

FAO-1772-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1772-2024 (O&M)

Date of decision: April 22, 2024

Mayank Rai

....Appellant

versus

Charu Srivastava

....Respondent

**CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE HARSH BUNGER**

Present:- Mr. Vinod Kumar, Advocate for appellant.

SUDHIR SINGH, J. (ORAL)

Appeal herein is against the impugned order dated 03.02.2024 passed by learned Additional Principal Judge, Family Court, Gurugram, whereby, an application under Order VII Rule 11 read with Section 151 of Code of Civil Procedure, 1908 (for short ‘CPC’) filed by respondent/ wife has been allowed, and the petition under Sections 8 and 25 of the Guardian and Wards Act, 1890 (for short ‘Act of 1890’) filed by appellant/ husband seeking custody of minor child, was ordered to be returned for the lack of jurisdiction.

2. Learned counsel for appellant submits that appellant had filed a petition under Sections 8 and 25 of the Act of 1890 seeking custody of minor child. He submits that thereafter, respondent/ wife had preferred an application under Order VII Rule 11 read with Section 151 of CPC, which was allowed vide impugned order dated 03.02.2024 by learned trial Court while rendering findings in paras-5 and 6 thereof which read thus:

“5. *It may be pointed out here that perusal of the file shows that the petitioner has shown himself to be resident of Noida. Further, he has shown the respondent to be resident of Gurugram. Respondent has filed a petition under Section 125 Cr.P.C. at*

Gautambudh Nagar, Noida by mentioning her address to be of Gurugram. The said petition was prepared on 17.01.2023 as is reflected in the petition itself. Present petition has been filed by the petitioner on 23.03.2023, thus, the child was residing within the jurisdiction of this Court immediately before the filing of this petition. One FIR under Section 323/504/506/498-A IPC is pending against the respondent at Gautambudh Nagar, Noida. Respondent has filed petition under Section 125 Cr.P.C. against the petitioner at the same place. The child perhaps remained at Gyaananda School, Gurugram for a very short period of time. Presently, he has been moved to Noida. The child is of a very tender age, therefore, directing the child to be produced before the Court or for visiting purposes at Gurugram would be uncomfortable for the child. Since the entire litigation of the parties is already pending at above referred place, the child is presently residing at Noida and the respondent is also a resident of Noida, therefore, this Court is not having jurisdiction to try this petition.

6. Accordingly, the main petition is ordered to be returned to the petitioner for presenting before the proper forum. Accordingly, the application stands allowed. Rest of the file be consigned to record room.”

2.1. After arguing for sometime, learned counsel for appellant seeks to withdraw the instant appeal with liberty to make an appropriate petition before the Court with competent jurisdiction seeking custody of the child.

3. Dismissed as withdrawn with liberty aforesaid. If so advised, an appropriate petition can be filed before the Court at Noida, Uttar Pradesh for seeking relief in question.

4. Pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

April 22, 2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No