

CR No.2671 of 2016

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

CR No.2671 of 2016

Date of decision:27.10.2016

Nakul Saxena and another

... Appellants

Vs.

Shivani Saxena and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Divya Sarup, Advocate
for the petitioners.

Mr. Ajay Jain, Advocate
for respondents No.1 and 2.

AMIT RAWAL J. (Oral)

The petitioners are aggrieved of the impugned order dated 16.02.2016 (Annexure P-1), whereby, the application by invoking the provisions of Order 7 Rule 10 of Code of Civil Procedure (hereinafter referred to as "CPC") in the suit filed under Sections 18, 20 to 22 of the Hindu Adoption and Maintenance Act, 1956, for return of the plaint to the proper Court, has been dismissed.

Mr. Divya Sarup, learned counsel appearing on behalf of the petitioners submits that as per the provisions of Section 16(d) CPC, the Court at Hisar would not have any jurisdiction to try the aforementioned suit as the property was situated in Ghaziabad and the petitioners are residing in Lucknow and Mumbai. In this background of the matter, the aforementioned application, was filed.

He further submits that even the respondent-wife is also residing at Ghaziabad and passed on certain documents to substantiate the aforementioned plea, thus, the order under challenge is not sustainable in the eyes of law.

During the hearing of the revision petition, Mr. Sarup was very fair enough to the Court to apprise the order dated 23.04.2013 of this Court rendered in FAO No.2942 of 2011 titled as Ashok Chopra vs. Meena Chopra and others, wherein, identical situation arose after the proceedings initiated under the aforementioned provisions of law but the same did not weigh in the mind of this Court.

He further submits that in view of the application filed under Section 127 of Cr.P.C., the address of the respondents is of Hisar but there is pleading with regard to her residence at Ghaziabad.

Per contra, Mr. Ajay Jain, learned counsel appearing on behalf of respondents No.1 and 2 has relied upon the ratio decidendi culled out by Madhya Pradesh High Court in **Sushilabadi Rohani Prasad and another vs. Rohani Prasad and others 1982 HLR 107** to contend that as per the provisions of Section 20(c) CPC, the petition under the aforementioned provisions of law was maintainable as the cause of action accrued at Hisar as the respondent-wife was abandoned at Hisar.

He further submits that even the petitioners have not chosen to file the written statement. The application filed under Order 7 Rule 10 CPC was not maintainable and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Sarup, for, the provisions of Section 20(c) CPC came to be debated upon by the Hon'ble Division Bench of this Court after taking the aid of provisions of Section 16 and the same was rejected. Moreover, I am of the view that relief as sought is premature as the petitioners have not disclosed their defence. They are at liberty to raise all possible pleas and press for issues, much less, lead evidence with regard to the purported petition filed under Section 127 of Cr.PC for the purpose of territorial jurisdiction at Hisar, but not in the manner and mode as indicated above.

I am also in agreement with the ratio decidendi culled out by the Madhya Pradesh High Court in Sushilabadi Rohani Prasad's case (supra) with regard to territorial jurisdiction.

For the reasons aforementioned, I do not intend to differ with the findings rendered in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

October 27, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No