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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 07.02.2020

+ CM(M) 393/2019 & CM 10834/2014

VIJAYANTI

..... Petitioner

Through: Mr.Himanshu Gupta, Adv.

versus

SURAJ SUHAG

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition challenges the order dated 08.01.2019 passed in GP No. 27/2017 titled, *Suraj Suhag vs. Vijayanti*, dismissing the application of the petitioner, which in turn sought dismissal of the Guardianship Petition on the ground of lack of territorial jurisdiction of the Court to entertain the petition.

2. The Guardianship Petition has been filed by the respondent seeking custody of the minor child born from the wedlock of the parties. The petition was filed on 23.03.2015. In the petition it was asserted as under:-

“23. That the Respondent has deserted to the Petitioner on 20.5.2012 and since then she had

never come back to join the society of the Petitioner to lead a peaceful married life. However, she has created mentor torture and social cruelty on the Petitioner by saying that the Petitioner has to be agreed to leave everything for her and the child and starts to live along which is not possible by leaving a joint family. Therefore, the Petitioner is in need of custody of the minor child for her welfare and bright future which is her birth right to enjoy the social life of the Petitioner and adopt ancestral values in joint family.

24. That the Respondent used to show disregard to the parents and other relatives of the Petitioner and picked up quarrel with them by calling them rustic. The Respondent left the marital home, without the permission of the Petitioner on 20.5.2012 and started to live alone as per her wish and desire. This is crystal clear that the living standard of the Petitioner is better than Respondent and deserves custody of the minor child being natural guardian and has been living in joint family.

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30. The Court is prayed to pass an order for removing the child from the alleged custody of the Respondent as the Petitioner is a natural guardian taking the custody of his minor child into his own custody to care her in joint family. The Respondent should hand over the physical custody of child to the Petitioner after the passing of the order as the child has completed six years on 24.3.2015.”

3. Interestingly there is no averment in the petition as to how the Courts at Delhi would have territorial jurisdiction to entertain the petition.

4. The learned counsel for the petitioner has placed reliance on the cross-examination of the respondent recorded on 09.11.2015 before the learned Family Court, Hisar in the Divorce Petition filed by the respondent himself. The respondent while being cross-examined in the said petition, has given his residential address as under:-

“PW1 Suraj Suhag aged 34 years son of Sh. Mahabir Suhag r/o Panihai Mohalla village and Tehsil Matanhail Distt. Jhajjar.”

5. He further asserted as under:-

“I am MBA from Kurushtra University Campus in the year 2006. I have been serving in Sham Indus Power Ltd. Power Solutions Private Limited in Punjabi Bag, New Delhi from 2006 to 2012. Thereafter I am serving in Riverside Utilities Private Limited, Bhubaneswar Urisa as Manager HR. I gets approximately 40,000/- per month cash in hand. I am interested in telling my address of Bhuvensher. Self stated it is for security purpose. I am residing in a rented house at Bhuvenshwar. It is two room set with kitchen bathroom etc. I am paying Rs. 10,500/- per month as rent. I have been residing there since February 2013.....”

6. The learned counsel for the petitioner submits that in the above statement the respondent admitted that he himself has been residing at Bhuvaneshwar since 2013.

7. The learned counsel for the petitioner further relied upon a certificate issued by the St. Sophia Sr. Sec. School, Hisar, which certifies that the child has been studying in the said school since 09.07.2012.

8. Placing reliance on Section 9 of the Guardians and Wards Act, 1890, the learned counsel for the petitioner submits that the child was, therefore, ordinarily residing in Hisar and consequently, the Courts at Delhi will lack territorial jurisdiction to entertain the petition.

9. In spite of repeated opportunity being granted to the respondent, the respondent has not filed a reply to the petition. Today none has appeared for the respondent.

10. I have considered the submission made by the learned counsel for the petitioner. The Impugned Order passed by the learned Judge, Family Courts, South-East District, Saket, New Delhi dismisses the application of the petitioner only on the ground that the question of territorial jurisdiction would be a mixed question of facts and law. The learned Judge, however, has not considered as to whether in light of the abovementioned facts, there was any disputed question of fact at all which needed adjudication. As noted hereinabove, the petition filed by the respondent itself asserted that the petitioner has left the matrimonial home on 20.05.2012. It does not, however, state if the

child remained in the custody of the respondent, that is the petitioner in the said petition, and if so, when was the child removed from his custody. Importantly, it does not state that the child remained within the territorial jurisdiction of the Court in Delhi. The cross-examination of the respondent was also before the learned Family Court, however, the Impugned Order makes no reference to the same. Even the school certificate certifies that the child has been studying in a school in Hisar since 09.07.2012. In presence of such overwhelming evidence, there was no disputed question of fact to be determined by the learned Family Court. The child clearly was not residing within the territorial jurisdiction of the Court at Delhi.

11. The learned Family Court has also been influenced by the dismissal of the Transfer Petition filed by the petitioner before the Supreme Court. The learned counsel for the petitioner submits that the Transfer Petition was filed primarily on the ground of inconvenience of the petitioner in defending the petition at Delhi and was dismissed by the Supreme Court observing that the petitioner will be at liberty to avail the video conferencing facility to the extent permissible, however, the question of jurisdiction of the Court had to be independently examined. I find merit in the said submission. Mere dismissal of the Transfer Petition would not confer jurisdiction in the Court which otherwise lacks it. The question of jurisdiction had to be independently determined by the learned Family Court and for such determination, dismissal of the Transfer Petition by the Supreme Court could have no bearing.

12. In view of the above, I find merit in the present petition. The same is allowed and the Guardianship Petition, being GP No. 27/2017, titled *Suraj Suhag vs. Vijayanti*, pending before the Family Court, South-East District, Saket, New Delhi is dismissed for lack of territorial jurisdiction. There shall be no order as to cost.

NAVIN CHAWLA, J

FEBRUARY 07, 2020/rv

