

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 26.07.2011*

+ **CM (M) No.1530/2009**

ARUNISH SOOD Petitioner
Through: Mr. Lalit Bhardwaj, Advocate.

Versus

KUMAR SOOD & ANOTHER Respondents
Through: Mr. S.P. Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This petition has impugned the order dated 06.10.2009 vide which the petition under Section 25 of the Guardians and Wards Act, 1890 seeking custody of the minor child Shivansh Sood had been dismissed; the Court was of the view that Delhi courts donot have the territorial jurisdiction to try the present petition.

2 The present petition has been filed by the father of the minor child seeking custody of his son Master Shivansh Sood

presently in the care and custody of his maternal grandparents, Kumar Sood and Smt. Sanjogita Devi Sood.

3 The parties i.e. Arunish Sood and Shivani had been married on 01.11.2004 according to Hindu rites. A male child master Shivansh was born out of their wedlock on 10.08.2005. On the same, immediately after the birth of the child, mother of the child expired. It is not in dispute that during her four month old pregnancy Shivani had gone to live with per parents at her parental house at Palmpur, Himachal Pradesh; child was born there. Contention of the petitioner is that after the death of his wife, he had sought the custody of his child; he had sent a legal notice dated 21.09.2006 to the respondents (maternal grandparents of the child) but to no avail. The petitioner has admittedly since remarried and he has one female child out of the wedlock. His further contention is that his second wife is in a position to look after the male child who is presently in the custody of the respondents; the petitioner being the father is the preferential guardian of the child and he has accordingly sought his custody.

4 An application under Order 7 Rule 11 of the Code had been filed before the Guardian Court seeking rejection of the plaint on the ground that Delhi Courts did not have the territorial

C.M.(M)No.1530/2009

jurisdiction to decide this dispute. The impugned order had returned a finding in favour of the respondents; the plaint stood rejected. This order has now been impugned before this Court.

5 Learned counsel for the petitioner has placed reliance upon a judgment of this Court reported in 76 (1998) DLT 526 Ramji Lal Yadav Vs. Dalip Kumar Yadav to support his submission that the constructions of words “where the ward for the time being ordinarily resides” under Section 9 of the Guardian and Wards Act has been misconstrued by the Guardian Court; relationship between the applicant, the minor and the opponent had necessarily to be considered; father in this case is the preferential guardian over and above the maternal grandparents and in the absence of any specific disqualification qua the father custody should have been granted in his favour. It is pointed out that in this case (Supra) the Guardian Court had decided this issue in favour of the petitioner; this had been upheld by the High Court in appeal and it had not interfered with the order of the trial Judge keeping in view of the factual scenario of that case. It is pointed out that the facts of the instant case are also the similar.

6 Arguments have been refuted.

7 Section 9 of the Guardians and Wards Act deal with the jurisdiction of the Court to entertain an application under the said

Act; it reads as follow:-

“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.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”

8 To decide the jurisdictional issue, this Court has to see whether the minor ordinarily was residing. Admittedly since the birth of the child on 05.08.2005, child is living with his maternal grandparents; this petition had been preferred in the year 2006. Child was about more than one year old at that time. He is presently more than six years old and is attending school. It is also not the case of the petitioner that the child is a temporary resident of Himachal Pradesh; admittedly he is living there continuously from the date of his birth and is attending his school therein. The cause of action made out in the present petition is that the petitioner last was residing at Delhi with his wife and that

is why Delhi Courts have the territorial jurisdiction. This is not the import and intent of Section 9 of the Guardians and Wards Act. The prayer of the petitioner is bordered largely on his own convenience; even on specific query put by the Court to the petitioner as to why this petition cannot be preferred in Himachal Pradesh, the petitioner has no answer.

9 The interest of the child is paramount. Assuming that the petition is to be tried in Delhi, the child will be disturbed not only physically, he will have to attend the hearing in the Court as no Court can decide the custody of a child without talking to the child; that apart the emotional and social edifice built up of the child in the preceding six years of his life will also be set to turmoil and will be disturbed. The promulgation of the Guardians and Wards Act is with the intent and object to watch the interest of the minor child whose interest is of utmost importance. In this instant scenario keeping in view the admitted fact that the father has not met the child since the last six years, in fact right from the inception of his birth, the contention being that the father had in fact deserted the mother of the child, the welfare and interest of the child will be jeopardized if the child is brought to Delhi for court hearings. As already noted supra, petition under Section 25

sought custody of his child) can in no manner be decided without interviewing or talking to the child. The judgment of Ramji Lal Yadav (Supra) was delivered in the peculiar facts of that case where the maternal grandfather of the child had been granted a temporary custody of the child which had been forcibly prolonged and which fact had stared in the mind of the Court to hold in those peculiar circumstances the place of residence of the father could also be held to the place where the Court could have territorial jurisdiction to try the said petition. Those facts are distinct.

10 The admitted facts are that the child is ordinarily a resident of Himachal Pradesh; he is living with his grandparents since the date of his birth; he has probably not even visited Delhi. Before this petition was filed in 2006, the petitioner had made no efforts to meet the child who is now aged more than six years. At the cost of repetition the whole life of the will be disturbed; not only will there be a physical upheaval but emotional and socially the set up of the child will be hampered if he is brought to Delhi. The impugned order suffers from no infirmity.

11 Dismissed.

INDERMEET KAUR, J.

JULY 26, 2011

a