

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 2996 of 2022

Priyanka Mohata

Vs.

Ashwin Mohata

For the petitioner

:Mr. Kushal Chatterjee, Adv.

Mr. Oishik Chatterjee, Adv.

Mr. Manish Shukla, Adv.

Ms. Ivi Banerjee, Adv.

For the Opposite Party

:Mr. Kaushik Pradhan, Adv.

Heard On

: 20.06.2024, 25.06.2024

Judgment On

: 12.08.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred by the petitioner under Article 227 of the Constitution of India with a prayer for setting aside of the order being no. 13 dated 20.04.2022 passed by Learned Additional District Judge, Fast Track Court, Barasat, North 24 Parganas in connection with Misc. Case No. 16 of 2020 wherein Ld. Trial Judge rejected the application made by the petitioner herein under Section 151 of the Code of Civil Procedure (for short CPC), challenging the maintainability of the application made by the opposite party before the Court of Ld. District Judge, Barasat under Section 7,8 & 12 of the Guardians and Wards Act, 1890 (for short Act of 1890) on the point of jurisdiction exclusively. In the impugned judgement, Ld. Trial Judge by rejecting the prayer of the petitioner observed that the Court has ample jurisdiction to entertain the application for custody under Act of 1890.

Brief facts:-

2. The petitioner in the year 2013 got married to opposite party herein and out of the said wedlock they gave birth to a girl child in the year 2017. But, soon after the birth of the girl child the opposite party and his family members allegedly started ill

treating & torturing the petitioner both mentally and physically to a greater extent which compelled the petitioner to leave her matrimonial home along with her minor daughter in the year of 2018. Thereafter, the opposite party herein as petitioner in the year 2020 filed an application under Sections 7 & 8 of the Act of 1890 for the custody of the minor daughter along with an application under Section 12 of the Act of 1890 for visitation rights. Thereafter, the petitioner herein on 05.03.2022 filed an application under Section 151 of the CPC with a prayer for rejection of the said application preferred by the opposite party herein on the ground of lack of jurisdiction. But on 20.04.2022 the Ld. Trial Judge rejected the same through the impugned order. Being aggrieved by and dissatisfied with the said order the petitioner has preferred the instant revision application.

Cases relied on behalf of the parties:-

- ***Ruchi Majoo vs. Sanjeev Majoo reported in (2011) 6 Supreme Court cases 479***
- ***Bhagyalakshmi vs. K. Narayana Rao reported in 1981 SCC OnLine Mad 190***

- ***Konduparthi Venkateswarlu vs. Ramavarapu reported in AIR 1989 Orissa 151***
- ***Shilpa Aggarwal vs. Aviral Mittar & Anr reported in (2010) 1 SCC 591***

Argument advanced:-

3. Ld. Counsel, Mr. Kushal Chatterjee, appearing on behalf of the petitioner has advanced his argument mainly on the following points:-

- The Ld. Judge has not taken into consideration the fact that the minor child was residing at 20L, Motilal Basak Lane, Phoolbagan, Kolkata-700054 which is beyond the jurisdiction of the District Judges Court at Barasat, North 24 Parganas and within the jurisdiction of District Judges Court at Alipore, South 24 Parganas. Referring to the cause title of the application under Section 7 & 8 of the Act of 1890, Mr. Chatterjee has submitted that Ld. Trial Judge also ignored the cause title of the aforesaid application indicating the residential address of the child to be in Phoolbagan.
- Ld. Judge also recorded that respondent/wife resides with the minor daughter at 20L, Motilal Basak Lane, Phoolbagan,

Kolkata- 700054 but still he refused the prayer made by the petitioner/wife under Section 151 of the CPC.

- Mr. Chatterjee has further submitted that it is not the case of either parties that the child has been residing casually or temporarily at 20L, Motilal Basak Lane, Phoolbagan, Kolkata- 700054 as the petitioner wife permanently left her matrimonial at Salt Lake and started residing at her parental home at Phoolbagan.
 - Mr. Chatterjee has drawn attention of this Court to the revision application and submitted that the wife/petitioner renounced the company of her husband and her intention was to reside at her paternal home with her child.
 - In support of his contention, Mr. Chatterjee relied on the case of ***Ruchi Majoo*** (supra).
4. Per contra, Ld. Counsel, Mr. Kaushik Pradhan, appearing on behalf of the opposite party has contended that cause title of the application under Section 7, 8 & 12 of the Act of 1890 filed by the opposite party/husband disclosed the address where child was residing presently after she was forcibly taken away

from the house of the opposite party/husband by the petitioner/ wife.

5. Mr. Pradhan has further contended that the facts dealt with by the Hon'ble Apex Court in the Case of ***Ruchi Majoo*** (supra) is not at all identical with the facts of the case at hand.

Analysis:-

6. Admittedly, both the parties to the revision application are residing separately and their marriage still exists. According to the case of the opposite party/husband, the petitioner/wife forcibly took away the minor daughter to her parental residence. In opposition to that, according to petitioner/wife she was subjected to torture both physically and mentally at her matrimonial home which eventually compelled her to leave her matrimonial home along with her minor daughter and take shelter in her paternal home at Phoolbagan.
7. In the case of ***Ruchi Majoo*** (supra) the Hon'ble Apex Court interpreted the word 'resides' and held that "a person resides in a place if he through choice makes it his abode permanently or even temporarily; whether a person has chosen to make a particular place his abode depends upon the facts of each

case". But, having said that the ratio enumerated in that case was based on a very different set of facts and circumstances and therefore it cannot be said that the findings of the Hon'ble Apex Court in the referred case squarely applies to the factual position of the present case.

8. In the case of ***Shilpa Aggarwal*** (supra) the Hon'ble Apex Court dealt with a case where factual position was absolutely different with that of ours as in the referred case the minor was already holding a British Passport by birth and was residing in India with her mother despite an order passed by the High Court of Justice, Family Division U.K., directing the child to be returned to the jurisdiction of the Courts of England and Wales.

9. In the case of ***Bhagyalakshmi*** (supra) the Hon'ble Madras High Court while interpreting the term 'ordinary residence' within the meaning of Section 9 of the Act of 1890 held that ordinary residence connotes a regular, normal or settled home and not a temporary or forced one to which a minor might have been removed either by stealth or by compulsion. The place of residence at the time of filing of the application under the Act

of 1890 does not decisively determine whether a particular Court has jurisdiction to entertain the proceeding or not.

10. Now coming to the case of ***Venkateswarlu*** (supra) Hon'ble Orissa High Court held that residence by compulsion at a place irrespective of duration cannot be treated as a place of ordinary residence.

11. Common ratio of all the aforementioned referred cases is that the issue of 'ordinary residence' of a minor under Section 9 of the Act 1890 depends on the facts and circumstances of each case leaving no straight jacket formula.

12. In our case, admittedly, both the parties to this revision application after marriage were residing at FD-467/2, Salt Lake City, Sector- III, Bidhananagar where the minor child was born. Following a dispute between the parties to the revision application, the petitioner herein left her matrimonial home at Salt Lake along with her minor daughter and started residing at her paternal home in Phoolbagan.

13. It is not the case of the parties to this revision application that the marriage between the parties has been dissolved through any decree of divorce. Therefore, there is hardly any

scope to presume that there is no chance of reunion of the parties in future. From that point of view, at this stage, it cannot be said that the petitioner is a permanent resident of Phoolbagan.

14. The child was born at Salt Lake admittedly but thereafter she was compelled to move to Phoolbagan by the petitioner. It has also to be borne in mind that the duration of stay in the residence at Phoolbagan cannot be equated to the place of ordinary residence.

15. Therefore, the stay of the minor at Phoolbagan, irrespective of the duration, cannot be regarded as ordinary place of residence as this stay can at best be said to be a result of 'force of circumstances'.

16. In the aforesaid view of the matter, I find hardly any scope to interfere with the impugned order.

17. As a result, the instant civil revision application being no. 2996 of 2022 stands dismissed.

18. Interim order, if there be any, stands vacated.

19. Connected applications, if there be, also stands disposed of accordingly.

- 20.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]