

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

**CR No.5103 of 2014
Date of Decision: 24.08.2017**

Seema Sharma

.....Petitioner

Vs

Abhay Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ravi K. Matoo, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged the order dated 05.07.2014 passed by Additional Civil Judge (Senior Division), Patiala, vide which the petitioner was directed to produce her child in the Court without determining the application under Order 7 Rule 11 read with Section 151CPC filed by the petitioner.

[2]. In compliance to the orders dated 16.03.2016, 18.11.2016 and 16.02.2017, publication has already been effected in the newspapers. Despite service, none has appeared on behalf of the respondent. Therefore, the respondent is proceeded against ex parte.

[3]. The impugned order dated 05.07.2014 reads as under:-

“Present: Sh. Rajiv Chaudhary, counsel for petitioner.

Sh. Satinder Pal, counsel for respondent.

Reply not filed. On request and in the interest of justice, case is adjourned to 05.08.2014 for filing reply as last opportunity. Respondent is directed to produce the child for the date fixed.

Sd/-
Deepika/ACJSD/5.7.14”

[4]. It appears that the order has been passed at the preliminary stage, even in the absence of the petitioner who was impleaded as respondent in the petition under Section 9 of the Guardians and Wards Act. On receipt of summon, the petitioner filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the petition on the ground that the petitioner along with her minor son are residing in Sangrur, whereas the petition under Section 9 of the Guardians and Wards Act came to be filed in the Court at Patiala.

[5]. Learned counsel for the petitioner contended that under Section 9(1) of the Act, the Court at Sangrur is having jurisdiction, where the minor is residing and the Court at Patiala was legally obligated to decide the application at the first instance before passing the impugned order.

[6]. Be that as it may, the perusal of the record shows that the order has been passed in a total non-speaking manner. It would be just and appropriate to set aside the order dated

05.07.2014 and remand the case to the Judge, Guardian Court at Patiala to decide the same afresh keeping in view the application filed by the petitioner under Order 7 Rule 11 read with Section 151 CPC.

[7]. In view of above, impugned order dated 05.07.2014 passed by Additional Civil Judge (Senior Division), Patiala is set aside with the direction as made above.

August 24, 2017.

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No