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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5525 of 2017 (O&M)
Date of decision:April 30, 2019

Robina Kaushik ...Appellant

Versus

Shikher Goel and another ...Respondent

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Harnaresh Singh Gill

Present: Mr. Vikram Singh Dhakla, Advocate,
for the appellant.

Ms. Roma Bhagat, Advocate, and
Mr. Vikas Kataria, Advocate, for the respondents.

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Rakesh Kumar Jain, J.

This appeal is directed against the order dated 20.07.2017, by which an application filed by the appellant under order 7 Rule 10 CPC for returning the plaint for want of territorial jurisdiction in terms of Section 9 of the Guardian & Wards Act, 1890 (hereinafter referred to as the "Act") has been dismissed.

Respondent no.1 is the father and respondent no.2 is the paternal grandmother of a minor girl who have filed a petition under Sections 7, 8, 9 and 25 of the Act for appointing them as guardian of the minor female child, namely, Tara and also for granting them her custody. In the said petition, the appellant had filed an application under Order 7 Rule 10 CPC for returning of the plaint for want of territorial jurisdiction in terms of Section 9 of the Act. The said application has been dismissed by the trial Court and, thus, the present

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appeal has been filed.

In brief, marriage of the appellant with respondent no.1 was solemnized on 04.02.2014 at Faridabad and, thereafter, they started living at House No.1000, Sector 7C, Faridabad. They were blessed with a girl child, namely, Tara who was born on 29.01.2016 at Faridabad. Respondent no.1 was doing job in Qatar Airlines and on 17.05.2016, the appellant along with girl child Tara went to Qatar but when she came back to India on 12.06.2016, she went to her paternal home at House No.214, Sector-9, Faridabad. Respondent no.1 along with his mother filed a petition under Sections 7, 8, 9 and 25 of the Act for seeking guardianship and custody of the minor child, in which the appellant had filed an application under Order 7 Rule 10 CPC read with Section 9 of the Act for returning the plaint for want of territorial jurisdiction on the ground that the minor child was already residing at Flat No.6111/3, D Block, Vasant Kunj, New Delhi before filing of the petition. It is pleaded that she had filed application under the provisions of the Protection of Women from Domestic Violence Act, 2005 at New Delhi, in which the respondents had appeared. The appellant had also alleged that FIR No.649/16, under Sections 498A/406/34 IPC was also got registered by her at Police Station Vasant Kunj, New Delhi. Counsel for respondents no.1 and 2, namely, Virender Singh had sent a legal notice at her address of New Delhi and, thus, for all intents and purposes, the appellant and her minor daughter are residing at New Delhi and, therefore, the Court at Faridabad has no jurisdiction to try and decide the instant petition.

The application was contested by the respondent while pleading that the appellant had been residing at House No.214, Sector 9, Faridabad at the time of filing of the main petition. It is also prayed that in the investigation

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of FIR No.649/16, the appellant had given her address of her House No.214, Sector 9, Faridabad, which has been witnessed by her father and the legal notice was sent at the address of New Delhi on the report of the father of the appellant. It is rather submitted that the appellant had appeared in this case after service of summons at House No.214, Sector 9, Faridabad.

Learned trial Court dismissed the application of the appellant on the ground that the memo of recovery dated 01.05.2017 prepared by the police during investigation of the criminal case registered vide FIR No.649 of 2016 shows that while accepting her belongings, the applicant had mentioned her address as House No.214, Sector 9, Faridabad. Besides this, the treatment record of the girl child was also closely perused by the Court below as per which, the treatment for viral fever of the girl child was taken from Singla Nursing Home, Sector 8, Faridabad on 24.06.2016; treatment was also taken for the girl child on 02.07.2016 from Singla Nursing Home at Faridabad; the applicant also took treatment for gastroenteritis from Singla Nursing Home, Faridabad on 30.07.2016, girl child was medically treated by Dr. Shalini Gandhi, Gandhi Child Clinic, Sector 15, Faridabad; the applicant also took her medical treatment from Dentist at Sector-16, Faridabad and then on 03.08.2016, medical treatment of the girl child was obtained from Gandhi Child Clinic, Faridabad. The Court had drawn the inference that had the appellant along with her daughter been living at New Delhi, then she would not have been come all the way to Faridabad for taking treatment for such disease much-less viral fever and gastroenteritis etc.

Learned counsel for the appellant has submitted that the very fact that she had opened a bank account at Delhi and the notice was sent by the counsel for the respondents at her Delhi address are the sufficient material for

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this Court to hold that the appellant is living at Delhi along with her minor girl and, therefore, Faridabad Court had no jurisdiction.

Learned counsel for the respondents has submitted that the bank account was not opened by the appellant but it was her bank account at Ambala which has been got transferred to Delhi, which itself does not prove that she had been living at Delhi. Moreover, no other evidence has been brought on record by her to prove that she is ordinarily residing at Delhi especially when both her maternal and paternal homes are at Faridabad. It is also submitted by her that if the appellant was not residing at Faridabad at House No.214, Sector-9, Faridabad, summons sent at the said address would have been returned to the Court with the report that the appellant is not residing at the given address but since the summons were accepted by the appellant at the said address, therefore, it is apparent that she is residing at the said address and an excuse has been created by the appellant for termination of the proceedings by returning of the plaint while invoking Section 9 of the Act.

After hearing learned counsel for the parties and perusing the available record, we are of the considered opinion that not only the fact that the appellant had been served at the address of House No.214, Sector 9, Faridabad in the petition filed by the respondents for seeking guardianship and custody of the minor child but also the fact that for minor ailments of the minor girl child and also for herself, the entire treatment has been taken by the appellant from Faridabad and the appellant had received her belongings/articles at House No.214, Sector 9, Faridabad are sufficient to prove that the appellant had been residing along with her minor child at Faridabad at the time when the petition was filed and the fact of having bank account at Delhi or sending the legal notice at her Delhi address by the counsel of the respondents would have no

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effect on it.

In view of the aforesaid facts and circumstances, we do not find any scope for interference in this appeal and hence, the same is hereby dismissed, though without any order as to costs.

(Rakesh Kumar Jain)
Judge

April 30, 2019 **(Harnaresh Singh Gill)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No

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