

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1706 OF 2018

**SAYED SHEHBAAZ ANEES
VERSUS
SAYED FARHEEN SHEHBAAZ AND ANOTHER**

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Advocate for the Petitioner : Shri N. B. Narwade
Advocate for Respondent No. 1 : Shri G. R. Syed

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 09th APRIL, 2019.

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PER COURT :

1. On 24/02/2018, I had recorded the extensive submissions of the learned Advocate for the petitioner and had passed the following order :-

"1 The Petitioner is aggrieved by the order dated 06.01.2018 by which, the Court below has disposed of the Civil Miscellaneous Application No.198/2017 filed by the Petitioner under Section 9(1) of the Guardians and Wards Act, 1890. By the impugned order, the Court below has concluded that it does not have the jurisdiction to entertain the application filed by the Petitioner/ father to claim custody of the minor child, who is said to be residing with his mother at Pune.

2 *The learned Advocate for the Petitioner relies*

upon the judgment of the Delhi High Court in the matter of Mr.Paul Mohinder Gahun vs. Mrs.Selina Gahun, (2007) 3 Civil Law Journal 923, wherein, the Delhi High Court has relied upon the judgments cited and has concluded that as the child was residing in Canada for 12 years prior to her sudden departure to India, would render the Court in Canada with the jurisdiction to consider the issue of custody of a child.

3 Section 9(1) of the said Act refers to the place where the minor ordinarily resides. The word "ordinarily" is defined in the Oxford Advanced Dictionary to mean "in a normal way or what normally happens in a particular situation".

4 The Gauhati High Court, in the matter of Amal Saha vs. Smt.Basana Saha, AIR 1988 Gauhati 22, has culled out certain principles while deciding the issue of jurisdiction and one of them is where the minor is found to be residing with one of his parents which would raise the question of his constructive custody. There is no presumption that the minor is deemed to reside at the place where his natural guardian resides as the place of residence of a natural guardian is not the determining factor in deciding the question of jurisdiction of the Court.

5 It is stated that the Petitioner was married to Respondent No.1 on 16.05.2002 in Ahmednagar and she started residing in their marital home at Ahmednagar. A girl child was born in Ahmednagar. It is contended that the Respondent/ wife secretly moved to Pune on

15.04.2016 and started living in adultery with the real brother of the Petitioner. The minor child was also carried by her to Pune in 2016.

6 *Issue notice to Respondent No.1 returnable on 28.03.2018."*

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. The Oxford Advanced Dictionary defines "*ordinarily*" to mean "*in a normal way or what would normally happen in a particular situation*". Section 9(1) of the Guardians and Wards Act, 1890, in relation to the jurisdiction of the Court, provides for such jurisdiction to be with the Court within whose area limits the minor is ordinarily residing.

4. In the case in hand, the child at issue was born on 27/12/2004 at Ahmednagar. She started attending school and subsequently her mother left the petitioner husband and moved to Pune with the husband of her sister, according to the petitioner. It is contended by the petitioner that she is living in adultery at Pune from 2016. Reliance is placed upon the

judgment of the Delhi High Court in *Mr. Paul Mohinder (supra)*, wherein the child, who was born in Canada and was surreptitiously moved to Delhi after 12 years, led to the Delhi High Court concluding that the child cannot be said to be ordinarily residing in Delhi.

5. In the matter of *Pooja Bahadur Vs. Uday Bahadur*, AIR 1999 Supreme Court 1741, the Honourable Apex Court concluded that as the child was residing at Delhi with the father, the application filed by the mother for custody under the Guardians and Wards Act at Chandigarh would not be maintainable and she would have to lodge the proceedings at Delhi.

6. This Court in the matter of *Mrs. Prajкта George Robin Vs. Mr. George Robin*, 2004(4) ALL MR 721 noticed that the mother was residing with the child at Thane and the husband was residing at Kalyan. Though Kalyan was a part of the Thane District, this Court concluded that the ordinary residence of the child would vest jurisdiction to the Court to consider such proceedings and concluded that as the mother

and the child are residing at Thane, the proceedings under Section 9 of the Guardians and Wards Act would lie before the District Judge at Thane.

7. It is well settled that unless the impugned order appears to be perverse and erroneous and likely to cause gross injustice, no interference is called for merely because a different view is possible.

8. Considering the above, I do not find that the impugned order of the Trial Court dated 06/01/2018 could be termed as being grossly erroneous or perverse. This petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-