

\$~20

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAT.APP.(F.C.) 197/2017, C.M. No. 41048/2017, C.M. No. 41049/2017 and C.M. No. 41050/2017

ED @ EA

..... Appellant

Through: Mr. Arvind Singh, Advocate along with Mr. S.K. Gautam, Mr. Vipin Raghav and Mr. Anuj Kumar, Advocates.

versus

AKA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **15.11.2017**

SIDDHARTH MRIDUL, J. (ORAL)

1. The present appeal under Section 19 of the Family Courts Act assails the order dated 19.08.2017 rendered by the Principal Judge, Family Court, Rohini, Delhi in case G.P No. 20/17 whereby the petition under Section 6(a) of the Hindu Minority and Guardianship Act, 1956 read with Sections 12 and 25 of the Guardians and Wards Act, 1890, for grant of permanent custody of minor son namely T.A. of the parties, was ordered to be returned to the appellant, the petitioner therein, after retaining the photocopies thereof on the record.

2. It is admitted by the appellant that at least since 18.05.2016, the minor son, who is about 7 years old is in the custody of the respondent/father and has been residing at 8A/36, W.E.A, Karol Bagh, New Delhi.

3. Section 9 of the Guardians and Wards Act, 1890 provides for the competent Court having jurisdiction to entertain an application of the nature instituted by the appellant.

It reads 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.”

4. A plain reading of the above provision would clearly reflect that it postulates that an application in respect of guardianship of the person of the minor is mandated to be filed where the minor ordinarily resides.

5. Although, learned counsel appearing on behalf of the appellant has invited our attention to the decisions in **Ramji Lal Yadav vs. Dalip K. Yadav, 76 (1998) DLT 526** and **Ruchi Majoo vs. Sanjeev Majoo** in Civil Appeal No. 4435/2011 arising out of SLP (C) No. 9220 of 2010 in relation to the ambit of the expression “ordinarily resides”, we find that the same are distinguishable on the facts of the instant case.

6. Further, the Family Courts Act, 1894, which is a special Act

postulates that a Family Court shall exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of nature specified in the said provision.

7. The relevant provision of the said Section 7 is as follows:-

“7. Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall-

- | | | | |
|-----|--|-----|-----|
| (a) | xxx | xxx | xxx |
| (b) | xxx | xxx | xxx |
| (c) | xxx | xxx | xxx |
| (d) | xxx | xxx | xxx |
| (e) | xxx | xxx | xxx |
| (f) | xxx | xxx | xxx |
| (g) | <i>a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”</i> | | |

8. A bare reading of the above provision clearly specifies that where the Family Court has been established for any area, no District Court or any Subordinate Civil Court shall in relation to such area have or exercise any jurisdiction in respect of any suit or proceeding referred to in the explanation which includes Clause (g) extracted above.

9. In view of the foregoing discussion, we are in agreement with the conclusion arrived at by the learned Trial Court as observed in paragraphs 6,7,8 and 9 of the impugned order dated 19.08.2017 which read as follows:-

“ 6. Section 9 of the Guardians & Wards Act, 1890 provides for Courts having jurisdiction to entertain application.

It is reproduced and reads as under:-

9. Courts 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 the application is with respect to the guardianship of the property of the 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.*

Section 9 (1) of the Guardians & Wards Act, 1890 deals with the jurisdiction of the court to entertain application. It makes it clear that an application in respect of the guardianship of the person of a minor requires to be filed, where the minor ordinarily resides. Jurisdiction of a Court is determined by law not by consideration of expediency or convenience or choice of the parties who invoke jurisdiction of such court.

The Family Courts Act 1984 lays down, in Section 7 of the Act, that a Family Court shall have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation, which, inter alia, includes, according to cl. (g), a suit or proceeding relating to the guardianship of the person or the custody of or access to, any minor. Section 8 of the Family Courts Act, specifically lays down that where a Family Court has been established for any area no district court or any subordinate civil court referred to shall, in relation to such area, have or exercise any jurisdiction in respect of any suits or proceeding referred to in the Explanation which include cl. (g).

The Hindu Minority and Guardianship Act 1956 as also the Guardians and Wards 1890 are general and Central Acts. The Family Courts Act 1984, though a Central Act, is a special Act and thereby will have a precedence over other Acts. Family Courts are established with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters concerned therewith.

As the Family Courts Act 1984, excludes the jurisdiction of the District Courts in respect of proceedings relating to the guardianship of the person or custody of, or access to, any minor the forum for application would be the Family Court established for the area where the minor resides.

7. *On careful perusal and analysis of the entire material on record it is found that it has been asserted in the petition itself by the Petitioner that the minor child namely T.A. is in the custody of the Respondent since the date of separation i.e.21.03.2016 and the said child is presently residing with the Respondent at 8A/36, W.E.A. Karol Bagh, New Delhi.*

8. *In the circumstances, the minor child is found to be not ordinarily residing in the territorial jurisdiction of this Court. Moreover the Petitioner has failed to show that this court has territorial jurisdiction u/s 9 (1) of the Guardians and Wards Act, 1890 to try this petition.*

9. *In view of above and in the circumstances, this Court under Section 9 (1) of the Guardians and Wards Act, 1890 has no territorial jurisdiction to entertain the present petition. Therefore the present petition is accordingly ordered to be returned to the petitioner after retaining the photocopies thereof on the record."*

10. The appeal is therefore devoid of merit and is accordingly dismissed along with pending applications.

11. It is however directed that the record of G.P. petition no. 20/11 titled as **Smt. ED @ EA vs Sh. AKA**, be transmitted to the Family Court of competent jurisdiction forthwith for further proceedings in accordance with law.

12. Copy of this order be sent to both concerned Family Court forthwith.

SIDDHARTH MRIDUL, J

DEEPA SHARMA, J

NOVEMBER 15, 2017

ss