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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 5th August, 2019

W.P. (CRL) 2153/2019

BHAGWAN DAS

..... Petitioner

versus

THE STATE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. A.K. Singh, Advocate.

For the Respondents : Mr. Rahul Mehra, Standing Counsel (Criminal) with Mr. Chaitanya Gosain, Advocate for State with Insp. Sanjay Kumar and SI Omkar Singh, PS Kishan Garh.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

SIDDHARTH MRIDUL, J (OPEN COURT)

1. The present petition under Article 226 of the Constitution of India, essentially, seeks a direction to respondent No.3 to 5, to handover the custody of the minor child, Darshana to the petitioner, who claims to be her father.
2. The facts as are necessary for the adjudication of the present writ petition, briefly encapsulated as follows:

- a. The petitioner is a former employee of the Indian Army and presently resides with his wife, Smt. Anguri, and his minor son, namely, Prince at New Delhi.
 - b. Whilst married to Anguri Devi, the petitioner is stated to have had a live in relationship with one Ms. Beena D/o Sh. Babul Chand Mess resident of Guwahati, Assam.
 - c. The petitioner states that, Ms. Beena gave birth to two children, namely, Prince and Darshana on the 25.05.2008 and 11.12.2014 respectively, born out of the aforementioned live in relationship.
 - d. Ms. Beena is stated to have been detected with serious complications in a subsequent pregnancy and was admitted for treatment in Satribari Christian Hospital, Guwahati, Assam, where she is stated to have breathed her last on 26.12.2015.
3. It is an admitted position that, Darshana, the minor child born from his live in relationship with Ms. Beena, has been residing all along with respondent Nos.3 to 5, her mausi, nani and mausa respectively, in Guwahati Assam.
 4. The petitioner states that, on the 27.01.2019, he visited the residence of Darshana and respondent Nos.3 to 5, along with his lawyer in

Guwahati and asked for the custody of his minor daughter, which was declined.

5. The petitioner is then, stated to send a complaint to Station House Officer, Police Station Kishan Garh, Delhi Police, as well as the Commissioner of Police, Guwahati, Assam on 22.06.2019.
6. Aggrieved by the inaction on behalf of the abovementioned police authorities, the petitioner has instituted the present petition seeking custody of the minor child, Darshana.
7. Predicated on the ratio of the decision of the Hon'ble Supreme Court of India, in '*Tejaswini Gaud and Ors. vs. Shekhar Jagdish Prasad Tewari and Ors*' reported as **AIR 2019 SC 2318**; learned counsel appearing on behalf of the petitioner would urge that this Court ought to exercise its extraordinary power, the jurisdiction under Article 226 of the Constitution of India, and allow the habeas corpus petition, directing respondent Nos.3 to 5, to handover the custody of minor child, Darshana to him.
8. There can be no quarrel with the position in law that, a habeas corpus petition seeking custody of a minor child is maintainable under Article 226 of the Constitution of India.

9. However, in the present case, it must be observed that, the Court exercising territorial jurisdiction over the minor child Darshana, is the Court, where the latter ordinarily resides, in terms of the provisions of the Family Courts Act, 1984 and in particular the provisions of Section 7(g) thereof, read in conjunction with Section 9 of the Guardian and Wards Act, 1890, which are reproduced respectively as follows:

“7. Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) xxx xxx xxx

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”

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) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”

10. In this behalf, it would be apposite to refer to a judgment of a Division Bench of this Court in ‘*ED @ EA vs. AKA*’ MAT.APP.(F.C.) 197/2017, dated 15.11.2017, wherein, after referring to the afore-extracted provisions, this Court observed as follow:

“6. Further, the Family Courts Act, 1894, which is a special Act postulates that a Family Court shall exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of nature specified in the said provision.

7. The relevant provision of the said Section 7 is as follows:-

“7. Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) xxx xxx xxx
- (e) xxx xxx xxx
- (f) xxx xxx xxx
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”

8. A bare reading of the above provision clearly specifies that where the Family Court has been established for any area, no District Court or any Subordinate Civil Court shall in relation to such area have or exercise any jurisdiction in respect of any suit or proceeding referred to in the explanation which includes Clause (g) extracted above.

9. In view of the foregoing discussion, we are in agreement with the conclusion arrived at by the learned Trial Court as observed in paragraphs 6,7,8 and 9 of the impugned order dated 19.08.2017 which read as follows:-

“ 6. Section 9 of the Guardians & Wards Act, 1890 provides for Courts having jurisdiction to entertain application. It is reproduced and reads as under:-

9. Courts 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) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides, or to a District Court having jurisdiction in a place where he has property.

(3) If the application is with respect to the guardianship of the property of the minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

Section 9 (1) of the Guardians & Wards Act, 1890 deals with the jurisdiction of the court to entertain application. It makes it clear that an application in respect of the guardianship of the person of a minor requires to be filed, where the minor ordinarily resides. Jurisdiction of a Court is determined by law not by consideration of expediency or convenience or choice of the parties who invoke jurisdiction of such court.

The Family Courts Act 1984 lays down, in Section 7 of the Act, that a Family Court shall have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation, which, inter alia, includes, according to cl. (g), a suit or proceeding relating to the guardianship of the person or the custody of or access to, any minor. Section 8 of the Family Courts Act, specifically lays down that where a Family Court has been established for any area no district court or any subordinate civil court referred to shall, in relation to such area, have or exercise any jurisdiction in respect of any suits or proceeding referred to in the Explanation which include cl. (g).

The Hindu Minority and Guardianship Act 1956 as also the Guardians and Wards 1890 are general and Central Acts. The Family Courts Act 1984, though a Central Act, is a special Act and thereby will have a precedence over other Acts. Family Courts are established with a view to promote conciliation in, and secure speedy settlement of,

disputes relating to marriage and family affairs and for matters concerned therewith.

As the Family Courts Act 1984, excludes the jurisdiction of the District Courts in respect of proceedings relating to the guardianship of the person or custody of, or access to, any minor the forum for application would be the Family Court established for the area where the minor resides.

7. On careful perusal and analysis of the entire material on record it is found that it has been asserted in the petition itself by the Petitioner that the minor child namely T.A. is in the custody of the Respondent since the date of separation i.e.21.03.2016 and the said child is presently residing with the Respondent at 8A/36, W.E.A. Karol Bagh, New Delhi.

8. In the circumstances, the minor child is found to be not ordinarily residing in the territorial jurisdiction of this Court. Moreover, the Petitioner has failed to show that this court has territorial jurisdiction u/s 9 (1) of the Guardians and Wards Act, 1890 to try this petition.

9. In view of above and in the circumstances, this Court under Section 9 (1) of the Guardians and Wards Act, 1890 has no territorial jurisdiction to entertain the present petition. Therefore, the present petition is accordingly ordered to be returned to the petitioner after retaining the photocopies thereof on the record.”

11. We may also refer to the judgment of the Hon’ble Supreme Court of India in ‘*Nawal Kishore Sharma vs. Union of India*’, reported as (2014) 9 SCC 329, wherein it was observed that :-

“19. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court’s jurisdiction.”

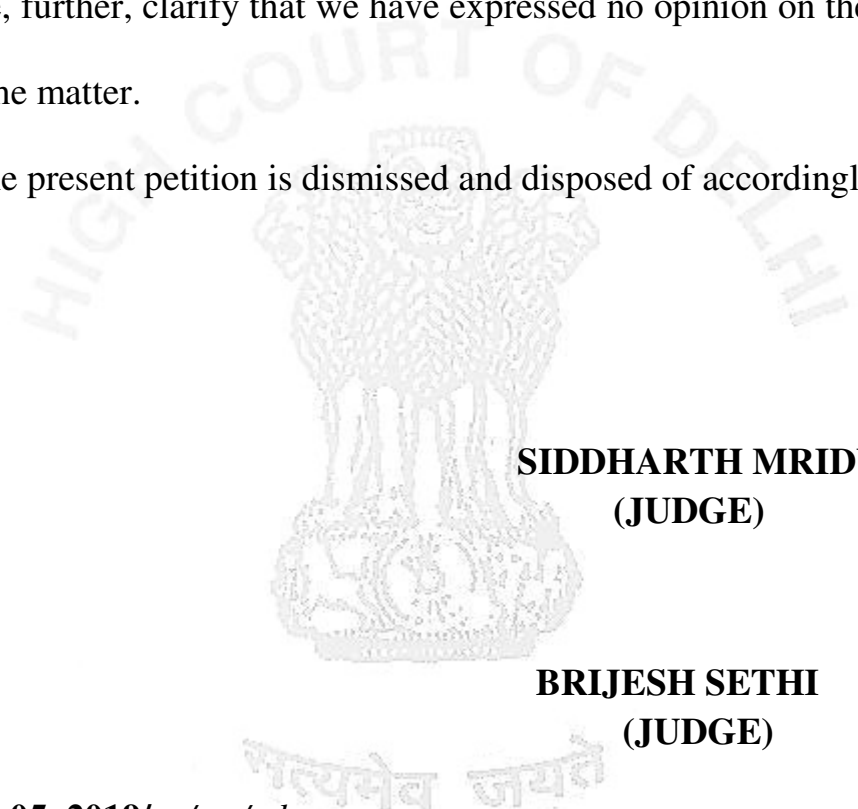
12. In view of the law laid down in *Nawal Kishore Sharma (Supra)*, with regard to the jurisdiction to entertain a writ petition including a writ of habeas corpus, we are not satisfied from the facts pleaded in support of the cause of action in the present case that, these facts constitute the arising a cause of action within the territorial jurisdiction of this court, so as to empower us to decide a dispute, which has admittedly arisen outside the jurisdiction of this Court.
13. In the instant case, it is an admitted position that, no part of the claim falls in the territorial jurisdiction of Delhi as the child was born in and continues to reside in Guwahati, Assam along with Respondents Nos.3, 4 & 5. The act of deprivation of the minor's custody and residence thus, arose at Guwahati, Assam. The petitioner has also, admittedly, filed a complaint in this regard, with the S.H.O. Dispur Police Station in Guwahati, Assam.
14. We are also supported, in this regard, by a judgment of a single judge of this court in '*Sumedha Nagpal vs. State of Delhi*', reported as I (2001) DMC 491.
15. In view of the foregoing, we are not inclined to entertain the present petition for habeas corpus, since the minor child, Darshana, whose

custody is sought therein, admittedly resides in Guwahati, Assam beyond the territorial jurisdiction of this Court.

16. Needless to state that, the petitioner is at liberty to approach the appropriate Court exercising territorial jurisdiction of the subject matter of the present proceeding.

17. We, further, clarify that we have expressed no opinion on the merits of the matter.

18. The present petition is dismissed and disposed of accordingly.



SIDDHARTH MRIDUL
(JUDGE)

BRIJESH SETHI
(JUDGE)

AUGUST 05, 2019/as/ym/ad