

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

CR No.3288 of 2017
Date of decision : 16.08.2017

Chiranjeev Singh Saini

...Petitioner

Versus

Baljit Kaur Saggoo

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Advocate for the petitioner.

Mr. S.S. Chadha, Advocate for the respondent.

ANIL KSHETARPAL, J.

Husband is in revision petition against the order dismissing the application filed under Order 7 Rule 10/10A read with Section 151 CPC.

Wife had filed a petition under Section 25 of the Guardians and Wards Act, 1890 for grant of custody of minor child namely Devansh Singh Saini, born on 04.11.2014. It was alleged in the petition that the husband and the wife alongwith minor child used to reside at Chandigarh and on 1st August, 2016, the husband took the minor child on the pretext of going to the park and then fled away. The pleadings in para No.5 of the petition are as under:-

“5. That respondent resided with petitioner and their minor child namely Devansh Singh Saini at Chandigarh together w.e.f. 17.07.2016 to 01.08.2016. It is submitted that on 01.08.2016 at about 11:00 AM, the respondent picked up

the minor child namely Devansh Singh with from the petitioner on the pretext that they are going to park for walking and will come back within 15-20 minutes. It is submitted that the petitioner waited about one hour and thereafter made telephonic call to respondent, then he did not make any response and thereafter it came to the knowledge of petitioner that the respondent illegally, fraudulently and by misrepresentation taken away the custody of minor child from petitioner and started to reside with her parents at Kalka, District Panchkula. Thereafter the petitioner went to her matrimonial house at Kalka and requested to respondent and his family members either handover the custody of her minor child or allow her to reside with them, but the respondent in connivance with his family members flatly refused to accept both the requests of petitioner and further thrown out her from her matrimonial house and since then petitioner is residing at Chandigarh. It is submitted that custody of minor child taken away by respondent illegally, fraudulently by respondent from House No.2338, Block No.32, Sector 63, Chandigarh.”

The respondent-husband filed an application under Order 7 Rule 10/10A read with Section 151 CPC for return of the plaint on the ground that it should be presented before the Competent Court having the jurisdiction over Tehsil Kalka, District Panchkula, Haryana.

The aforesaid application filed by the husband has been dismissed by the Court while recording as under:-

“9. As the minor is born on 04.11.2014, at present he is below the age of 5 years. Learned counsel for both the parties have agreed and even the statute provides so and it has been settled in Ruchi Majoo's case (supra) and Pooja Bahadur's case (supra) that it shall be made to the District

Court having the jurisdiction for the place, where the minor ordinarily resides. Thus, the question comes before the present court that which is the place where the minor ordinarily resides. Certainly, at present, the respondent resides at Chandigarh and even at the time of filing the present petition, the respondent was residing at Chandigarh and the present petition has been filed on 12.09.2016 and the present applicant has filed a divorce petition under Section 13 of Hindu Marriage Act against the present respondent and that petition was instituted in the year 2016, which is still pending and a perusal of head note of said petition reveals that the present address mentioned of the applicant and the respondent therein is House No.2338, Block 32, Sector 63, Chandigarh and as per the assertions of respondent Baljit Kaur, the minor was removed from her custody at Chandigarh. Though, it is yet to be decided that whether the minor has been removed from her custody forcibly, but one thing has become crystal clear that till the year 2016, the present applicant used to reside at Sector 63, Chandigarh. Even if, it is considered that subsequently, minor has been shifted to Kalka, even then, ordinarily place of residence of the minor cannot be said to be Kalka, because, till the year 2016, the minor used to reside with her mother at Chandigarh. In view of ratio of law laid down in Amit Kashyap's case (supra). Thus, the ordinary place of residence of the minor is Sector 63, Chandigarh. Merely shifting of the same subsequently does not confer that the ordinary place of residence of the child has been changed. As the ordinary place of residence of minor falls within the territorial jurisdiction of Chandigarh, thus, the present application is without any merits and the same is dismissed as such.”

Counsel for the petitioner-husband has challenged the aforesaid

order on the ground that on the day the petition was filed, the child was living with him at Kalka and, therefore, in view of the provisions of Section 9 of the Guardians and Wards Act, 1890, the Court at Chandigarh does not have jurisdiction to entertain and decide the dispute. Section 9 of the Guardians and Wards Act, 1890 is extracted as under:-

“9. Court having jurisdiction to entertain application.—

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”

Learned counsel has also placed reliance on the judgment passed by the Hon'ble Supreme Court of India reported as 2011(6) SCC 479, *Ruchi Majoo Vs. Sanjeev Majoo*. Learned counsel for the petitioner has further relied upon the judgment passed by the Division Bench of this Court reported as 2012(3) PLR 702, *Sunaina Chowdhary Vs. Vikas Chowdhary*.

A careful reading of Section 9 of the Guardians and Wards Act, 1890 would show that the word used by the Legislature is “where the minor

ordinarily resides”. A reading of the assertions made in para No.5 of the petition, which has been extracted above would show that the minor was ordinarily residing with his mother at Chandigarh when he was removed by the father. The child is even 3 years old. On the day when he was picked up, he was hardly 2 years 9 months old.

Counsel for the petitioner has laid stress that on the day application was filed, the child was in the custody of the husband and was residing at Kalka, District Panchkula, therefore, the Civil Court at Chandigarh has no jurisdiction.

On the other hand, learned counsel for the respondent has submitted that child was removed from the custody of the mother from Chandigarh. The child used to ordinarily reside at Chandigarh. He has further submitted that Legislature has used the word “ordinarily resides” and “not reside” and, therefore, the Chandigarh Court has the jurisdiction. He has relied upon the judgment of this Court reported as *2017(1) Law Herald 181* titled *Amit Kashyap Vs. Pooja*. In this case, the Court had held that in case of child who is less than five years, the ordinarily residence of the minor is with the mother.

Counsel for the petitioner further relied upon the judgment passed by this Court reported as *2005(3) RCR (Civil) 213*. In this case also, this Court took a view that in case of small child, place of jurisdiction would be the same as residence of the mother. The Court relied upon Section 6 of the Hindu Minority and Guardianship Act, 1956 which provide that the custody of minor who has not completed the age of five years shall ordinarily be with the mother.

I have heard learned counsel for the parties at length and with their able assistance gone through the paper book.

It is an unfortunate litigation between the husband and the wife. The parties are fighting for custody of a very small child who has not even completed three years.

Under Order 7 Rule 10 CPC, the Court has only to see the pleadings in the plaint. It is clear from the pleadings in the plaint that the child was ordinarily residing with the mother. When child was removed by the husband/petitioner herein on 1st August, 2016, the parties were residing at Chandigarh. Therefore, in my opinion, the child was ordinarily residing at Chandigarh before he was removed to Kalka.

Learned counsel for the petitioner has relied upon the judgment in Ruchi Majoo's case (Supra). In this case, the mother had filed the petition under the Guardians and Wards Act, 1890 at Delhi, although, at that time, the children were not living in Delhi.

In that context, the Court examined the word “ordinarily resides” and ultimately held that the Court at Delhi had jurisdiction to entertain the petition.

Learned counsel for the petitioner has further referred to the judgment passed by the Division Bench in the case of Sunaina Chowdhary (Supra). In this case also, the petition was filed before the Family Court at Gurgaon whereas the children were at that time living in Auckland (New Zealand). The Division Bench ultimately held that Gurgaon Court has the jurisdiction.

Still further, the divorce petition between the parties is pending

at Chandigarh. The parties are already litigating in the Court at Chandigarh.

Further, Chandigarh and Panchkula are adjoining cities. There is hardly distance of 20 KM between the Chandigarh and Kalka where the husband alleges that he is residing with child. The husband is already coming to defend the case at Chandigarh. The District Court of Kalka is at Panchkula. In fact, Panchkula and Mohali are satellite towns of Chandigarh.

In view of the aforesaid discussion, I do not find any reason to interfere with the order passed by the Civil Judge (Senior Division), Chandigarh.

Revision petition is dismissed.

16.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No