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

+ **CM(M) 385/2022 & CM APPL. 20173/2022**

ANIT KUMAR @ ANIT SINGH

..... Petitioner

Through: Mr.Purushottam Sahrawat and
Mr.Lalit Sharma, Advocates.

versus

SMT. POOJA

..... Respondent

Through: Mr. Shiv Kumar Singh, Advocate.

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Date of Decision: 03rd November, 2022.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed challenging the order dated 07.04.2022.
2. Learned counsel for the petitioner submits that admittedly the child is ordinarily a resident of Muzzafar Nagar and therefore in view of Section 9(1) of the Guardian & Wards Act, 1890, the Court of Muzzafar Nagar shall have the jurisdiction to entertain the petition.
3. Learned counsel for the respondent has opposed the same and has relied upon the judgment of the Supreme Court in the case titled ***Ruchi Majoo vs. Sanjeev Majoo***: (2011) 6 SCC 479.

4. The Relevant para of the impugned order dated 07.04.2022 reads as under:-

“If this court does not have territorial jurisdiction, the petition cannot be rejected under Order VII Rule 11 CPC. If this court does not have territorial jurisdiction, the petition will have to be returned for filing before the court having territorial jurisdiction. The child is about 3 years old now. In view of Section 6 of Hindu Minority and Guardianship Act, the custody of the child has to be ordinarily with the mother. The question whether the petitioner voluntarily abandoned the custody of the child is a matter of trial. The question of territorial jurisdiction is a mixed question of law in fact and the same cannot be decided at this stage. The judgments cited at bar by Ld. Counsel for respondent have different facts. Accordingly the application of the respondent is dismissed and is directed to file to the petition and the application under Section 12 of the G.W. Act.”

5. Perusal of the para makes it clear that the learned Judge, Family Court has not returned any finding as to the territorial jurisdiction. The learned Judge, Family Court is directed to frame a preliminary issue on the point of territorial jurisdiction and return a finding on the question of the territorial jurisdiction after conducting necessary enquiry. The enquiry may include taking of evidence on this point.
6. However, this will not in any manner deprive the learned Family Judge to pass any order regarding the interim custody in accordance with law till the decision of the preliminary issue, in the welfare of the child, as a temporary arrangement.

7. With these observations, the present petition along with the pending application stands disposed of.
8. Parties are directed to appear before the learned Judge, Family Court on 01st December, 2022.

DINESH KUMAR SHARMA, J

NOVEMBER 03, 2022
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