

117.

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

Civil Revision No.2322 of 2018 (O&M)

Date of decision:06.04.2018.

KAMAL VIRMANI

... Petitioner

Versus

GEETA VIRMANI

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ranjit Saini, Advocate,
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner has filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 07.03.2018 whereby the application filed by the petitioner-defendant under Order 7 Rule 11 CPC for rejection of plaint was dismissed by the learned Guardian Judge, Ludhiana.

Notice of motion.

At this stage, Mr. Kanav Bansal, Advocate, has put in appearance on behalf of respondent and filed his power of attorney, which is taken on record.

Briefly stated, the respondent-Geeta Virmani has filed a petition under Section 6 of Hindu Minority & Guardianship Act and Sections 8, 12 and 25 of Guardian and Wards Act, for the custody of the minor son, namely, Barun, who was born on 16.08.2017. In the said petition, she has also prayed for the interim custody of minor child-Barun who was about 4 months at the time of filing of said petition. However, the petitioner

(husband) has filed an application under Order 7 Rule 11 read with Section

151 CPC for rejection of plaint on the ground of jurisdiction with an averment that since the child-Barun is residing in Faridabad, therefore, ordinarily the jurisdiction for filing the petition under Section 6 of Hindu Minority & Guardianship Act and Sections 8, 12 and 25 of Guardian and Wards Act is required to be in the court at Faridabad. The child is residing within the jurisdiction of Faridabad Court. The child is not ordinarily residing within the jurisdiction of Ludhiana Court. He has further pleaded that apart from the fact that there is no cause of action to the respondent-wife to file the custody petition, she is estopped from her own act and conduct. She has abandoned the child and had left the matrimonial home and filed the petition after three months of abandoning the child. However, vide order dated 07.03.2018, the application filed by the petitioner under Order 7 Rule 11 CPC was dismissed. Hence, the present revision petition.

Learned counsel for the petitioner has argued that the respondent at her own left the child at Faridabad and has come to parents' house at Ludhiana and thereafter filed the petition under Section 6 of Hindu Minority & Guardianship Act and Sections 8, 12 and 25 of Guardian and Wards Act, for the custody of minor son-Barun. The child in question was four months old on the date of filing of the petition. Since she left the matrimonial home at her own which led to leaving the territorial jurisdiction intentionally, the impugned order rejecting the application is unsustainable. Under Section 9 of Guardians and Wards Act, Ludhiana Court has no jurisdiction, as the minor child is residing at Faridabad. Thus, while dismissing the application filed by the petitioner under Order 7 Rule 11 CPC, the learned court has committed a gross illegal error.

On the other hand, learned counsel appearing on behalf of respondent has argued that there is no illegality in the impugned order which may be interfered with.

I have heard learned counsel for the parties and perused the order.

In order to decide the application filed under Order 7 Rule 11 CPC, the Court is required to believe the contents of the plaint and having a bare glance of the petition filed by the respondent-Geeta Virmani under Section 6 of Hindu Minority & Guardianship Act and Sections 8, 12 and 25 of Guardian and Wards Act, wherein it has been averred that on account of making illegal demands of dowry and refusal thereof, the respondent was given beatings by the petitioner and his family members and, thereafter, she was forcibly thrown out of the matrimonial home, she has no option except to go to her parents' house at Ludhiana and to file the petition seeking custody of the child in question. Therefore, the petitioner cannot take advantage of their own wrong. Moreover, the age of the child, whose custody is sought for in the petition, was four months at the time when the petition was filed. Therefore, the child in question is ordinarily presumed to be residing with the mother. Moreover, while deciding the application under Order 7 Rule 11 CPC the averments made in the plaint are to be considered. No ground to interfere in the impugned order is made out.

Dismissed.

(HARI PAL VERMA)
JUDGE

06.04.2018

sanjeev

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