

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 488 OF 2016

Shri Sabgonda Anna Patil

..Applicant

Vs

1.Dr.Shri Sandesh Bajirao
Admuthe and Anr.

.. Respondents

Mr. Manoj A. Patil, Advocate for Applicant.

Mr. Shivaji A Masal, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.
DATE : 27/02/2017**

PC:

1. Heard Mr.Manoj Patil, learned counsel for the applicant and Mr. Shivaji Masal, learned counsel for the respondents at length.
2. By this Application under section 115 of the Code of Civil Procedure, the applicant has challenged the Judgment and order dated 6.6.2016 passed by the learned District Judge-8, Kolhapur in Civil Misc. Application No. 234 of 2015. By that order, the learned District Judge held that the District Court at Kolhapur has jurisdiction to entertain and try the application made by the respondents under Section 6 of the Hindu Minority and Guardianship Act, 1956 (for short, 'Act') for custody of minor Sanvi and overruled the objection raised by the applicant. Rule. Mr.Masal waives service on behalf of the respondents. Having regard to the narrow controversy raised in this petition and at the

request and by consent of the parties, Rule is made returnable forthwith and Application is taken up for final hearing.

3. In support of this application, Mr. Patil submitted that marriage of respondent no.1 Dr. Sandesh Admuthe and Dipali, daughter of applicant, was solemnized on 8.7.2011. Out of this wedlock, daughter Sanvi was born on 28.5.2012. As immediately after delivery, Dipali suffered from Jaundice, she was admitted in Wanless Hospital, Miraj on 3.6.2012. During the course of treatment, she died on 10.6.2012.

4. Mr. Patil invited my attention to the assertions made by the respondents in the application filed under Section 6 of the Act. He submitted that ordinary residence of minor Sanvi is Sangli district. The learned District Judge was, therefore, not justified in holding that ordinary residence of minor Sanvi is Kolhapur and accordingly the District Court at Kolhapur has jurisdiction to entertain and try the proceedings. He relied upon Section 9 of the Guardians and Wards Act, 1890 to contend that application with respect to the guardianship of the person of the minor has to be made to the District Court having jurisdiction in the place where the minor ordinarily resides. In the present case, ordinary residence of minor Sanvi is Sangli District and, therefore, the District Court at Sangli will have jurisdiction to entertain and try the application. In support of this submission, he relied upon the following decisions:

1. Rajni Sharma Vs. Fateh Chand Sharma, 2009 (4)Civil L.J. 670;
2. C.Narasaraji V S. Ramesh, 2012 (2) CTC 717;
3. Ramnivas Ganpatlal Sharma Vs. Smt Shakuntalabai Bansilal Sharma, 2015 (5) Mah.L.J. 932;
4. Ruchi Majoo Vs. Sanjeev Majoo , (2011) 6 SCC 479
5. On the other hand, Mr.Masal supported the impugned order. He submitted that respondent no.1, being father of the minor Sanvi, is the natural guardian. He relied upon Section 6(a) of the Act. He submitted that as the minor daughter Sanvi is below 5 years, and her mother expired on 10.6.2012, respondent no.1 being the father is the natural guardian of minor Sanvi. He has also invited my attention to the assertions made in paragraphs 5, 7 and 8 of the application made under section 6 as also the statement dated 27.4.2015 of respondent no.2 recorded by police Sub Inspector attached to Old Rajwada Police Station, Kolhapur. He submitted that in paragraph 8 of the impugned order, the learned District Judge rightly held that custody of Sanvi with the applicant herein is in forced circumstances. There was the common understanding between respondent no.1 and applicant herein that minor Sanvi will remain with her grand parents for the time being as their daughter died due to illness. He submitted that residence of minor Sanvi with the applicant herein was of a temporary nature and on humanitarian ground

and cannot be considered Sangli as her ordinary place of residence.

6. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The moot question in the present case is whether ordinarily residence of minor Sanvi is at Sangli District or Kolhapur District. It is settled principles of law that while considering issue of jurisdiction, the Court has to go by the averments made in the plaint. In the present case, perusal of the averments made by the respondents in Application under section 6 of the Act and in particular paragraph 2 shows that minor Sanvi was born on 28.5.2012. Her mother was admitted in Wanless Hospital, Miraj on 3.6.2012 for treatment of jaundice. She died on 10.6.2012. The respondents lodged a complaint with Old Rajwada Police Station, Kolhapur on 25.4.2015.

7. In paragraph 5, respondents have averred that in the new year of 2014 (Padwa), respondent no.1 approached the applicant for custody of minor Sanvi. The applicant avoided to hand over custody. Somehow, respondent no.1 persuaded applicant in April 2014 and when he brought Sanvi at Kolhapur, original Respondent no1-Smt. Pramila Bhurgunde (who was subsequently deleted) came along with the first respondent. In paragraph 7, the respondents asserted that respondents no.1 and 2 were married on 15.12.2014 and again sought custody of minor Sanvi.

A perusal of the application in its entirety shows that minor Sanvi was residing in Sangli district right from her birth in May 2012. It has also come on record that minor Sanvi is taking education in Sangli.

8. In the case of Ruchi Majoo (*supra*), in paragraph 45 the Apex Court observed that “the fact remains that Kush was ordinarily residing with the appellant, his mother and has been admitted to a school, where he has been studying for the past nearly three years. The unilateral reversal of a decision by one of the two parents could not change the fact situation as to the minor being an ordinary resident of Delhi, when the decision was taken jointly by both the parents”. Applying the principles laid down by (1) Allahabad High Court in Rajni Sharma (*supra*), (2) Madras High Court in S. Ramesh (*supra*) and (3) this court in Ramnivas Sharma (*supra*), in my opinion it has to be held that ordinary residence of minor Sanvi is Sangli district. The learned District Judge was, therefore, not justified in observing that residence of minor Sanvi at Sangli was temporary residence. In view of Section 9(1) of the Guardian and Wards Act, 1890, application with respect to guardianship of minor Sanvi has to be entertained and tried by the District Court at Sangli as ordinary residence of minor Sanvi is at Sangli.

9. In view thereof, impugned order deserves to be set aside and is quashed and set aside, thereby, allowing Application

made by the applicant. The proceedings of Civil Misc. Application No. 234 of 2015 filed in the District Court Kolhapur shall stand transmitted to the District court at Sangli.

10. Rule is made absolute accordingly with no order as to costs.

(R.G.KETKAR, J.)