

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

(235)

FAO-5608-2017 (O&M)

Decided on: May 21, 2018.

Rekha

.... Appellant

Versus

Navdeep Sharma

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. N.K. Manchanda, Advocate, for the appellant.

Mr. Ravish Bansal, Advocate, for
Mr. Ankush Singla, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

Aggrieved by order dated 11.07.2017 passed by the Family Court, Moga returning the petition of the appellant-wife in proceedings under Sections 8 and 10 of the Guardians and Wards Act, she has preferred this appeal.

The petition appears to have been returned at the stage when both the parties had produced their respective evidence after framing of issues. It is also apparent that no preliminary issue regarding jurisdiction had been framed. Even if it is presumed that there was dispute whether the Court at Moga would have jurisdiction, it was a mixed question of both law and fact regarding the existence of jurisdiction which was to be determined on appreciation of evidence. The order of returning of the petition at the final stage of the arguments is apparently improper in the light of statutory provisions of Order 20 Rule 5 CPC which required the trial Court to decide every issue.

Counsel for the appellant-wife has submitted that it has come on the record that the minor was residing with her and her parents few months prior to filing of the petition but he was taken away forcibly by the respondent-husband. The Family Court at Moga, without deciding the disputed questions

of fact, has opted to exercise his jurisdiction in an illegal and improper manner which has resulted in delay of adjudication of the rights of the parties. The stage, at which the petition has been returned, makes the order an illegal order which is not justified depriving the appellant at final stage of the case to seek final adjudication on merits of the case on all the issues arisen out of the pleadings.

The appeal is allowed. The impugned order returning the petition is hereby set aside. Parties are directed to appear before the Family Court, Moga on 21.07.2018 for further proceedings. It is mentioned herein that after giving fair opportunity to both the parties, the trial Court shall determine the question of territorial jurisdiction which is a mixed question of law and fact in the present case and finally adjudicate the proceedings in accordance with law.

Since both the parties are represented by counsel, it will be deemed that they have got notice of the date of hearing fixed before the lower Court i.e. 21.07.2018.

Nothing said in this order or the impugned order will affect the final adjudication of the matter.

The trial Court on the basis of appreciation of evidence brought on the record, will determine the question of territorial jurisdiction. It is directed that the case will be finally decided within a period of two months after 21.07.2018.

(M.M.S. BEDI)
JUDGE

May 21, 2018.
harsha

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No