

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF JANUARY, 2021

BEFORE

THE HON' BLE MR.JUSTICE R. DEVDAS

**WRIT PETITION NO.27431 OF 2015 (GM-FC)**

BETWEEN

MS. ANN THOMAS  
D/O MR. N THOMASKUTTY,  
AGED ABOUT 32 YEARS,  
RESIDING AT D G -2/207B,  
VIKASPURI, NEW DELHI-110 018.  
ALSO RESIDING AT APT NO.A/1203,  
NAGARJUNA ASTERPARK,  
YELAHANKA,  
BANGALORE-64.

...PETITIONER

(BY SRI AMIT A MANDGI, ADVOCATE)

AND

1 . MR. BIJU MATHEW  
SINCE DEAD REPRESENTED  
BY HIS LEGAL HEIRS

1(a) MR. THOMAS MATHEW,  
S/O LATE T M THOMAS,  
AGED ABOUT 60 YEARS

1(b) MRS ALICE MATHEW  
W/O THOMAS MATHEW,  
AGED ABOUT 69 YEARS,

BOTH THE PARTIES MENTIONED ABOVE  
RESIDING AT NO.34,  
SHANTHINIKETHAN LAYOUT,  
VIGRO NAGAR POST,  
MEADAHALLI, BANGALORE-47.

...RESPONDENTS

(BY MS. BHARMAL SHIRIN SHABBIRBHAI, ADVOCATE FOR  
SRI MENTO ISSAC, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DATED 27.4.2015 PASSED BY THE LEARNED VI ADDITIONAL FAMILY COURT JUDGE AT BANGALORE IN EXECUTION PROCEEDINGS VIDE ANNEXURE-A AND ETC.

THIS WRIT PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

#### **R. DEVDAS J., (ORAL):**

The petitioner is the estranged wife of Mr. Biju Mathew, between whom proceedings for divorce were initiated in M.C.No.2059/2013 and was disposed of on 25.03.2014 in terms of the mediation report submitted by the Bangalore Mediation Centre. Prior to that, the husband had filed G &W.C No.157/2013, under Section 7 of the Guardians and Wards Act, 1890 seeking custody of the minor child. In the settlement that had happened between the parties before the Mediation Centre, the petitioner had agreed that

the father will visit the minor child once in a month with prior intimation to the petitioner and subject to the child's and parties convenience. It is submitted that there was non compliance of the visitation rights in terms of the settlement and therefore an Execution Petition was filed by the husband in Ex.Case No.69/2014. However during the pendency of the execution proceedings, the husband passed away on 25.11.2014 and the husband's parents filed an interlocutory application under Order XXII Rule 3 R/w Section 151 of the CPC seeking permission to be brought on record in the execution proceedings as a legal heirs of the deceased son. The impugned order dated 27.04.2015 was passed on the application made by the parents-in-law of the petitioner. The application was allowed and there is a direction given to the petitioner to comply with the terms of settlement and send the child for visitation of the grandparents. Being aggrieved, this writ petition is filed by the petitioner-wife/daughter-in-law.

2. Learned counsel for the petitioner Sri Amit.A.Mandgi, appearing for the petitioner, very fairly submits that the petitioner has no objection for grandparents meeting the child. But the apprehension is that the child suffers from certain illness and is not

like a normal child and it may be difficult for the child to be with the grandparents more so because of the fact that the child has never been with the father or the grandparents. Therefore, it is the submission of the learned counsel for the petitioner that if the grandparents i.e., respondents agree they may visit the house of the petitioner in order to develop a bonding with the child and thereafter the child could be taken to the grandparents house.

3. The learned counsel for the respondents-grandparents draws the attention of this Court to condition No.8 in the settlement, which provides that in case of demise of respondent-husband, the rights and obligations flowing under the agreement shall devolve on the respondent's parents. Learned counsel would submit that the grand parents are also eager to have the child in their house and show their love and affection towards the child. To the suggestion made by the learned counsel for the petitioner, the grandparents-respondents who are present before the Court readily agree stating that they too want the child to be in the best of the environment and the welfare of the grand child is a paramount consideration of the grand parents also.

4. Having heard the learned counsel and the parties who are present before the Court, this Court finds that there is absolutely no problem between the parties and the only thing that was required was to sit across the table and sort out the issue. Nevertheless, the respondents-grandparents have also come forward to settle the issue in terms which would be in the interest of the grand child. Consequently, this Court proceeds to pass the following order:

- (i) initially the respondents-grand parents may visit the house of the petitioner-daughter in law on every first Saturday of every month and spend some time as agreed upon in the settlement. Similarly the petitioner may also take the child to the respondent's grandparents house, at the request of the grandparents and try to acclimatize the child in the care and custody of the respondent-grandparents. Necessary change in the date and time of visitation rights is permitted with mutual consent. Flexibility is provided, depending on the facts and circumstances.
- (ii) This arrangement shall continue for a period of one year. Thereafter, depending on how the child get adjusted in the grandparents house,

the visitation rights as agreed upon in the settlement shall continue without any hindrance.

- (iii) In view of the arrangement agreed upon by the parties, the respondents-grandparents shall file necessary application before the Executing Court to dispose of the execution petition.

The writ petition stands disposed of in the above terms.

**Sd/-  
JUDGE**

KLY/