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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3037 of 2018

Amandeep Randhawa

..Petitioner.

Vs

Jehangir Salim Abdulla

..Respondent.

Mr. Gautam Tiwari i/by Prabus Legal, Advocate for the petitioner.
Mr. Hitesh P. Vyas Advocate for respondent.

CORAM : SMT.BHARATI H.DANGRE, J.

27th March, 2018.

P.C. :

1 The present petition challenges order passed by the Family Court Mumbai at Bandra on 10th January 2018 in Petition No. D-98 of 2016 thereby rejecting application filed by the petitioner-wife raising an objection about the jurisdiction of the Family Court Mumbai at Bandra to deal with the petition filed under Guardianship and Wards Act before Family Court at Mumbai.

2 The narration of facts in the application and the pleadings would reveal that the marriage between the parties who were residing in the United States of America (USA) and being Citizens of India was solemnized on 10th June 2005. It is not in dispute that the petitioner and the respondent came to India in the year 2011 along with two children who are also US Citizens and they resided in India till May, 2016. The dispute amongst the parties is the manner in which the wife travelled to the USA along with kids, as according to the learned counsel for the petitioner, it was with an intention to have a permanent settlement in USA as it was decided amongst the parties that she would move to USA permanently with her children and to begin with, she can apply for a job and the respondent would follow them. As against this, it is the contention of the learned counsel for the respondent that it was never the intention of the parties and the petitioner has taken the children for vaccination and not with intention of making US their place abode. He would submit that In any contingency, from 20th November 2016 the children were staying in India, they were admitted in school in Mumbai and the

parties had intention to stay in India as their place of abode.

This is the exact controversy between the parties and an objection has been raised to the petition filed by the respondent-husband under the Guardianship and Wards Act and it is claimed that as per Section 9 of the Guardians and Wards Act, it is imperative that the proceedings are initiated at the place where the minors are ordinarily residing. The whole controversy between the parties is about the ordinary place of residence of the minor children and according to the petitioner it is USA whereas according to the respondent it is in India. This Court was taken through the several emails exchanged between the parties reflecting intention of the parties either to travel to USA and permanently stay there and also to counter emails which would amply demonstrate that there was no intention of permanent stay in the USA but the intention was to return back to India after the exigency of visiting USA was over.

3 The Family Court has passed an order on the basis of pleadings of the parties and rejected the objection with observation that the intention to settle at a particular place is a question of fact

and it will have to be decided after recording oral evidence. The Family Court on the prima facie basis have arrived at a conclusion that the parties are consciously have accepted Mumbai as their permanent place of abode and therefore said Court has jurisdiction. The application filed by the wife therefore came to be rejected.

4 On hearing the learned counsel for the parties it is apparent that on the specific issue involve is as to the place of residence of the minor. This issue needs to be determined as preliminary issue by the Family Court before proceeding in the matter. Ultimately, the question of residence is largely “question of intention. Though the Court is required to take into consideration their actual place of residence at the time of application and record that as their ordinary place of residence, the past abode, however long a period, it may be, cannot be considered to be the place where the minors are residing. The words which are applied in the statute are “where the minor ordinarily resides” In such circumstances, the said issue of ordinary residence will have to be tried as a preliminary issue.

The peculiar facts and circumstances of the case would reveal that the parties had resided in India and even the children were admitted in the school in India. The contention of the learned counsel for the petitioner that she had moved with the children with intention of permanently shifting in the USA needs to be examined and has to be analyzed only after the parties are permitted to tender their evidence and step into witness box reflecting intention of the parties as determining “permanent place of residence”, but the Family Court has rejected preliminary objection. However, before proceeding with the matter, it is imperative to deal with the said issue of jurisdiction of the Family Court at Bandra. To deal with the said objection on the ground of Section 9 of the Guardians and Wards Act the matter needs to be dealt with by the Family Court for deciding the said issue as preliminary issue. In such circumstances, the Family Court at Bandra is directed to frame a preliminary issue in Petition No. D-98 of 2016 as to its jurisdiction to deal with the proceedings instituted by the petitioner-husband under the Guardians and Wards Act. The parties are at liberty to adduce their evidence in support of

the said preliminary issue that would be framed and the Family Court is requested to decide the said issue as expeditiously as possible within six months with cooperation of both the parties. It is open for the Family Court to deal with the temporary access application, if at all it is preferred by the respondent. The writ petition is disposed off.

[SMT.BHARATI H.DANGRE, J.]