



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

917 WRIT PETITION NO. 8985 OF 2022

Gulam Yazdani Gulam Samdani

VERSUS

Iram Afreen Abdul Samad

...

Advocate for the Petitioner : Mr. Ansari Asfia Nuzhat

Advocate for Respondent : Mr. Hamzakhan I. Pathan

...

WITH

**CIVIL APPLICATION NO. 1077 OF 2023
IN WP/8985/2022**

....

CORAM : R. M. JOSHI, J.

Dated : July 10, 2024

PER COURT :-

1. Heard.
2. This petition takes exception to order passed below Exhibit 19 in Petition No. D-10/2021 by Family Court, Nanded whereby the application for raising objection with regard to the jurisdiction of the Court is rejected.
3. Learned Counsel for the petitioner/ original respondent husband submits that in order to maintain any application under Section 25 of the Guardian and Wards Act, the same shall be made to the District Court having jurisdiction to the place where the minor ordinarily resides. With this specific contention that the children are residing at Pune, such objection is raised. According to her, Family Court however has not considered the said aspect and has only taken into consideration provisions of Section 8 of the Family Court Act which provides that no District Court or any subordinate Civil Court referred to Section 7 (1) shall

in relation to such area have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to the sub-section. Learned Counsel for the petitioner contends that in absence of recording any findings with regard to the ordinary residence of the children, the application ought not to have been dismissed.

4. Learned Counsel for the respondent tried his best to support the impugned order by contending that considering the visitation right given under 'Khula' between petitioner and respondent, the children are supposed to have been residing at Nanded itself. He has also contended that the summons is served on the respondent at his address at Nanded, and therefore, it is to be held that the Family Court at Nanded has jurisdiction to entertain the application.

5. Section 9 of the Guardian and Wards Act specifically provides that the territorial jurisdiction of the Court would be the place where the minor ordinarily reside. Perusal of the application does not show that there is any specific averments in the application to the effect that the minors herein are resident of Nanded. As against this, there is specific reply filed by the respondent contending that he has migrated to Pune and that the children are resident of Pune and taking education therein. In spite of such specific plea being raised by the respondent, the learned Family Court has failed to take into consideration as to whether

there is territorial jurisdiction to said Court to entertain the proceedings under Section 25 of the Guardian and Wards Act.

6. Family Court, Nanded seems to have considered objection only to the extent of jurisdiction of District Court and not territorial jurisdiction, which would apply to Family Court too. The objection raised by the petitioner with regard to the territorial jurisdiction is ignored and not decided. In order to reject the contention raised there ought to have been a finding that the children are or not ordinarily residing within the jurisdiction of the Family Court. Having regard to the aforesaid facts, the impugned order cannot sustain, hence set aside. The application Exhibit 19 is relegated back to the Family Court for decision afresh. It is expected from the Family Court to take into consideration provisions of Section 9 of the Guardian and Wards Act and to record finding with regard to the ordinary residence of the children before passing any order on the application.

7. In view of the above, petition is disposed of. Pending application stands dismissed.

(R. M. JOSHI, J.)

vj gawade/-.