

CR-2629-2020

Date of decision : December 10, 2020

Anshuman Singh

.....Petitioner

Versus

Rhythm and others

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kislay Komal, Advocate for the petitioner.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Prayer in this petition is for setting aside order dated 25.11.2020 passed by the learned Guardian Judge, Chandigarh dismissing the petitioner's application under Order 7 Rule 11 CPC.

Relevant facts are that the respondent i.e. petitioner's wife filed a petition under Section 6 of the Hindu Minority and Guardianship Act, 1956 and Sections 8, 12 and 25 of The Guardian and Wards Act (for short – 'the Act'), seeking custody of two minor daughters of the parties, aged about four and three years, respectively. The petitioner filed an application under Order 7 Rule 11 CPC for rejection of the petition due to lack of territorial jurisdiction. It is stated that the present petitioner is a resident of Greater Noida and both minor daughters namely Aishani and Shanaya were residing with the petitioner at their residence at Greater Noida since their birth. Therefore, in terms of Section 9(1) of the Act, the Court at Chandigarh had no jurisdiction to deal with the matter. Learned Guardian Judge, Chandigarh dismissed the application vide impugned order dated 25.11.2020. Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that as per Section 9(1) of the Act, application under Order 7 Rule 11 CPC filed by the petitioner should have been allowed. He relies upon the judgment of the Hon'ble Supreme Court in **Ruchi Majoo versus Sanjeev Majoo (2011) 6 SCC 479** as well as of the Himachal Pradesh High Court in **Himanshu Mahajan versus Rashu Mahajan, AIR 2008 HP 38**.

Heard learned counsel for the petitioner and have gone through the file with his assistance.

The petitioner and the respondent solemnised marriage on 22.11.2015. They are blessed with two daughters namely Aishani and Shanaya, who are stated to be 3 years 10 months and 2 years 4 months old, as per application dated 13.08.2020. Section 9 (1) of the Act 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.”

In my considered opinion, the matter is squarely covered by decisions of Co-ordinate Benches in **Chiranjeev Singh Saini versus Baljit Kaur Saggoo 2017 (4) PLR 380**, **Tejbir Singh and Baljit Kaur 2019 (2) HLR 97** and **Amit Kashyap versus Pooja 2017 (1) HLR 438**. It is specifically held in all these decisions that the expression ‘minor ordinarily resides’ used in Section 9 has to be interpreted to mean residence of the mother. This is so for the reason that custody of minors under five years of age would naturally lie with the mother. Thus, custody of the minor is deemed to be with the mother irrespective of the actual custody being with the father. **Ruchi Majoo’s** case (supra) has been specifically discussed in **Chiranjit’s** case (supra). There is, thus, no illegality, irregularity or

infirmity in the impugned order dated 25.11.2020 passed by the learned Guardian Judge, Chandigarh, which calls for any interference in exercise of revisional jurisdiction.

At this stage, learned counsel for the petitioner submits that there is a chance of an amicable resolution of the dispute. However, I do not find any ground to issue notice on this ground, at this stage.

Petition is, accordingly, dismissed. Needless to say, the petitioner is at liberty to move an appropriate application before the learned trial Court for seeking mediation for resolution of the entire dispute between the parties.

December 10, 2020

rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No