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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 24.07.2024

+ **MAT.APP.(F.C.) 232/2024**

IQBAL KHAN YUSUFI

.....Appellant

Through: Mr Arjun Natarajan with Ms Kamana
Pradhan, Advs. along with appellant.

versus

SABEENA SIDDIQUI

.....Respondent

Through: Ms Sabeena Siddiqui, respondent in
person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.41484/2024

1. Allowed, subject to just exceptions.

CM Appl.41483/2024

2. This is an application filed on behalf of the appellant seeking
condonation of delay in filing the appeal.

2.1 According to the appellant, there is a delay of twelve (12) days.

3. Having regard to the period involved, the delay is condoned.

4. The application is, accordingly, closed.

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5. At the outset, we must state that parties have joined the proceedings
through video conferencing [VC].



6. This appeal is directed against the judgment and order dated 06.05.2024 passed by Mr Gurvinder Pal Singh, learned Principal Judge, Family Courts, South East District, Saket Court, New Delhi.

6.1 *Via* the impugned judgment, the Family Court has allowed the application preferred by the respondent/mother under Order VII Rule 10 of the Code of Civil Procedure, 1908 [in short, “CPC”], and ruled that it has no territorial jurisdiction to entertain and try the guardianship petition lodged with it.

6.2 In this context, the learned Principal Judge, Family Courts, has adverted to the following:

- (i) That the child was born in Noida, Uttar Pradesh.
- (ii) In 2019, the couple resided in Noida, Uttar Pradesh.
- (iii) In October 2019, the child was removed by the respondent/mother to Prayagraj/Allahabad, Uttar Pradesh, where the respondent’s/mother’s parents reside.

7. Mr Arjun Natrajan, learned counsel, who appears on behalf of the appellant/father, however, submits that the learned Principal Judge, Family Courts, committed an error in view of the assertions made in paragraph thirty-nine (39) of the guardianship petition, in which, *inter alia*, it is averred that the respondent/mother, along with the child, was residing in Flat no.16, Pragati Vihar (Jawaharlal Nehru Stadium), New Delhi – 110003.

8. Before the Family Court, the respondent/mother took the stand that in August 2022, she and her child were ordinarily residing in Jabalpur, Madhya Pradesh.



8.1 In the application preferred under Order VII Rule 10 of the CPC, the respondent/mother had asserted that the child never resided in Delhi.

9. On the other hand, counsel for the appellant/father asserts that till 26.08.2022, the respondent/mother was residing in Delhi, being employed as an Inspector with the Central Bureau of Investigation (CBI).

9.1 For this purpose, our attention has been drawn to a document dated 11.10.2023 issued by the Superintendent of Police (Head Quarters), CBI Head Quarters, New Delhi. For convenience, the relevant parts of the said document are extracted hereafter:

“Ms Sabeena Siddiqui Inspector CBI was posted in CBI ACB New Delhi from 5.06.2017 to 26.08.2022. During the period of her posting at Delhi, she had requested for individual’s accommodation in the Guest House of CBI situated in Pragati Vihar Hostel, Lodhi Road, New Delhi for period from 10.11.2019 onwards. Accordingly, competent authority has accorded permission in favour of the officer for stay in the PV Hostel and allotted a bed in the ladies dormitory initially for a period from 10.11.2019 to 15.11.2019. Subsequently, on her request she was allowed to stay in the PV Hostel for the different brief periods. It is further informed that as per record of the office, the officer had stayed alone on all occasions on the allotted bed of the ladies dormitory of CBI Guest house at Pragati Vihar Hostel, Lodhi Road, New Delhi. The officer has vacated the ladies dormitory bed on 4.02.2022.”

10. A careful perusal of the aforementioned extract would show that the respondent/mother was posted in Delhi, and for that purpose, she was allotted an “individual accommodation” in CBI’s Guest House situated in Pragati Vihar Hostel, Lodhi Road, New Delhi.

11. The respondent/mother was allotted a bed in the ladies’ dormitory for a period spanning between 10.11.2019 to 15.11.2019. Furthermore, at her request, she was allowed to stay at the ladies’ dormitory for brief periods on various dates. The respondent/mother had vacated the ladies' dormitory bed on 04.02.2022.



12. The respondent/mother, as noticed hereinabove, has asserted that the child, from October 2019 onwards till August 2022 lived with the respondent's/mother's family in Prayagraj/Allahabad, Uttar Pradesh.

13. A perusal of the reply filed by the appellant/father to the application preferred by the respondent/mother under Order VII Rule 10 of the CPC would show that he has been unable to dislodge the assertion made by the respondent/mother that she did not ordinarily reside in the Delhi as alleged, or at all.

14. More significantly, the language of Section 9 of the Guardians and Wards Act, 1890 [in short, "Act"] confers jurisdiction on the District Court *"having jurisdiction in the place where the minor ordinarily resides"*.

15. The assertion made in paragraph thirty-nine (39) of the guardianship petition, when plainly read, does not advert to this aspect.

15.1 All that the appellant/father has said in paragraph 39 is that the minor daughter is in the custody of the respondent/mother, who is presently residing at Flat no.16, Pragati Vihar (near Jawaharlal Nehru Stadium), New Delhi-110003.

16. Concededly, the respondent/mother has initiated maintenance proceedings against the appellant/father, which are pending in the concerned court in Jabalpur, Madhya Pradesh.

17. The respondent/mother, who appears in person *albeit* through VC, has, in no uncertain terms, informed us that she, along with the minor child, resides in Jabalpur, Madhya Pradesh.

18. The respondent/mother has also indicated that she would have no objection if the instant petition is presented in the concerned court at Jabalpur, Madhya Pradesh.



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19. Thus, for the foregoing reasons, taking a holistic view of the matter, we are of the view that no interference is called for in the impugned judgment and order.
20. The appeal is, accordingly, dismissed.
21. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 24, 2024/pmc

Signature Not Verified

Digitally Signed By: TARUN
RANA

Signing Date: 05.08.2024
15:06:06

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