



CR-3689-2023 (O&M) -1-
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR-3689-2023 (O&M)
Reserved on:14.03.2024
Date of pronouncement:07.05.2024

Dinesh Kumar

... Petitioner

Vs.

Isha Rani

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Argued by petitioner in person.

Mr. Nikhil Sabherwal, Advocate for the respondent.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed against the order dated 01.02.2023 passed by Id. Principal Judge, Family Court, Bathinda, whereby the application filed by the petitioner under Section 114/Order XLVII CPC seeking review of order dated 12.02.2020 has been dismissed.

2. The brief facts as per revision petitioner are that marriage of the petitioner and respondent was solemnized on 06.09.2014 as per Hindu Rites and Ceremonies and they started cohabiting at Village Bajakhana, District Faridkot. Out of their wedlock, a male child, namely, Priansh Mittal was born on 25.02.2016. It has been alleged that they used to remain quarrel between them and their relations were not cordial with each other. It has further been alleged that respondent put pressure upon the petitioner to reside at Bathinda and under compelling circumstances, the petitioner and respondent started residing together at Bathinda from 01.07.2018 in a rented

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accommodation. But thereafter on 08.09.2018, respondent deserted the petitioner and minor child and went to her parental house at Rama Mandi, Bathinda. The petitioner along with his minor child, namely, Priansh Mittal started residing at Bajakhana, District Faridkot with his parents. Immediately coming to her parental house on 24.09.2018, the respondent filed a complaint under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter to be referred to as 'the 2005 Act') against the petitioner, where the respondent had mentioned address of the petitioner to be of Village Bajakhana, District Faridkot. Petitioner got admitted his minor child in Dashmesh Kindergarden Bargari, Near Bajakhana, District Faridkot on 21.02.2019. Respondent also got registered FIR No.7, dated 26.02.2019 at Police Station Women, District Bathinda, in which the address of the petitioner was mentioned as of Village Bajakhana, District Faridkot. The revision petitioner has alleged that initially the petitioner had the custody of minor child. But then respondent preferred petition under Section 25 of the Guardians and Wards Act, 2005 (GW/155/2019) on 30.03.2019 which is pending before the Family Court, Bathinda. It has been further alleged that the said petition was filed by the respondent in a Court which lacked jurisdiction as in terms of provisions of the Guardians and Wards Act. A petition under Section 25 of the 2005 Act for custody of a minor can only be filed where the minor is residing at the time of filing of the said petition. The respondent in the said petition has intentionally mentioned the petitioner to be a resident of Aggarwal Colony, Bathinda whereas the petitioner is a resident of Bajakhana, District Faridkot.

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3. Respondent had filed various complaints before the various authorities and Courts earlier mentioning the address of the petitioner to be a resident of Bajakhana, but in the instant petition under Section 25 of the 2005 Act, she has intentionally mentioned his address as resident of Aggarwal Colony, Bathinda, in order to show that the petitioner is residing alone at Aggarwal Colony, Bathinda separate from his family members and hence, he cannot take proper care of the minor child and custody of the child be given to the respondent/mother. It has also been alleged that by giving the wrong address, the respondent had created jurisdiction at Bathinda. Since the aforesaid petition suffered the basic jurisdictional defect, so petitioner filed an application for rejecting the petition for want of jurisdiction. The said application was dismissed vide order dated 12.02.2020 of the Additional Principal Judge, Family Court, Bathinda. Against the said order, the petitioner approached this Court by way of filing CR-1788-2020 which was dismissed as withdrawn with liberty to avail any other remedy in accordance with law, vide order dated 29.09.2020 passed by this Court. Thereafter, the petitioner filed an application and got reports of the District and Sessions Judge, Bathinda and the Principal Judge, Family Court, Bathinda that both the summons were served upon the petitioner at his office address at Rampura Phul and thereafter petitioner filed an application under Section 114/Order XLVII CPC for reviewing the order dated 12.02.2020 in pursuance to the liberty granted by this Court. Then vide the impugned order dated 01.02.2023, such application filed by the petitioner seeking review of order dated 12.02.2020 was dismissed. Aggrieved against the said order, the

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petitioner has approached this Court by way of filing of the present revision petition.

4. Petitioner has contended that the child resided at Village Bajakhana, District Faridkot throughout his life except for a small period of approximately two months from 01.07.2018 to first week of September, 2018. During this period, the minor child was admitted to Brainwave Kids Care, Ganesha Basti, Bathinda. A house was taken on rent by the petitioner in Aggarwal Colony, Bathinda for 11 months. But the petitioner along with his minor child started residing again at Bajakhana when the respondent deserted them both in first week of September, 2018. He has further contended that minor child was admitted to Dashmesh Kindergarten (Kindergarten Wing of Dashmesh Public School, Bargari) situated at Bargari in District Faridkot on 21.02.2019 i.e. more than a month before filing of GWA/155/2019 by the respondent. He has argued that on the date of filing of the petition by the respondent on 30.03.2019, minor Priansh Mittal was residing and studying in Faridkot district. So, the conclusion regarding date of admission of the child in Dashmesh Kindergarten, Bargari being in July, 2019 is erroneous. He has further argued that two summons were issued in this case. Summon No.1420 was served upon the petitioner by Birbal Singh, Process Server at his office address at Rampura Phul. Similarly, Summon No.1538 was served upon the petitioner by Sh. Ravinder Singh, Process Server at the same very address at Rampura Phul. Thus, both the summons were served to the petitioner at his office address at Rampura Phul. So the Court below has erroneously presumed that one of the summons were served

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at Bathinda address. In this context, he has also referred to report of the Principal Judge, Family Court, Bathinda and District & Sessions Judge, Bathinda. He has contended that thus the impugned order suffers from error apparent on the face of it and is liable to be set aside. It has also been contended that as per Section 9 of the 1890 Act, jurisdiction for filing of a case for guardianship of the person of the minor is to be filed to the District Court having jurisdiction in the place where the minor 'ordinarily resides'. The ordinary place of residence in the present case would be the house at Bajakhana as at the time of filing of the petition i.e. GWA/155/2019 by the respondent in the Family Court, Bathinda, child was residing and studying in a school at Bajakhana, District Faridkot. He has urged that in the application dated 23.03.2021 for grant of adjournment and for staying the proceedings in petition filed by the petitioner, the address of the petitioner as a resident of Aggarwal Colony, Bathinda had been mentioned by the counsel for the petitioner, as per the address already mentioned in the case title by the respondent in the petition under Section 25 of the 1890 Act. He has further urged that the Court below has rendered totally erroneous and perverse findings which were based on mere presumptions and assumptions and are not sustainable in the eyes of law and are liable to be set aside.

5. On the other hand, it has been contended by learned counsel for the respondent that petitioner is working as a Sales Tax Inspector and the ancestral village of the petitioner is Bajakhana. But at the time of filing of the petition i.e. GWA/155/2019, respondent was residing at House No.17036, Street No.5-A, Aggarwal Colony, Bathinda, which was a rented

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accommodation and had been taken on rent vide rent agreement dated 27.06.2018 duly executed by the petitioner. He has further contended that minor son was admitted in a Day Care School, namely, Brainwave Kids Care, Ganesh Nagar, Bathinda. So correct address of the petitioner was mentioned in the aforesaid petition. He has argued that the objections and the documents in support thereof cannot be appreciated at this stage and are to be appreciated only after taking evidence on record. He has further argued that the petitioner had already availed of his remedy while filing CR No.1788 of 2020 against the order dated 12.02.2020 and now he cannot again challenge the said order and no ground is made out for reviewing the order dated 12.02.2020 when there is no error apparent on the face of record and impugned order dated 01.02.2023 has been correctly passed by the Principal Judge, Family Court, Bathinda. He has vehemently contended that as per order dated 08.06.2021 passed by the Hon'ble Supreme Court in SLP (C) No.4443 of 2021 titled as Dinesh Kumar Vs. Isha Rani Civil Appeal No.1847 of 2021, counsel for the petitioner had undertaken before the Supreme Court that petitioner would withdraw the application filed under Section 9 before the Family Court. But petitioner has not honored the said undertaking and despite the said undertaking, filed the review application for reviewing the order dated 12.02.2020 on 23.05.2022. By placing reliance upon **Sarabjit Vs. Piara Lal & another, 2005(3) RCR (Civil) 213, Vinay Kumar Vs. Smt. Preeti, 2019 (2) RCR (Civil) 351 and Anshuman Singh Vs. Rhythm & others, 2021 (1) LAR 388**, he has contended that as per Section 6 (1) of the Hindu Minority and Guardianship Act, 1956, it is

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mandatory that a child below the age of 5 years has to reside ordinarily with the mother. Then the expression 'where the minor ordinarily resides' has to be interpreted to mean the residence of the mother and the petitioner has failed to show any error apparent on the face of record to make out any ground for review.

6. From the perusal of the record, it is revealed that earlier the petitioner had filed an application for rejection of the petition under Section 25 of the 1890 Act, for want of jurisdiction, alleging that the wrong address of the petitioner being living at Bathinda had been given, whereas he was residing at Bajakhana, District Faridkot and was posted at office of Excise and Taxation Department at Rampura Phul. He had also alleged therein that the minor son was also residing with him at Bajakhana at the time of filing of the said petition and the Court at Bathinda had no jurisdiction to entertain the aforesaid petition. The said application was disposed of by the Additional Principal Judge, Family Court, Bathinda vide order dated 12.02.2020 by passing a detailed speaking order after taking into consideration all the contentions raised by the petitioner. The petitioner filed CR-1788-2020 before this Court which was withdrawn on 29.02.2020 with liberty to avail legal remedy. Thereafter the petitioner filed an application before the Family Court, Bathinda for review of order dated 12.02.2020. The said review application has also been dismissed by the Principal Judge, Family Court, Bathinda vide the impugned order dated 01.02.2023. It is pertinent to mention here that as per order dated 08.06.2021 passed in SLP (C) No.4443 of 2021 arising out of Civil Appeal No.1448 of 2021, counsel

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for the petitioner had submitted before the Hon'ble Supreme Court that petitioner shall be withdrawing the application filed under Section 9 before the Family Court, which has not been honored by the petitioner and despite that he had filed the review application on 23.05.2022 for reviewing the order dated 12.02.2020.

7. Now it has been alleged by the petitioner that the minor son resided along with him at Bajakhana except for a small period from 01.07.2018 to first week of September, 2018. The minor son was got admitted at Dashmesh Public School, Bargari and admission fee of the minor was also paid vide cheque drawn by State Bank of India Branch. It has also been alleged that two summons were issued in this case i.e. Summon Nos.1420 and 1538 which were served to the respondent at his office address at Rampura Phul and not at his other address at Aggarwal Colony, which strengthens his claim that he was residing at Bajakhana at the relevant time. But the trial Court has rightly observed that the documents relied upon by the petitioner are not conclusive in itself to vindicate the claim of the petitioner that at the time of filing of the present petition, the minor was residing at Bajakhana in District Faridkot. In the instant petition, an application was filed on 23.03.2021 on behalf of the petitioner for staying the proceedings of the case in view of pendency of SLP (C) No.4443 of 2021 before the Hon'ble Supreme Court and in the said application, the petitioner himself mentioned his address as resident of Bajakhana District Faridkot now resident of first floor portion of House No.17036, Street No.5-A, Aggarwal Colony, Bathinda which falsifies his contention.

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8. It is trite law that a judgment/order may be open to review only if there is a mistake or error apparent on the face of record. But no such error apparent on the face of record has been pointed out in order dated 12.02.2020 passed by the Principal Judge, Family Court, Bathinda justifying the exercise of power of review under Rule (I) of Order 47 CPC.

9. There is another aspect of the matter which requires attention. It is trite to observe that the paramount consideration of the child has to be kept in view in deciding these matters. The tender age of a child below 5 years would necessarily require the natural love and affection which the child is likely to get from his mother, which would facilitate to his proper growth and development. Though as per terms of sub section 1 of Section 9 of the 1890 Act, any application made for seeking guardianship of a minor is to be made before the District Court that has jurisdiction over the place where the minor is ordinarily residing, however, in view of the fact that proviso contained in Clause (a) of Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter to be referred to as 'the 1956 Act') stipulates that custody of a minor, who has not completed the age of 5 years shall be ordinarily with the mother. According to proviso of Sections 2 and 5 of the 1956 Act, 1890 Act is in addition and not in derogation thereof. The matter is squarely covered by decisions of coordinate benches of this Court in **Smt. Sarabjit Vs. Piara Lal & another, 2005 (3) RCR (Civil) 213, Chiranjeev Singh Saini Vs. Baljit Kaur Saggoo, 2017 (4) PLR 380 (P&H), Amit Kashyap Vs. Pooja, 2017 (1) Law Herald 181 (P&H)**. In the aforesaid cases, it has been specifically held that the expression “minor

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ordinarily resides” used in Section 9 has to be interpreted to mean residence of the mother as custody of minors under 5 years of age would naturally lie with the mother.

10. Perusal of copy of the petition filed under Section 25 of the 1890 Act by the respondent reveals that it was filed on 20.01.2020 and at that time, the minor Priansh Mittal was aged about 3 years.

11. Moreover, the question of territorial jurisdiction loses the significance if considerable period has passed after entertaining the petition. All the judgments on child custody emphasize that it is the welfare of the child that should be first looked into. So when the custody battle was instituted more than 3 years ago by the respondent/mother in the Court at Bathinda and when that Court vide the impugned order not having ousted its own jurisdiction while dealing with the application for lack of jurisdiction, it would be prolonging the agony to oust jurisdiction of that Court. So after such a long delay ordinarily a petition should not be returned by sustaining objections of the territorial jurisdiction. Moreover, it is also well settled that convenience of hapless woman is always to be kept in view. It has been held by the Hon’ble Supreme Court of India in **Surinder Kaur Sandhu Vs. Harbax Singh Sandhu, 1984 (3) SCC 698** that it is the duty and function of the Court to protect the wife against burden of litigation in a convenient forum.

12. Keeping in view the above, the impugned order being well reasoned order does not suffer from any illegality or perversity and does not call for any interference in the revisional jurisdiction.



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- 13. Revision petition sans merit and is hereby dismissed.
- 14. Pending application(s), if any, shall also stand disposed of.

07.05.2024
harjeet

(SUKHVINDER KAUR)
JUDGE

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |