

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1628-2019

Date of Decision: 07.03.2019

Ramandeep Singh

.....Appellant

Versus

Gurpinderdeep Kaur Gill

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. C.M. Munjal, Advocate, for the appellant.

Harnaresh Singh Gill, J.

The instant appeal is directed against the order dated 18.12.2018 passed by the learned Civil Judge (Senior Division) [Exercising the powers of District Judge under the Guardians and Wards Act, 1890], Sri Muktsar Sahib, whereby an application filed by the respondent-wife for dismissing the petition under Section 25 of the Guardians and Wards Act, 1890 (for short 'the Act') filed by the appellant-husband for the custody of the minor daughter, has been allowed and the petition under Section 25 of the Act, stood dismissed for want of territorial jurisdiction.

As per the factual position as depicted in the impugned order, the dispute is regarding the custody of the minor daughter of the parties, namely, Teganbir Kaur Gill, aged about 3 years. In the petition under Section 25 of the Act, filed by the appellant-husband, respondent-wife filed an application

for dismissal of the said petition, inter-alia, on the grounds, that the respondent-wife along with minor daughter, has been residing in Canada, since November, 2017 i.e. even before the filing of the said application. Thus, under Section 9(i) of the Act, the Courts at Sri Muktsar Sahib, had no jurisdiction to try and entertain the custody application. The objection as regards the territorial jurisdiction was to be taken at the first instance. Therefore, even before the issues were framed, the respondent-wife, had raised the objection. It was further averred that an application regarding the custody of the minor daughter is already pending in the Ontario Court of Justice Court (Canada) and the appellant-husband, through his counsel, had already caused appearance in the said proceedings at Canada.

Upon notice, the respondent entered appearance and filed his reply, averring therein that as per Section 21 CPC, the objection as to the place of suing is to be taken before an appellate or revisional Court and only such Court can entertain such objection and that too, if the same is taken at the very first instance. While relying upon Section 9 of the Act, it was stated that the said provisions stipulate that the application with respect to the guardianship shall be made to the "District Court having jurisdiction at the place where the minor ordinarily resides." It was stated that as the applicant is permanent resident of Sri Muktsar Sahib, the ordinary place of residence of the child would be that place itself and hence the Court at Sri Muktsar Sahib, has the jurisdiction to entertain and try the petition under Section 25 of the Act. It was further stated that

in the petition under Section 25 of the Act, the appellant-husband had clearly pleaded that the respondent-wife had taken the minor child Teganbir Kaur Gill to Canada stealthily and without the express or implied consent of the appellant-husband. It was further stated that in order to travel to Canada, No Objection Certificate is required, which can only be obtained with the consent of both the parents and without such process, the Exit Visa cannot be obtained.

The learned trial Court, vide order impugned herein, while allowing the application filed by the respondent-wife and thereby dismissing the petition under Section 25 of the Act, filed by the appellant-husband, has found that Section 9 of the Act provides for the jurisdiction where the application for the custody of the minor can be filed. The said Section stipulates that 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. On the basis of the material on record, it was observed that the minor child is residing in Canada with the respondent-wife at 14, Caravan Court Brampton, Ontario L6 Y OT3 Canada and same was the position at the time of filing of the petition i.e. 23.1.2018 by the appellant-husband. The relevant extracts from the impugned order would read as under:-

“.....At the time of the filing of the petition, the minor daughter of the petitioner was residing at 14, Carvan Court Brampton, Ontario L6 YOT 3 Canada and was not residing within the territorial jurisdiction of the Courts at Sri Muktsar Sahib. Now these facts have been admitted by the

petitioner in the petition and, therefore, there is no requirement of the framing of the issue on this aspect and taking of the evidence on the same. In the case in hand, the child is residing beyond the territorial jurisdiction of this Court and is residing in Canada. In Shakuntala Versus Rajesh (P&H), 2010(5) RCR (Civil) 261, Hon'ble Punjab and Haryana High Court has held that the territorial jurisdiction of the Court is where the children ordinarily reside. In that case, the minor was residing with her mother within the territorial jurisdiction of the Court at Jhunjhunu in Rajasthan in Rajasthan. Hon'ble Court held that the Court at Jagadhari in Haryana would have no jurisdiction to decide the petition in view of Section 9(1) of the Guardians and Wards Act, 1890. Hon'ble Court further held that the Welfare of the children would also lean towards the taking of the view that instead of minor travelling from where they ordinarily reside the proceedings would be taken in the Court in jurisdiction of which they reside. In the case in hand, the minor whose custody has been sought is ordinarily residing with her mother in Canada. Even before the respondent left India, the minor was residing with the respondent at Moga, the maternal home of the respondent. As such, this Court has no territorial jurisdiction to try the present petition as per the Section 9(1) of the Guardians and Wards Act, 1890.....”

Learned counsel appearing for the appellant submits that the impugned order passed by the learned trial Court is patently illegal for the reason that the respondent-wife had taken the minor daughter to Canada without the express or implied consent of the appellant-husband. Learned counsel further submits that once, from the averments made by the parties before the trial Court, it stood established that the

respondent-wife, had acted with mala-fide intention in shifting the child from the jurisdiction of the Courts at Sri Mukhtsar Sahib, it was not incumbent upon the part of the learned trial Court to accept her application for dismissal of the petition filed by the appellant-husband under Section 25 of the Act.

We do not find any merit in the arguments raised by the learned counsel for the appellant.

Section 9(1) of the Act, which is relevant for the adjudication of the present proceedings, 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) and (3) xx xx xx”

Thus, if the factual position of the present case is read in consonance with the aforesaid provisions, it would stand established that the minor, who has been admittedly residing in Canada since November, 2017 i.e. prior to the filing of the petition filed by the appellant-husband. The ordinary place of residence of the minor is ‘Canada’ and not Sri Muktsar Sahib. Hence, the Court at Sri Muktsar Sahib, will have no jurisdiction to entertain and try the present proceedings.

The matter can be looked from another angle as well. As per the stand taken by the respondent-wife before the trial Court, the appellant-husband, has already caused his presence before the Courts at Ontario, wherein in the application seeking custody of the minor, is pending. The said version has not been

controverted by the appellant-husband. Thus, in our opinion, no prejudice has been caused to the rights of the appellant-husband claiming the custody of the minor child. Once, the appellant-husband, has appeared before the Courts at Ontario, Canada, and he is defending the custody proceedings filed at the instance of the respondent-wife, there remains nothing to be dilated upon for the reason that the appellant-husband would be at liberty to agitate his rights before the said Court at Canada.

In view of the above, we do not find any merit in the present appeal. The same is, accordingly, dismissed.

(RAKESH KUMAR JAIN)
JUDGE

07.03.2019

ds

(HARNARESH SINGH GILL)
JUDGE

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No