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

CNR No. DLHC010072422026

+ **CRL.REV.P.(MAT.) 116/2026 & CRL.M.(BAIL) 433/2026**

OM PRAKASH

.....Petitioner

Through: **Mr. Sunil Kumar, Advocate.**

versus

SMT. ARCHANA GAUTAM & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

25.09.2026

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1. The present revision petition assails the judgment dated 11th November, 2025, passed by the Principal Judge, Family Court, East District, Karkardooma Courts, in MT No. 197/2018. By the impugned judgment, Respondent No. 1's claim for maintenance was declined, while the Petitioner was directed to pay maintenance of INR 8,000 per month to Respondent No. 2, the minor child, from 3rd February, 2018, the date on which the petition was instituted.

2. At the outset, counsel for the Petitioner, on instructions, confines the revision to the question of territorial jurisdiction. The finding that the Petitioner is the biological father of Respondent No. 2 is not assailed. Nor is the award of maintenance in favour of Respondent No. 2 challenged, either as to entitlement or quantum. The sole question, therefore, is whether the Family Court at Karkardooma had territorial jurisdiction to entertain the



petition under Section 125 of the Code of Criminal Procedure, 1973¹.

3. The objection rests principally on the circumstance that Respondent No. 1 is employed as a teacher with the Government of Uttar Pradesh and was posted in District Bulandshahar; that her permanent address, electoral record and certain bank accounts were also in Uttar Pradesh; and that Respondent No. 2 was born at Khurja. The Petitioner also relies on statements attributed to Respondent No. 1 in proceedings under the Protection of Women from Domestic Violence Act, 2005, to contend that she was residing at Bulandshahar and visited her parents in Delhi only on weekends. These were, in substance, the grounds urged in his application under Section 126 Cr.P.C. before the Family Court.

4. The objection was not raised for the first time in revision. It had been taken before the Family Court, and evidence was led on the question of Respondent No. 1's residence. Although an issue on maintainability was framed, the impugned judgment contains no express finding on territorial jurisdiction. The application under Section 126 Cr.P.C. was not separately decided either. The consequence of that omission will be considered later.

5. Section 126(1) Cr.P.C. governs the place where proceedings under Section 125 may be instituted. In *Mst. Jagir Kaur v. Jaswant Singh*², the Supreme Court explained that "resides" is not synonymous with domicile. A person may reside at a place permanently or temporarily, but the place must in fact be an abode; a casual stay or a flying visit will not suffice. Whether a person resides at a particular place is, therefore, a question of fact to be determined from the circumstances of each case.

¹ "Cr.P.C."

² AIR 1963 SC 1521



6. This Court applied the same distinction in *Sachin Gupta v. Rachana Gupta*³. Section 126(1) does not insist upon permanent residence. Even a place where the wife is residing “for the time being” may confer jurisdiction. What will not suffice is a residence temporarily assumed solely to create a forum. The enquiry, therefore, is whether the asserted residence was genuine or merely colourable.

7. The petition was instituted on 03rd February, 2018. Both Respondents were shown as residing at 87C, Pocket-D1, DDA Flats, Mayur Vihar Phase-III, Delhi. The petition pleaded that, after Respondent No. 1 was turned out of the matrimonial home in February 2017, she was attending her duty from Delhi. It also expressly stated that both Respondents were residing at Mayur Vihar Phase-III and that the Court at Delhi consequently had jurisdiction.

8. The Mayur Vihar address formed part of the original petition itself. It thus preceded the Petitioner’s challenge to territorial jurisdiction and was not introduced later to answer that objection.

9. The oral evidence does not dislodge this position. Respondent No. 1 accepted her substantial connection with Uttar Pradesh: she was employed there as a government teacher, had a permanent address there, continued on the electoral roll there until shortly before her cross-examination, and maintained bank accounts at Khurja. At the same time, when specifically questioned about her residence at the time the proceedings were instituted, she denied that she was then residing in Uttar Pradesh. Her evidence was that, notwithstanding her permanent address in Uttar Pradesh, she was residing in Delhi.

10. Place of employment, permanent address and actual residence may

³ (2019) 257 DLT 87



coincide, but they need not. Section 126 does not require the claimant to establish that the forum invoked is her exclusive residence, nor does it import the technical concept of domicile. Respondent No. 1's continuing links with Uttar Pradesh, therefore, do not by themselves negate a genuine residence in Delhi.

11. The other circumstances relied upon do not alter that conclusion. Respondent No. 2's birth at Khurja in 2016 does not establish where he resided when the petition was instituted nearly two years later. PW-2's statement that Respondent No. 1 had lived in Uttar Pradesh before and after the marriage does not identify the relevant period and cannot establish that she was residing there, to the exclusion of Delhi, on 03rd February, 2018. The Petitioner likewise stated that he had seen her at Khurja during 2017-2018, but could identify neither the address at which she was living nor the duration of her stay. Presence at one place does not, without more, negate residence at another.

12. The electoral record must be viewed in the same manner. Electoral registration is undoubtedly relevant to the question of residence, but it is not conclusive of the enquiry under Section 126 Cr.P.C. Respondent No. 1 relied upon the Delhi Election ID Card bearing the address of Mayur Vihar Phase-III, Delhi, which was issued in 2014. However, her name admittedly continued to remain on the electoral roll of Constituency No. 70, Khurja, Bulandshahr, Uttar Pradesh, and was deleted therefrom only shortly prior to her deposition in May 2024. Respondent No. 1 was cross-examined at length on this apparent inconsistency. The continued electoral registration in Uttar Pradesh, therefore, is a relevant circumstance, but by itself cannot displace the other material bearing upon her residence at Mayur Vihar, particularly



the Delhi Election ID Card and the other documents relied upon by her.

13. The Petitioner also places considerable reliance on a statement attributed to Respondent No. 1 in the proceedings under the DV Act, namely, that she was residing at Bulandshahar and visited her parents in Delhi on weekends. She was questioned on that statement in cross-examination. The certified statement itself, however, does not form part of the present paper-book; what is before the Court is its reproduction in the Petitioner's application under Section 126 Cr.P.C. Even if the statement is taken at face value, it has to be weighed against the contemporaneous pleadings in the present proceedings and Respondent No. 1's direct testimony concerning her residence when the petition was instituted. It does not, by itself, establish that the Mayur Vihar address was fictitious.

14. Respondent No. 2's position also assumes relevance since he is the sole beneficiary of the impugned maintenance order. In *Vijay Kumar Prasad v. State of Bihar*⁴, the Supreme Court noticed that clauses (b) and (c) of Section 126(1) confer upon wives and children a wider choice of venue which is not available to parents claiming maintenance. Respondent No. 2 was a co-petitioner from the outset, was admittedly a minor in the custody of Respondent No. 1, and was stated to be residing with her at Mayur Vihar. There is no material of comparable weight placing him elsewhere when the petition was instituted. His subsequent schooling at Salwan Public School, Delhi, though not by itself proof of his residence in February 2018, is consistent with the Delhi residence asserted in the petition.

15. The Petitioner next contends that the Family Court ought to have decided his application under Section 126 Cr.P.C. before proceeding to the



claim for maintenance. The decision in *Raj Kumari Vijn v. Dev Raj Vijn*⁵ does not support such an inflexible proposition. The Supreme Court approved the course of recording evidence on the entire case before deciding the objection to territorial jurisdiction.

16. That does not mean that an objection to territorial jurisdiction may simply be left unanswered. The Family Court ought to have dealt with it expressly while disposing of the petition. The Petitioner's grievance is justified to that extent. The real question is whether the omission warrants a remand.

17. In the present case, the objection was fully tried, though not expressly decided. Respondent No. 1 was extensively cross-examined on the issue of her residence; both sides led evidence on that question; and the objection was reiterated at the stage of final arguments. The evidentiary record necessary to decide the objection is, therefore, complete and is before this Court.

18. A remand would require the Family Court to pronounce upon the same evidentiary record, while further delaying a maintenance proceeding instituted in 2018. The omission in the impugned judgment was avoidable, but it has caused neither prejudice nor any failure of justice. A remand would, in these circumstances, serve no useful purpose.

19. The material relied upon by the Petitioner undoubtedly shows Respondent No. 1's substantial links with Uttar Pradesh, but does not disprove her residence in Delhi when the petition was instituted. Respondent No. 2, the minor child and sole beneficiary of the maintenance order, was

⁴ (2004) 5 SCC 196

⁵ (1977) 2 SCC 190



stated to be residing with her at Mayur Vihar, and there is no sufficient material on record to establish otherwise.

20. The Family Court at Karkardooma, therefore, had territorial jurisdiction to entertain the petition. The sole ground on which the impugned judgment is challenged fails.

21. The revision petition is accordingly dismissed. All pending applications stand disposed of. Any interim order stands vacated.

22. It is clarified that this Court has examined neither the finding as to biological paternity nor Respondent No. 2's entitlement to, or the quantum of, maintenance, those aspects having been expressly left unchallenged by the Petitioner.

23. The Trial Court record be returned forthwith.

SANJEEV NARULA, J

SEPTEMBER 25, 2026/ab