. The respondent/husband/father can visit the child between 11.00 a.m. to 03.00 p.m. on every Sunday, in the presence of wife/mother in any place of their choice preferably in a holy place, park or a good restaurant in the near vicinity of the residence of wife, where the wife and the daughter are presently living.
- ii. The respondent/husband/father is also permitted to make video calls every evening between 06.00 to 07.00 p.m. for 10-15 minutes.
- iii. The respondent/father can accompany the wife/mother with the child, while the child is taken for treatment to the Doctors on every Saturday, whenever they visit on each occasion and as per the convenience

of the respondent, if he is otherwise not busy.

- iv. The petitioner/wife/mother shall not come in the way of visitation rights. Any infraction would be viewed seriously on the application by the respondent husband/father.
- v. The respondent/husband/father is directed to pay a sum of Rs.25,000/-p.m. towards maintenance of the child, considering the fact that the child is a special child, since she requires constant care and medication, which the respondent/husband in person has not seriously disputed and readily agreed.

10. With these modifications the appeal stands ***partly allowed.***

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**