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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-:-

FAO No. 2294 of 2024**Reserved on :-08.08.2024****Pronounced on :- 27.08.2024**

Rajesh

..... Appellant

Versus

Komal

..... Respondent

**CORAM : HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present:- Mr. Bharat Julka, Advocate
for the appellant.

Mr. Samay Singh Sandhawalia, Advocate
for the respondent

SUDEEPTI SHARMA, J.

1. The appellant-husband has challenged the order dated 24.04.2024 passed by learned Principal Judge, Family Court, Kaithal, whereby his application under Order 7 Rule 11 of Code of Civil Procedure, 1908 (for short, 'CPC') filed in case GW/26/2023 seeking rejection of plaint, has been dismissed.

2. Brief facts of the case are that the respondent-wife moved an application (Annexure A-1) under Section 25 read with Section 12 of the Guardians and Wards Act, 1890 (herein after to be referred as 'Act of 1890') before the learned Principal Judge, Family Court, Kaithal, seeking custody of the minor son Dishant (aged 3.5 year). During the pendency of the above petition, the appellant-husband moved the application under Order 7 Rule 11 CPC (Annexure

A-3) for rejection of plaint and the respondent-wife filed her reply to the



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application (Annexure A-4) but the same was dismissed, vide impugned order dated 24.04.2024. Hence the present appeal.

SUBMISSIONS OF THE LEARNED COUNSELS

3. Learned counsel for the appellant contends that the impugned order is liable to be set aside in view of Section 9 of the Act of 1890, which provides that the application with respect to guardianship of the person of the minor shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. He further submits that the minor son is residing with him at Panchkula and is studying in Manav Mangal School, Sector 11, Panchkula. Further the minor son was with the appellant since 24.07.2022 when the respondent-wife left the company of the appellant.

4. *Per contra*, learned counsel for the respondent-wife submits that it is settled law that whenever the age of child is less than 5 years and physical custody is not with the mother then the district in which mother resides shall have the jurisdiction with respect to the custody of the child. He relies upon the judgments of this Court passed in *Smt. Sarabjit Vs. Piara Lal and Another [2005(3) RCR (Civil) 213]*; *Amit Kashyap Vs. Pooja [2017(1) Law Herald]* and *Akashy Gupta Vs. Divya [2021(1) RCR (Civil) 722]*. He further contends that the Family Court Judge has dismissed the application of the appellant by relying upon these judgments. He further contends that the respondent-wife filed the custody case in Family Court, Kaithal on 12.04.2023 and from the past one year the appellant-husband did not file his written statement inspite of availing five consecutive opportunities. He further contends that since the custody of child is already with the husband, therefore, he has filed the application under Order 7 Rule 11 of CPC after the delay of one year and was seeking adjournments for the last one year. He



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further contends that the mother is natural guardian of the child below five years of age whereas the custody of the child is with the appellant. Therefore, to delay the proceedings he did not take objection of jurisdiction at the initial stage when he was asking for adjournments for filing reply.

5. We have heard learned counsel for the parties and perused the whole record of this case.

6. Learned Principal Judge, Family Court, Kaithal dismissed the application under Order 7 Rule 11 CPC filed by the appellant on the ground that the minor son was born on 24.11.2020 and is less than 5 years of age and as per Section 6 of the Hindu Minority and Guardianship Act, 1956 and custody of the child below 5 years would ordinarily lie with the mother. Learned Principal Judge, Family Court further held that the intention of Section 6(a) of the Hindu Minority and Guardianship Act, 1956 is that even though the minor below 5 years may not be in physical custody/residing with mother but still his/her custody would be deemed to be at the place where the mother is residing and the respondent-mother at the time of instituting proceedings before the Family Court, was deemed natural guardian of the minor child since the child was below 5 years of age, therefore, the natural custody would also be presumed to be with the mother, regardless of the place where the child was actually/physically residing at that time. By relying upon the judgments of this Court in ***Smt. Sarabjit Vs. Piara Lal and Another [2005(3) RCR (Civil) 213]; Amit Kashyap Vs. Pooja [2017(1) Law Herald] and Akashy Gupta Vs. Divya [2021(1) RCR (Civil) 722]***, learned Principal Judge, Family Court, Kaithal dismissed the application under Order 7 Rule 11 CPC filed by the appellant by holding that the Family Court, Kaithal has jurisdiction to entertain and try the petition as the child is below the age of 5 years and has to reside ordinarily



with the mother, therefore, the expression “where the minor ordinarily resides” has to be interpreted to mean the residence of mother.

RELEVANT PROVISIONS OF LAW

7. For proper adjudication of the matter, relevant provisions of law are being reproduced as under:-

GAURDIAN AND WARDS ACT, 1890

Section 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.*

If the application is with respect of 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 the place where he has property.

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 on conveniently by any other District Court having jurisdiction.

Section:-12 . Power to make interlocutory order for production of minor and interim protection of person and property.- (1) *The Court may direct that the person if any, having the custody of the minor,*



shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

If the minor is a female who ought not to be compelled to appear in public, the claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

Any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

Section:-17 Matter to be considered by the Court in appointing guardian.- (1) *In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.*

In considering what will be for the welfare of the minor, the Courts shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

If the minor is old enough to form an intelligent preference, the Court may consider that preference.



The Court shall not appoint or declare any person to be a guardian against his will.

Section 25 . Title and guardian to custody of ward.- (1) *if a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.*

For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882 (10 of 1882).

HINDU MINORITY AND GUARDIANSHIP ACT, 1956

Section 4. Definitions.—*In this Act,—*

(a) *“minor” means a person who has not completed the age of eighteen years;*

(b) *“guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—*

(i) a natural guardian,

(ii) a guardian appointed by the will of the minor’s father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any Court of wards.



(c) “natural guardian” means any of the guardians mentioned in section 6.

Section 6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother:

provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expressions “father” and “mother” do not include a step-father and a step-mother.

SUBSTANTIAL QUESTION OF LAW

8. The question which is to be decided by this Court is interpretation of the expression “the place where the minor ordinarily resides” referred to in Section

9(1) of the Guardian and Wards Act, 1890.



ANALYSIS OF JUDGMENTS REFERRED TO BY THE LEARNED COUNSEL FOR THE RESPONDENT AND THE FAMILY COURT

1.Smt. Sarabjit Vs. Piara Lal and Another [2005(3) RCR (Civil) 213];

2.Amit Kashyap Vs. Pooja [2017(1) Law Herald]

3. Akashy Gupta Vs. Divya [2021(1) RCR (Civil) 722]

9. In all the above referred to judgments learned Single Bench of this Court decided the question of jurisdiction by interpreting the expression “minor ordinarily resides” as used in Section 9 of the Guardian and Wards Act, 1890 to mean, for the children below 5 years of age to be residence of the mother in view of Section 6(a) of the Hindu Minority and Guardianship Act, 1956. We find that all the above referred to decisions of learned Single Judge are per-incuriam and Section 9 of the Guardian and Wards Act 1890, has been wrongly interpreted.

10. A perusal of the definition of ‘Guardian’ shows that the guardian is the person who is having the care of the person of a minor or his property or both his person and property which includes natural guardians.

11. Section 6 defines natural guardian of the Hindu minor as per which the natural guardian of Hindu minor in respect of minor’s persons as well as in respect of minor’s property is in case of boy or unmarried girl, the father and after him, the mother. Proviso to this section states that the custody of minor who has not completed the age of five years shall ordinarily be with the mother.

12. By using the language “shall ordinarily be with the mother” the intention of the legislature is that since the child below 5 years is normally breast feeding child and requires love and affection from the mother and since mother gives birth to the child, the child is more comfortable in the lap of the mother,



therefore the intention of the legislature is welfare and the comfort of the child. For that the language is “shall ordinarily be with the mother” and not “shall be with the mother”. By using the words “shall ordinarily be with the mother”, the intention of the legislature is to see the welfare of the child. The custody of the minor cannot be with the mother who is unchaste, insane, leading immoral life, insensitive, leading to estranged matrimonial relationship with her husband (the father of the child), sick, physically or mentally suffering from any disability, not conducive for ideal upbringing of the child. Therefore, the intention of the legislature is that the proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956 is not mandatory but depends upon the welfare of the child. If the intention of the legislature under Section 6 of the Hindu Minority and Guardianship Act, 1956 would have been that the natural guardian of Hindu minor who has not completed the age of 5 years shall be the mother then the provisions under Sections 12, 17 and 25 of the Guardian and Wards Act, 1890 would be redundant for the minor below the age of 5 years.

13. A bare perusal of the provision of Section 17 of the Guardian and Wards Act, 1890 shows that this is mandatory provision which reads that in appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of Section 17 of Guardian and Wards Act 1890, be guided by what, consistently with the law to which minor is subject, appears in the circumstances to be for the welfare of the minor. It further reads that in considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor.

14. Section 25 deals with the title of guardian to custody of ward. It reads that if a ward leaves or is removed from the custody of the guardian of his person,



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the Court, if of the opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

15. A conjoint reading of all the above referred to statutory provisions shows that the intention of the legislature in Section 9 with respect to the jurisdiction is that application for the guardianship of the person of the minor shall lie to the District Court having jurisdiction in the place where the minor is actually and physically residing and not as per the proviso to Section 6(a) of Hindu Minority and Guardians Act, 1956.

16. Hon'ble Supreme Court in ***Rosi Jacob Vs. Jacob A. Chakramakkal*** [1973 AIR Supreme Court 2090] while dealing with Section 25 of the Guardian and Wards Act, 1890 held as under:-

“14. In our opinion, Section 25 of the Guardians And Wards Act contemplates not only actual physical custody but also constructive custody of the guardian which term includes all categories of guardians. The object and purpose of this provision being ex facie to ensure the welfare of the minor ward, which necessarily involves due protection of the right of his guardian to properly look after the ward's health, maintenance end education, this section demands reasonably liberal interpretation so as to effectuate that object. Hyper-technicalities should not be allowed to deprive the guardian of the necessary assistance from the Court in effectively discharging his duties and obligations towards his ward so as to promote the latter's welfare. If the Court under the Divorce Act cannot make any order



with respect to the custody of Ajit: alias Andrew and Maya alias Mary and it is not open to the Court under the Guardians and Wards Act to appoint or declare guardian of the person of his children under Section 19 during his lifetime, if the Courts does not consider him unfit, then, the only provision to which the father can have resort for his children's custody is Section 25. Without, therefore, laying down exhaustively the circumstances in which Section 25 can be invoked, in our opinion, on the facts and circumstances of this case the husband's application under Section 25 was competent with respect to the two elder children. The Court was entitled to consider all the disputed questions of fact or law properly raised before it relating to these two children. With respect to Mahesh alias Thomas, however, the Court under the Divorce Act is at present empowered to make suitable orders relating to his custody, maintenance and education. It is therefore, somewhat difficult to impute to the Legislature an intention to set up another parallel Court to deal with the question of the custody of a minor which is within the power of a competent Court under the Divorce Act. We are unable to accede to the respondent's suggestion that his application should be considered to have been preferred for appointing or declaring him as a guardian. But whether the respondent's prayer for custody of the minor children be considered under the Guardians and Wards Act or under the Indian Divorce Act, as observed by Maharajan J., with which observation we entirely agree, "the controlling consideration governing the custody of the children is the welfare of the children concerned and not the



right of their parents", It was not disputed that under the Indian Divorce Act this is the controlling consideration. The Court's power under Section 25 of the Guardians And Wards Act is also, in our opinion, to be governed primarily by the consideration of the welfare of the minors concerned. The discretion vested in the Court is, as is the case with all judicial discretions to be exercised judiciously in the background of all the relevant facts and circumstances. Each case has to be decided on its own facts and other cases can hardly serve as binding precedents, the facts of two cases in this respect being seldom-if ever identical. The contention that if the husband is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading. It does not take full notice of the real core of the statutory purpose. In our opinion, the dominant consideration in making orders under Section 25 is the welfare of the minor children and in considering this question due regard has of course to be paid to the right of the father to be the guardian and also to all other relevant factors having a bearing on the minor's welfare. There is a presumption that a minor's parents would do their very best to promote their children's welfare and, if necessary, would not grudge any sacrifice of their own personal interest and pleasure. This presumption arises because of the natural, selfless affection normally expected from the parents for their children. From this point of view, in case of conflict or dispute between the mother and the father about the custody of their children,



the approach has to be somewhat different from that adopted by the Letters Patent Bench of the High Court in this case. There is no dichotomy between the fitness of the father to be entrusted with the custody of his minor children and considerations of their welfare. The father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. If the custody of the father cannot promote their welfare equally or better than the custody of the mother, then, he cannot claim indefeasible right to their custody under Section 25 merely because there is no defect in his personal character and he has attachment for his children -which every normal parent has. These are the only two aspects pressed before us, apart from the stress laid by the husband on the allegations of immorality against the wife which in our firm opinion, he was not at all justified in contending. Such allegations, in view of earlier decisions, had to be completely ignored in considering the question of custody of the children in the present case. The father's fitness from the point of view just mentioned cannot override considerations of the welfare of the minor children. No doubt, the father has been presumed by the statute generally to be better fitted to look after the children - being normally the earning member and head of the family but the Court has in each case to see primarily to the welfare of the children in determining the question of their custody, in the background of all the relevant facts having bearing on their health, maintenance and education. The family is normally the hear of our society and for a balanced and



healthy growth of children it is highly desirable that they get their due share of affection and care from both the parents in their normal parental home. Where, however family dissolution due to some unavoidable circumstances becomes necessary the Court has to come to a judicial decision on the question of the welfare of the children on a full consideration of all the relevant circumstances. Merely because the father loves his children and is no, shown to be otherwise undesirable cannot necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him as against the wife who may also be equally affectionate towards her children and otherwise equally free from blemish, and, who, in addition, because of her profession and financial resources may be in a position to guarantee better health, education and maintenance for them. The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father. is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them. The approach of the learned single Judge, in our view, was correct and we agree with him. The Letters Patent Bench on appeal seems to us to have erred in reversing him on grounds which we are unable to



appreciate.

* * * * *

16. *The respondent's contention that the court under the Divorce Act had granted custody, of the two younger children to the wife on the ground of their being of tender age, no longer holds good and that, therefore, their custody must be handed over to him appears to us to be misconceived. The age of the daughter at present is such that she must need the constant company of a grown-up female in the house genuinely interested in her welfare. Her mother is in the circumstances the best company for her. The daughter would need her mother's advice and guidance on several matters of importance. It has not been suggested at the bar that any grown-up woman closely related to Maya alias Mary would be available in the husband's house for such motherly advice and guidance. But this apart, even from the point of view of her education, in our opinion, her custody with the wife would be far more beneficial than her custody with the husband. The youngest son would also, in our opinion, be much better looked after by his mother than by his father who will have to work hard to make a mark in his profession. He has quite clearly neglected his profession and we have no doubt that if he devotes himself wholeheartedly to it he is sure to find his place fairly high up in the legal profession.*

17. A perusal of the above referred to judgment shows that the Hon’ble Supreme Court while interpreting Section 25 of the Guardian and Wards Act held that the object and purpose of this provision being ex facie to ensure the welfare of



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the minor child, which necessarily involves due protection of the right of his guardian to properly look after the ward's health, maintenance and education, this section demands reasonably liberal interpretation so as to effectuate that object. It is further held hyper-technicalities should not be allowed to deprive the guardian of the necessary assistance from the Court in effectively discharging his duties and obligations towards his ward so as to promote the latter's welfare.

18. In *Ruchi Majoo Vs. Sanjeev Majoo [2011(6) SCC 479]*, para 3 of the judgement refers to the facts of the case, which is reproduced as under:-

“3. The present happens to be one such case where legal proceedings have engaged the parties in a bitter battle for the custody of their only child Kush, aged about 11 years born in America hence a citizen of that country by birth. These proceedings included an action filed by the father-respondent in this appeal, before the American Court seeking divorce from the respondent- wife and also custody of master Kush. An order passed by the Superior court of California, County of Ventura in America eventually led to the issue of a red corner notice based on allegations of child abduction levelled against the mother who like the father of the minor child is a person of Indian origin currently living with her parents in Delhi. The mother took refuge under an order dated 4th April, 2009 passed by the Addl. District Court at Delhi in a petition filed under Sections 7, 8, 10, 11 of the Guardians And Wards Act granting interim custody of the minor to her. Aggrieved by the said order the father of the minor filed a petition under Article 227 of the Constitution of India before the High Court of Delhi. By the order impugned in this appeal the High Court



allowed that petition, set aside the order passed by the District Court and dismissed the custody case filed by the mother primarily on the ground that the Court at Delhi had no jurisdiction to entertain the same as the minor was not ordinarily residing at Delhi - a condition precedent for the Delhi Court to exercise jurisdiction. The High Court further held that all issues relating to the custody of child ought to be agitated and decided by the Court in America not only because that Court had already passed an order to that effect in favour of the father, but also because all the three parties namely, the parents of the minor and the minor himself were American citizens. The High Court buttressed its decision on the principle of comity of courts and certain observations made by this Court in some of the decided cases to which we shall presently refer.”

Three questions were framed by the Hon’ble Supreme Court for determination. In the present case only the first question would be relevant **“whether the High Court was justified in dismissing the petition for custody of the minor on the ground that the Court at Delhi had no jurisdiction to entertain the same”**

Hon’ble Supreme Court in the case of **Ruchi Majoo (supra)** while dealing with Section 9 of the Guardian and Wards Act, 1890, held as under:-

“5. There is no gainsaying that any challenge to the jurisdiction of the court will have to be seen in the context of the averments made in the pleadings of the parties and the requirement of Section 9 of the Guardian and Wards Act, 1890. A closer look at the pleadings of the parties is, therefore, necessary before we advert to the legal



requirement that must be satisfied for the Court to exercise its powers under the Act mentioned above.

* * * * *

13. Section 9 of the Guardian and Wards Act, 1890 makes a specific provision as regards the jurisdiction of the Court to entertain a claim for grant of custody of a minor. While Sub-section (1) of Section 9 identifies the court competent to pass an order for the custody of the persons of the minor, sub-sections (2) & (3) thereof deal with courts that can be approached for guardianship of the property owned by the minor. Section 9(1) alone is, therefore, relevant for our purpose. It says :

"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."

14. It is evident from a bare reading of the above that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the 'ordinary residence' of the minor. The expression used is "Where the minor ordinarily resides". Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy. The factual aspects relevant to the question of



jurisdiction are not admitted in the instant case. There are serious disputes on those aspects to which we shall presently refer. We may before doing so examine the true purpose of the expression 'ordinarily resident' appearing in Section 9(1) (supra). 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 characterised by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

15. *The word 'reside' has been explained similarly as under :*

"Reside : live, dwell, abide, sojourn, stay, remain, lodge. (Western-Knapp Engineering Co. V. Gillbank, C.C.A. Cal., 129 F2d 135, 136.) To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in residence, to have an abiding place, to be present as an element, to inhere as quality, to be vested as a right. (State ex rel. Bowden v. Jensen Mo., 359 S.W.2d 343, 349.)"

16. *In Websters dictionary also the word 'reside' finds a similar*



meaning, which may be gainfully extracted :

- "1. To dwell for a considerable time; to make one's home; live.
2. To exist as an attribute or quality with in. 3. To be vested:
with in"*

16A. In Mrs. Annie Besant v. Narayaniah AIR 1914 Privy Council 41 the infants had been residing in the district of Chingleput in the Madras Presidency. They were given in custody of Mrs. Annie Besant for the purpose of education and were getting their education in England at the University of Oxford. A case was, however, filed in the district Court of Chingleput for the custody where according to the plaintiff the minors had permanently resided. Repeating the plea that the Chingleput Court was competent to entertain the application their Lordships of the Privy Council observed :

"The district court in which the suit was instituted had no jurisdiction over the infants except such jurisdiction as was conferred by the Guardians and Wards Act 1890. By the ninth Section of that Act the jurisdiction of the court is confined to infants ordinarily residing in the district.

It is in their Lordship's opinion impossible to hold that the infants who had months previously left India with a view to being educated in England and going to University had acquired their ordinary residence in the district of Chingleput."

17. In Mst. Jagir Kaur and Anr. v. Jaswant Singh, AIR 1963 Supreme Court 1521, this Court was dealing with a case under Section 488 Criminal Procedure Code 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 : "

.....Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases there on, 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....."

*18. In **Kuldip Nayar & Ors. v. Union of India & Ors., 2006(7) SCC 1**, the expression "ordinary residence" as used in the Representation of People Act, 1950 fell for interpretation. This Court observed : "*

*243. Lexicon refers to **Cicutti v. Suffolk County Council (1980)3 All England Reporter 689** to denote that the word "ordinarily" is primarily directed not to duration but to purpose. In this sense the question is not so much where the person is to be found "ordinarily", in the sense of usually or habitually and with some degree of continuity, but whether the quality of residence is "ordinary" and general, rather than merely for some special or limited purpose.*

244. The words "ordinarily" and "resident" have been used



together in other statutory provisions as well and as per Law Lexicon they have been construed as not to require that the person should be one who is always resident or carries on business in the particular place. 245. The expression coined by joining the two words has to be interpreted with reference to the point of time requisite for the purposes of the provision, in the case of Section 20 of the RP Act, 1950 it being the date on which a person seeks to be registered as an elector in a particular constituency.

246. Thus, residence is a concept that may also be transitory. Even when qualified by the word "ordinarily" the word "resident" would not result in a construction having the effect of a requirement of the person using a particular place for dwelling always or on permanent uninterrupted basis. Thus understood, even the requirement of a person being "ordinarily resident" at a particular place is incapable of ensuring nexus between him and the place in question."

19. Reference may be made to Bhagyalakshmi and Anr. v. K.N. Narayana Rao, AIR 1983 Madras 9, Aparna Banerjee v. Tapan Banerjee, AIR 1986 Punjab and Haryana 113, Ram Sarup v. Chimman Lal and Ors., AIR 1952 Allahabad 79, Smt. Vimla Devi v. Smt. Maya Devi & Ors., AIR 1981 Rajasthan 211, and in re: Dr. Giovanni Marco Muzzu and etc. etc., AIR 1983 Bombay 242, in which the High Courts have dealt with the meaning and purport of the expressions like 'ordinary resident' and 'ordinarily resides' and



taken the view that the question whether one is ordinarily residing at a given place depends so much on the intention to make that place ones ordinary abode.”

After above referred to discussion the Hon’ble Supreme Court answered the question in negative.

CONCLUSION

19. In view of the above, we find the order dated 24.04.2024 is infirm and against the statutory provisions of law. Therefore we set aside the same and allow the present appeal.
20. Pending applications, if any, also stand disposed off.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 27, 2024
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Whether speaking/reasoned: Speaking

Whether reportable: Yes / No