

Civil Revision No.1945 of 2017 (O&M)

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

Sr. No.112

**Civil Revision No.1945 of 2017 (O&M)
DECIDED ON: May 11, 2017**

Dr. ARUN KANT

..PETITIONER

VERSUS

REKHA TANWAR

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rakesh Kumar Kaundal, Advocate,
for the petitioner.

JASPAL SINGH, J.

CM No.8472-CII of 2017

Application is allowed as prayed for.

Document (Annexure P-6) is taken on record subject to all just
exceptions and be tagged at appropriate place.

CR No.1945 of 2017

By virtue of the instant revision petition preferred under Article
227 of the Constitution of India, petitioner has sought the setting aside of
impugned order dated February 15, 2017 (Annexure P-3) passed by the
learned Civil Judge (Senior Division), Chandigarh, whereby an application

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moved by the petitioner under Section 9 of Guardian and Wards Act, 1890 (for short 'Act, 1890'), for the dismissal of the petition under Section 25 of the Act, 1890 has been rejected.

2. While assailing the impugned order dated February 15, 2017, it has been argued with vehemence by the learned counsel for the petitioner that at the time of filing of petition, the minor was residing at G003, D-1, Tower, Paras Panorama, Kharar, District Mohali and in view of Section 9 of the Act, 1890 as well as ratio of law highlighted in case “*Ruchi Majoo vs. Sanjeev Majoo, 2011 (6) Supreme Court Cases 479*; “*Pooja Bahadur vs. Uday Bahadur, 1999 (2) Apex Court Journal 211*, the territorial jurisdiction of Chandigarh Court is barred. In the instant case is an undisputed fact that minor at present is residing with his father i.e. in the area of Sub-Division Kharar, District SAS Nagar (Mohali). The dismissal of an application by the learned trial court vide impugned order dated February 15, 2017 is absolutely against the settled provisions of law as well as ratio of law laid down in the above referred authorities.

3. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any legal and factual substance therein.

4. No doubt, minor child namely Rithima is residing with his father in the Flat No.271, Evergreen Towers, Desu Majra, Kharar (Punjab), whereas, mother of minor child namely Rekha Tanwar resides at Modern House Complex, Manimajra, Chandigarh. But, there is a specific allegation unfolded by Rekha Tanwar-mother of minor child that after dismissal of divorce petition preferred by the present petitioner-Dr. Arun Kant father of

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minor child vide judgment and decree dated September 16, 2014, the respondent left the House No.5194, Ground Floor, Sector 38 (West), Chandigarh where she as well as her husband and minor child were residing. But present petitioner without informing her as well as relative of the parties took the minor child to unknown place in the area of village Dhanas, Chandigarh. She made several efforts to trace out whereabouts of her husband as well as minor child namely Rithima but the same proved futile. However, subsequently, it came to light that her husband has solemnized marriage with one Jaspreet Kaur Jassal, aged 27 years daughter of Tajinder Pal Singh Jassal, resident of House No.6005, A-2, Block, Paras Panorma, Kharar, District SAS Nagar (Mohali). Thus, at the time of minor daughter was allegedly removed from the custody of her mother by her father, she was resident of Sector 38 West, Chandigarh. Thus, courts at Chandigarh have got jurisdiction to entertain and try the petition moved under Section 25 of the Act, 1890 and petition under Section 9 of the Act, 1890 has rightly been dismissed by the trial court. Otherwise also, point of jurisdiction being mixed question of law and fact cannot be decided summarily. Moreover, law is pretty settled by now that while dealing with an application for rejection of petition, trial court has only to consider the averments made in the plaint only as a whole and court has to refrain from going through the averments made in the application for rejection of petition or written statement filed by opposite party to the main petition.

5. Taking into consideration all these aspects, this Court is of the considered view that impugned order dated February 15, 2017 is absolutely legally and factually justified and does not call for interference by this

Court.

6. As an upshot of the aforesaid discussion, this Court does not find any merit in the instant petition. As such, the same is dismissed, whereby impugned order dated February 15, 2017 (Annexure P-3) is upheld.

7. No order as to costs.

May 11, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No