



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-5519-2023 (O&M)
Date of Decision: 15.05.2024

HARPREET KAUR GILL

...Appellant

Versus

HARINDER SINGH SANDHU

...Respondent

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

Present : Ms. Baani Chhiber, Legal Aid Counsel
and Mr. Mayank Vashishth, Advocate
for the appellant.

Mr. Lupil Gupta, Advocate
Ms. Khushi Suryavanshi, Advocate
Mr. Praduman Krishan, Advocate
and Mr. Sumit Bhardwaj, Advocate
for the respondent.

HARSH BUNGER, J.

CM-3174-CII-2024

This is an application for placing on record the short reply filed on behalf of respondent-Harinder Singh Sandhu.

Civil Misc. Application is allowed, as prayed for and the short reply filed on behalf of respondent-Harinder Singh Sandhu, is taken on record, subject to all just exceptions.

FAO-5519-2023 (O&M)

The present appeal has been filed against order dated 17.08.2023 passed by the learned Family Court, Bathinda, whereby an application filed by the appellant under Section 9 of the Guardians and

Wards Act, 1890 (in short '*the 1890 Act*') seeking dismissal of the application under Section 25 of the 1890 Act filed by the respondent-husband before the learned Family Court, Bathinda, for want of territorial jurisdiction; has been dismissed.

2. Briefly, the marriage between the appellant (Harpreet Kaur Gill) and the respondent (Harinder Singh Sandhu) was solemnized on 17.08.2017 and out of their wedlock, one daughter namely, Divleen Kaur Sandhu was born on 06.07.2018.

It transpires that a dispute had arisen between the appellant and the respondent on account of certain matrimonial issues. The appellant alleges that she was mercilessly beaten on 03/04.06.2022 for demand of dowry and was turned out of her matrimonial home along with her minor daughter, which constrained the appellant to file a case against the respondent under Section 12 of the Prevention of Domestic Violence Act, 2005 (in short '*the 2005 Act*') which is stated to be pending before the Court of Chief Judicial Magistrate, Tehsil Abohar.

On the other hand, it is the case of the respondent-husband that the appellant is a quarrelsome lady and has never performed her matrimonial duties and always disrespected his parents. Respondent claims that in the month of June 2022, the appellant gave beatings to minor and forcibly took away the minor with her. Respondent maintains that it is the appellant who has removed the minor child by stealth and kept her at a different place than the house of the respondent, which is his natural and permanent place of residence.

3. It appears that the respondent filed an application under Section 25 of the 1890 Act on 10.10.2022, before the learned Family Court at

Bathinda, praying for issuance of a direction to the appellant herein to hand over the custody of the minor daughter to the respondent.

During the pendency of the afore-said petition before the learned Family Court at Bathinda, the appellant herein filed an application under Section 9 of the 1890 Act, seeking dismissal of the afore-said petition filed by the respondent under Section 25 of the 1890 Act, for want of territorial jurisdiction on the plea that on the date of filing of the application under Section 25 of the 1890 Act, the minor was residing with the appellant in District Fazilka. It is stated that since August, 2022, the minor has been studying in Green View Sr. Secondary School, Chanan Khera, which is situated in Tehsil Abohar, District Fazilka. Therefore, it is the Family Court at Fazilka, which has the jurisdiction to entertain the said application under Section 25 of the 1890 Act.

4. The afore-said application filed under Section 9 of the 1890 Act by the appellant was contested by the respondent herein, on the plea that the application under Section 9 of the 1890 Act, has been filed by the appellant only to delay the proceedings under Section 25 of the 1890 Act. It was stated that the Family Court, Bathinda had the jurisdiction to try the application under Section 25 of the 1890 Act, as the parties were residing at Kamla Nehru Colony, Bathinda and the daughter was born on 06.07.2018 at Civil Hospital, Bathinda and since her birth till June-2022, the minor was continuously residing with the respondent at Bathinda. It was further stated that the minor daughter was also admitted in Delhi Public School at Bathinda and therefore, Bathinda was the place of ordinary residence of the minor; therefore, the Court at Bathinda had the territorial jurisdiction to entertain and try the said application under Section 25 of the 1890 Act.

5. Vide impugned order dated 17.08.2023, the learned Family Court, Bathinda dismissed the application under Section 9 of the 1890 Act, filed by the appellant by holding as under :-

“7. Admittedly, after the marriage, the petitioner and respondent resided and cohabited as husband and wife at Kamla Nehru Colony, Bathinda and out of this marriage, one daughter is born to the parties on 06.07.2018. It is also not disputed by respondent that minor daughter earlier admitted in Delhi Public School, Bathinda. Respondent is stated to have left the matrimonial home after taking the minor Divleen Kaur in the month of June, 2022. In the copy of petition under Section 12 of Domestic Violence Act filed by respondent, she pleaded to have left the matrimonial home on 04.06.2022 with the allegations that petitioner Harinder Singh Sandhu tried to kill her and she had to run away from her matrimonial home.

8. In view of discussion above, it is observed that this Court has territorial jurisdiction to entertain and try the present petition, as within the jurisdiction of this court, minor born on 06.07.2018 and also studied and would have continued to remain, but she was removed and taken at village Bhangalan, Tehsil Abohar, District Fazilka. As such, application under section 9 of Guardian & Wards Act, 1890 stands dismissed. Now to come up on 14.09.2023 for filing reply to main petition.”

6. In the afore-mentioned circumstances, the present appeal has been filed before this Court.

7. We have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

8. Upon considering the rival contentions of the parties, the

following issue arises for consideration before this Court :-

Whether the Family Court, Bathinda was justified in dismissing the application under Section 9 of the Guardians and Wards Act, 1890, filed by the appellant, seeking dismissal of the application under section 25 of 1890 Act filed by respondent, on the ground that the court at Bathinda had no jurisdiction to entertain the same?

9. Here, it would be apposite to refer to Section 9(1) of the 1890 Act, which reads as under :-

“9. Court having jurisdiction to entertain application – (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.”

In order to answer the aforesaid question, one has to see what is meant by the expression "*the place where the minor ordinarily resides*" in Section 9(1) of the 1890 Act.

10. In ***Ruchi Majoo v. Sanjeev Majoo, 2011(3) RCR (Civil) 122***; Hon'ble Apex Court has explained the meaning of expression "ordinarily resident", by observing as under: -

“13. Section 9 of the Guardian and Wards Act, 1890 makes a specific provision as regards the jurisdiction of the Court to entertain a claim for grant of custody of a minor. While Sub-section (1) of Section 9 identifies the court competent to pass an order for the custody of the persons of the minor, sub-sections (2) & (3) thereof deal with courts that can be approached for guardianship of the property owned by the minor. Section 9(1) alone is, therefore, relevant for our purpose. It says:

"9. Court having jurisdiction to entertain application - (1) If the application is with respect to the guardianship of the person of the minor, it

shall be made to the District Court having Jurisdiction in the place where the minor ordinarily resides."

14. It is evident from a bare reading of the above that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the 'ordinary residence' of the minor. The expression used is "Where the minor ordinarily resides". Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy. The factual aspects relevant to the question of jurisdiction are not admitted in the instant case. There are serious disputes on those aspects to which we shall presently refer. We may before doing so examine the true purpose of the expression 'ordinarily resident' appearing in Section 9(1) (supra). This expression has been used in different contexts and statutes and has often come up for interpretation. Since liberal interpretation is the first and the foremost rule of interpretation it would be useful to understand the literal meaning of the two words that comprise the expression. The word 'ordinary' has been defined by the Black's Law Dictionary as follows :

"Ordinary (Adj.) : Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterised by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

15. The word 'reside' has been explained similarly as

under :

"Reside : live, dwell, abide, sojourn, stay, remain, lodge. (Western-Knapp Engineering Co. V. Gillbank, C.C.A. Cal., 129 F2d 135, 136.) To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in residence, to have an abiding place, to be present as an element, to inhere as quality, to be vested as a right. (State ex rel. Bowden v. Jensen Mo., 359 S.W.2d 343, 349.)"

16. In Websters dictionary also the word 'reside' finds a similar meaning, which may be gainfully extracted :

"1. To dwell for a considerable time; to make one's home; live. 2. To exist as an attribute or quality with in. 3. To be vested: with in"

16A. In Mrs. Annie Besant v. Narayaniah AIR 1914 Privy Council 41 the infants had been residing in the district of Chingleput in the Madras Presidency. They were given in custody of Mrs. Annie Besant for the purpose of education and were getting their education in England at the University of Oxford. A case was, however, filed in the district Court of Chingleput for the custody where according to the plaintiff the minors had permanently resided. Repeating the plea that the Chingleput Court was competent to entertain the application their Lordships of the Privy Council observed :

"The district court in which the suit was instituted had no jurisdiction over the infants except such jurisdiction as was conferred by the Guardians and Wards Act 1890. By the ninth Section of that Act the jurisdiction of the court is confined to infants ordinarily residing in the district.

It is in their Lordship's opinion impossible to hold that the infants who had months previously left India with a view to being educated in England and going to University had acquired their ordinary residence in the district of Chingleput."

17. In *Mst. Jagir Kaur and Anr. v. Jaswant Singh*, AIR 1963 Supreme Court 1521, this Court was dealing with a case under Section 488 Criminal Procedure Code and the question of jurisdiction of the Court to entertain a petition for maintenance. The Court noticed a near unanimity of opinion as to what is meant by the use of the word "resides" appearing in the provision and held that "resides" implied something more than a flying visit to, or casual stay at a particular place. The legal position was summed up in the following words :

".....Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases there on, we would define the word "resides" thus: 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....."

18. In *Kuldip Nayar &Ors. v. Union of India &Ors.*, 2006(7) SCC 1, the expression "ordinary residence" as used in the Representation of People Act, 1950 fell for interpretation. This Court observed :

*"243. Lexicon refers to **Cicutti v. Suffolk County Council (1980)**³ All England Reporter 689 to denote that the word "ordinarily" is primarily directed not to duration but to purpose. In this sense the question is not so much where the person is to be found "ordinarily", in the sense of usually or habitually and with some degree of continuity,*

but whether the quality of residence is "ordinary" and general, rather than merely for some special or limited purpose.

244. The words "ordinarily" and "resident" have been used together in other statutory provisions as well and as per Law Lexicon they have been construed as not to require that the person should be one who is always resident or carries on business in the particular place.

245. The expression coined by joining the two words has to be interpreted with reference to the point of time requisite for the purposes of the provision, in the case of Section 20 of the RP Act, 1950 it being the date on which a person seeks to be registered as an elector in a particular constituency.

246. Thus, residence is a concept that may also be transitory. Even when qualified by the word "ordinarily" the word "resident" would not result in a construction having the effect of a requirement of the person using a particular place for dwelling always or on permanent uninterrupted basis. Thus understood, even the requirement of a person being "ordinarily resident" at a particular place is incapable of ensuring nexus between him and the place in question."

*19. Reference may be made to **Bhagyalakshmi and Anr. v. K.N. Narayana Rao**, AIR 1983 Madras 9, **Aparna Banerjee v. Tapan Banerjee**, AIR 1986 Punjab and Haryana 113, **Ram Sarup v. Chimman Lal and Ors.**, AIR 1952 Allahabad 79, **Smt. Vimla Devi v. Smt. Maya Devi & Ors.**, AIR 1981 Rajasthan 211, and in re: **Dr. Giovanni Marco Muzzu and etc. etc.**, AIR 1983 Bombay 242, in which the High Courts have dealt with the meaning and purport of the expressions like 'ordinary resident' and*

'ordinarily resides' and taken the view that the question whether one is ordinarily residing at a given place depends so much on the intention to make that place ones ordinary abode..."

11. In **Divya J. Nair v. S.K. Sreekanth, 2019(1) CivCC 135**; a Division Bench of Kerala High Court, observed as under:-

*"9. The question as to "ordinary residence" of a minor is always to be decided on the facts and particulars of each case. The expression 'where the minor ordinarily resides' excludes places to which the minor may be removed at or about the time of the filing of the application for the enforcement of the guardianship and custody of the minor. Where the application is filed soon after such removal, the place of such removal has to be ignored for the purpose of determining the jurisdiction of the court to entertain the application. The new place, to which the minor may have gone or may have been removed, can become the place of ordinary residence of the minor only after the minor has settled down at that place for a reasonably long period. Actual place of residence of the minor at the time of filing the application does not necessarily determine the jurisdiction of the court. Mere factual residence at a place at the time of the proceeding is not sufficient to confer jurisdiction. Ordinary residence means more than a temporary residence, even though such residence is spread over a long period [See **Sarada Nayar v. Vayankara Amma, 1957 KLT 466**].*

10. "Residence" has a connotation in law. It is not meant to take in places of temporary stay, however long the stay may be. Though a casual residence is also residence in a way, such transitory residence is not meant to be included within the purview of residence in law, unless a particular context justifies its inclusion. Permanent residence is the place where a person is expected to be ordinarily found.

*The place where mere physical presence is found may not necessarily be the place where he ordinarily resides. The expression "ordinarily resides" connotes a regularly settled home and not a place of stay where the children are obliged to dwell by force of circumstances or compulsion of the employment of parents [See **Chandy v. Mary, 1988 (1) KLT 611**].*

*11. In **Jeewanti Pandey v. Kishan Chandra Pandey, AIR 1982 Supreme Court 3**, the Supreme Court, dealing with a situation where jurisdiction of a court was based on 'the ground of residence' has observed as under :*

"12. In order to give jurisdiction on the ground of 'residence', something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the Court in which the respondent is sued, is his natural forum. The word 'reside' is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. In Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length of time', and words like 'dwelling place' or 'abode' are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had

gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides."

12. It can be gathered from the decisions referred to above that the ordinary place of residence of the child would be the place of residence of his parents. When the parents are living separately, it has to be ascertained with whom the child was residing on a permanent basis or for a considerably long period of time immediately prior to the filing of the application. Ordinary residence means more than a temporary residence. Actual place of residence of the minor at the time of filing the application does not necessarily determine the jurisdiction of the court. Mere factual residence at a place at the time of the proceeding is not sufficient to confer jurisdiction. The expression "ordinarily resides" connotes a regularly settled home and not a place of stay where the children are obliged to dwell by force of circumstances..."

12. In ***Dilip Kr. Behera v. Puspanjali Behera, 2015 AIR (Orissa) 200***; Orissa High Court observed as under:-

18. In view of the aforesaid decisions of various Courts, when the facts of the present appeal are expatiated and scanned, it becomes unambiguous that Nilesh was residing with his mother since last more than three years, who had left the company of her husband not to return again. The appellant-husband also never tried to resolve the dispute. On the other hand, he filed a suit for judicial separation. When Nilesh parted the company of his father, he was only two and half years of age. Therefore, his ordinary place of

residence will be that of his mother (respondent no.1). At no point of time, the minor was taken away out of the care and custody of the mother, and mother being the second lawful guardian and the child being living with his mother, his place of ordinary residence would only be that of his mother. We are of the considered opinion that there is a world of difference between 'would have resided' and 'ordinary place of residence'. The connotation 'would have resided' indicates the prospective place of residence, whereas 'ordinarily resides' is the present place of residence, which is not casual or temporary. There is also difference between the expression 'should have resided' and 'ordinary residence'. The connotation 'should have resided' indicates intention of the person where to reside, whereas the expression 'ordinary residence' means the place where he is already residing. Section 9(1) does not speak of 'would have resided' or 'should have resided'. It has nothing to do with the legal entitlement respecting residence of the minor. If the minor ordinarily resides at a place of his care and custody, which is not illegal or sans law, ordinary place of residence would be where he has resided. As stated, when the mother left the company of her husband, the father of the minor, although father is the first natural guardian, the child, who was only an infant of two and half years, would ordinarily reside with the mother, which conclusion is not difficult to perceive.

13. In ***Smt. Jyotsna Singh v. Saurabh Singh, 2018(3) CivCC 45;***

Allahabad High Court held as under:-

“14. The short question for consideration before this Court is whether the order impugned suffered from any illegality and the Family Court at Agra has jurisdiction to entertain the application filed by the husband under section 25 of the Guardians And Wards Act or not.

15. Section 9 of the Guardians And Wards Act, 1890 makes specific provisions as regards to jurisdiction of the Court to entertain the claim for grant of custody of a minor.

16. Clause 1 of section 9 of the Guardians And Wards Act, 1890, read as under:

"If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."

17. It is apparent from the reading of the above that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the place of "ordinary residence" of the minor. The expression used is "where the minor ordinary resides".

18. It is admitted between the parties that the minor child was born on 2.12.2011 at Ghaziabad out of the wedlock between the appellant and the respondent. Subsequently, in less than three weeks i.e. on 28.12.2011, the wife shifted to her parents' house at Bhopal along with the child and since then they are residing there. It is not disputed by the counsel for both the parties that the minor child namely, Surya never resided at Agra and is still living at Bhopal.

19. Under these circumstances, the minor cannot be said to be permanent resident of Agra as held by the Family Court. The Family Court has recorded the said finding on the basis of the fact that the father is permanent resident of Agra. The jurisdiction of the court as per the Section 9 (1) of the 6 Guardians and Wards Act is the place where the minor 'ordinarily resides'. In the facts on record, it cannot be said that the minor 'ordinarily resides' at Agra. The Family Judge totally ignored the provisions of Sub Section (1) of section 9 of the Guardians and Wards Act, 1890..."

14. From the above, it is discernible that the challenge to the jurisdiction of the Court will have to be seen in the context of the averments

made in the pleadings of the parties and the requirement of Section 9 of the 1890 Act.

15. From the pleadings brought before this Court, it is evident that there is a serious dispute as regards the claims of the respective parties i.e. whether the appellant was mercilessly beaten on 03/04.06.2022 for demand of dowry and turned out of her matrimonial home alongwith minor daughter (as claimed by the appellant) OR whether in the month of June 2022, the appellant gave beatings to minor and forcibly took away the minor with her (as claimed by the respondent).

A satisfactory answer to the same could be given by the trial Court, only after the parties had been given opportunity to adduce evidence in support of their respective versions.

16. Be that as it may, during the course of hearing of these proceedings, it was not disputed before us that presently, the respondent-husband has also filed a petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights and the appellant has filed a complaint against the respondent under the 2005 Act.

17. In order to explore the possibility of an amicable resolution of the dispute between the parties, we had called upon the parties to remain present in Court.

On 01.05.2024, the parties appeared in Court in person and willingness of parties to reside together was ascertained. Although the respondent-husband had agreed to take appellant-wife alongwith him, yet, the appellant-wife expressed her apprehensions as regards security of her life and liberty.

18. After interacting with the parties for some time, we are of *prima facie* view that at present the appellant-wife is not ready to reside with the respondent-husband at Bathinda. This aspect can be further gathered from her stand in the petition filed by her under the 2005 Act, wherein she has stated that respondent-Harinder Singh Sandhu tried to kill her and she had to run away from her matrimonial home.

19. Concededly, the parties have been residing separately since July 2022 and appellant alongwith the minor is residing at village Bhangalan, Tehsil Abohar, District Fazilka. It is not disputed that since August, 2022, the minor has been studying in Green View Sr. Secondary School, Chanan Khera, which is stated to be situated in Tehsil Abohar, District Fazilka.

20. Keeping in view the judicial pronouncements referred to above and from the facts on record; it can safely be inferred that the appellant has the intention to make village Bhangalan, Tehsil Abohar, District Fazilka, as her ordinary abode. In such situation, the word 'ordinary residence' of minor, as per Section 9(1) of the 1890 Act, should be construed as the place of residence of the appellant *i.e. Abohar*.

21. In view of the above discussion and taking note of the fact that the minor child is studying in a school at Abohar (Fazilka), it will be appropriate and in the interest/welfare of the minor child, that the application under Section 25 of the 1890 Act, filed by the respondent at Family Court, Bathinda be tried and decided by the Family Court, Fazilka. The question framed is accordingly answered in the 'negative'.

22. Resultantly, the present appeal is allowed and the impugned order dated 17.08.2023 passed by the Principal Judge, Family Court,

Bathinda, is set aside. Consequently, we direct that the case/application under Section 25 of the 1890 Act (CIS No.GW/91/2022:CNR No.PBBT01-009174-2022 titled as '*Harinder Singh Sandhu vs Harpreet Kaur Gill*' filed by the respondent at Family Court, Bathinda, be transferred to the Family Court, Fazilka, within a period of three weeks from the date of receipt/production of a copy of this order.

23. All pending application/s (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 15, 2024
gurpreet

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No