

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

**CR No. 6683 of 2016(O&M)**

**Date of decision: 19.12.2016**

Amit Kashyap

....Petitioner

VERSUS

Pooja

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. S.K. Jain, Advocate for the petitioner.

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**REKHA MITTAL, J.**

The present petition directs challenge against order dated 12.08.2016 (Annexure P-4) passed by the District Judge/Guardian Judge Ludhiana dismissing application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') dated 23.09.2015 (Annexure P-2) filed by the petitioner for rejection of the petition for want of territorial jurisdiction of the Court.

Pooja, wife of Amit Kashyap, filed a petition under Section 6 of the Hindu Minority and Guardianship Act, 1956 and Sections 8, 12 and 25 of the Guardian and Wards Act, 1890 for custody of Yash Kashyap born on 13.12.2012 before the Court at Ludhiana. The instant application for rejection of petition by invoking the provisions of Order 7 Rule 11 CPC was filed on the allegations that Yash Kashyap was born in Government Hospital, Phase-VI, Mohali. He is residing with his father at Chandigarh and is also studying in a school at Chandigarh and he never stayed or resided at Ludhiana, therefore, the minor being ordinarily residing in

Chandigarh, the Court at Ludhiana does not have the jurisdiction to entertain and try the petition.

Counsel for the petitioner in line with the allegations raised in the application has submitted that the Court at Ludhiana lacks territorial jurisdiction to entertain and try the petition with regard to guardianship and custody of the minor child. In addition, it is argued that it would not be in the interest of welfare of the child if he is called at Ludhiana for the purpose of present petition. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Pooja Bahadur Vs. Uday Bahadur**, 1993(3) RCR (Civil) 219.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Pooja, mother of a minor less than 5 years filed the petition for guardianship and custody of the child as she is residing with her parents at Ludhiana due to marital disharmony between the petitioner and his wife. The trial Court by relying upon judgment of this Court **Smt. Sarabjit Vs. Piara Lal and another**, 2005(3) RCR (Civil) 213, has held that the Court at Ludhiana has the jurisdiction to entertain and try the present petition as a child below the age of 5 years has to reside ordinarily with the mother, therefore, the expression 'where the minor ordinarily resides' has to be interpreted to mean residence of the mother.

Counsel for the petitioner has not disputed the ratio laid down in **Smt. Sarabjit's case** (supra) wherein this Court in para 10 has held, quoted thus:-

"10. The question then arise whether the expression 'minor ordinarily resides' used in Section 9 could be construed to mean that the minor would cease to reside with his mother. Once Under Section 6(1), it is mandatory that a child below the age of 5 years has to reside ordinarily

with the mother then the expression 'where the minor ordinarily resides' has to be interpreted to mean the residence of the mother. In other words the residence of the mother would follow the residence of the son. This proposition is supported by the view taken by the Karnataka High Court in the case of K. C. Sashidhar (supra). I am further of the view that the learned Guardian Judge has lost sight of the fact that a period of 2 years had already expired since the filing of application by the petitioner. It is appropriate to mention that the application was filed on 17-3-2002 and she was non-suited by sustaining the objection of lack of territorial jurisdiction. After such a delay ordinarily the petition should not be returned by sustaining the objection of territorial jurisdiction.”

Counsel for the petitioner has referred to judgment of Hon’ble the Supreme Court in Pooja Bahadur’s case (supra) but in the said case, the Court did not deal with the question of as to how ordinary residence of a minor less than 5 years is to be treated for the purpose of deciding the question of jurisdiction of a Court to decide custody or guardianship of the minor. Taking into consideration the enunciation of law laid down in Smt. Sarabjit’s case (supra) and in absence of any contrary precedent cited by counsel for the petitioner, I do not find any error much less illegality in the impugned order warranting intervention. I would hasten to add that even the proceedings for divorce initiated at the instance of the petitioner are pending before the Court at Ludhiana having been transferred there on the request of respondent-wife.

So far as plea of the petitioner that in case the proceedings are allowed to carry on at Ludhiana, it may cause some inconvenience to the minor child, the petitioner would be at liberty to raise such an issue before the trial Court at the time of deciding the question of interim custody, if any, or visitation rights to the mother during pendency of the proceedings

and the same shall be decided by the Court below on its merits, in accordance with law.

For the foregoing reasons, the petition fails and is accordingly dismissed in *limine*.

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| <b>DECEMBER 23, 2016</b>  |   | <b>(REKHA MITTAL)</b> |
| ‘D. Gulati’               |   | <b>JUDGE</b>          |
| Whether speaking/reasoned | : | yes/no                |
| Whether reportable        | : | yes/no                |