

**CR-2558-2018(O&M)
and connected case**

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

1. CR-2558-2018(O&M)

Nikhil Goyal

.....Petitioner

Versus

Ruchika Goyal

.....Respondent

2. CR-3422-2018(O&M)

Ruchika Goyal

.....Petitioner

Versus

Nikhil Goyal

.....Respondent

Date of decision: 10.02.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:- Mr. Karan Garg, Advocate for the petitioner
in CR-2558-2018 and for respondent in
CR-3422-2018**

**Mr. G.S.Sidhu, Advocate for the respondent
in CR-2558-2018 and for the petitioner
in CR-3422-2018**

ANIL KSHETARPAL, J.

**By this order, two civil revision petitions i.e CR-2558-2018
and CR-3422-2018 shall stand disposed of.**

**CR-2558-2018 has been filed with a prayer to set aside
impugned order dated February 8, 2018 passed while dismissing
application filed by the petitioner-husband under Order 7 Rule 11 CPC.**

The application was filed with a prayer that the petition filed by the wife (mother of the minor child) under Section 25 of the Guardian and Wards Act, 1890, read with Section 6 of the Hindu Minority and Guardianship Act, 1956 should be rejected at the threshold.

The petitioner claims that the Court at Patiala lacks territorial jurisdiction in view of Section 9 of the Guardian and Wards Act, 1890 on the ground that the minor child is residing at Jalandhar, therefore, the Court at Patiala lacks territorial jurisdiction.

Learned Trial court dismissed the application while relying upon a judgment passed in the case of '**Amit Kashyap vs. Pooja**' 2017 (1) Law Herald 181. In the aforesaid judgment after examining the provisions of the Act and while relying upon a previous judgment passed in the case of '**Smt. Sarabjit vs. Piara Lal and another**' 2005 (3) RCR (Civil) 213 it has been held that a child below the age of 5 years is deemed to be ordinarily residing at a place where his/her mother resides. The Court has interpreted the words "*where the minor ordinarily resides*" and held that since the child below the age of 5 years is deemed to be resident of the place where the mother resides. Therefore, at this stage, it would not be appropriate for the Court to reject the petition on the ground that the Court at Patiala lacks territorial jurisdiction.

This Court has heard learned counsel for the parties and with their able assistance has gone through the paper book. Learned counsel for the petitioner while drawing attention of the Court to para 3 of the petition filed before the Trial Court submits that it is not disputed by the respondent that the child Mahir Goyal, born on 22.3.2016, at present is

residing in Jalandhar. He, hence, submitted that the Court has erred in dismissing the application.

This Court has considered submission, however, in view of the consistent interpretation of Section 9 of the Guardian and Wards Act, 1890, this Court is not inclined to interfere. The petitioner shall be at liberty to object to the maintainability of the petition on account of lack of territorial jurisdiction and pray for framing an issue on the question of jurisdiction which shall be independently decided uninfluenced by this order.

Disposed of.

In CR-3422-2018 mother of the child has challenged the correctness of the order dated 16.4.2018 declining application for grant of interim custody.

Keeping in view the facts of the case and the assertions made, this Court is of the view that mother should be permitted to file fresh application which shall be decided by the Court independently uninfluenced by the order Annexure P-1 dated 16.4.2018.

Disposed of.

10.02.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No