

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO. 62 OF 2024

Sonali Trushant Walde ..Applicant
Versus
Dhananjay Pundlik Choudhari ...Respondent

WITH
MISCELLANEOUS CIVIL APPLICATION (ST) NO. 23125 OF 2024

Dhananjay Pundlik Choudhari ..Applicant
Versus
Sonali Trushant Walde & Anr ...Respondents

Mr. Abhijeet Kandarkar, for the Applicant in MCA/62/2024 and for the Respondent in MCA(St)/23125/2025.
Smt Daksha Madhav Punghera, with Karan Gajra, Mohini Rehpade, Vijay Singh, Digvijay Kachare, Sanchita Sontakke, i/b Desai Legal, for Respondent in MCA/62/2024 and for the Applicant in MCA(St)/23125/2025.

CORAM: N. J. JAMADAR, J.
DATED : 17th APRIL 2025

ARUN
RAMCHANDRA
SANKPAL

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ORDER:

1. These Applications are preferred under 24 of the Code Civil Procedure Code 1908 (“the Code”) for transfer of the Applications for Guardianship filed under the Guardians And Wards Act 1890 (“the Act of 1890”).

2. Sonali, the Applicant in MCA No. 62 of 2024, is the sister of Monali, the deceased wife of Dhananjay Choudhari, the Respondent.

3. The marriage of Monali was solemnized with the Respondent on 15th May 2016 at Bramhapuri, District Chandrapur. A daughter, Ms “V” was born to Monali by the Respondent, on 6th November 2017. However, the marital life of Monali and the Respondent was afflicted with discord. Monali had instituted a number of proceedings against the Respondent. Subsequently, there was an effort at amicable resolution of the matrimonial dispute. Monali withdrew the proceedings which she had instituted against the Respondent. However, the settlement proved short lived.

4. In the wake of marital discord, Monali was constrained to take shelter along with Ms “V”, at her parental home at Bramhapuri. On 11th April 2022, Monali again filed a proceeding under the Protection of Women from Domestic Violence Act 2005 (“the D.V. Act”) being Misc Criminal Application No. 8 of 2022, before the Court of Magistrate at Bramhapuri.

5. On 16th April 2023, Monali, Ms “V”, the parents of Monali and her brother met a vehicular accident at Balaghat, Madhya Pradesh. Monali, her father, mother and brother died in the said accident. Only Ms “V” survived.

6. Sonali, the Applicant, who resides at Nashik, took the custody of Ms “V” and since then Ms “V” has been residing at Nashik. Ms “V” is enrolled in a school at Nashik. Thus, the Applicant filed a Petition for Guardianship under Sections 7 and 8 of the Act of 1890 before the Family Court at Nashik, being Petition No. 44 of 2023.

7. The Respondent-father of Ms “V”, in turn, filed an Application being Guardian Ward Case No. 119 of 2023 before the Principal District Judge, Chandrapur, seeking the custody of Ms “V” asserting, *inter alia*, that the Respondent is the natural guardian of Ms “V”, the Applicant, Sonali has surreptitiously removed Ms “V” out of the custody of the Respondent.

8. Initially, Sonali filed Misc Civil Application No. 62 of 2024 before this Court seeking transfer of the Guardian Ward Case No. 119 of 2023 from the District Court, Chandrapur to the Family Court at Nashik, for trial and disposal in accordance with law along with Petition No. 44 of 2023 filed by Sonali before the Family Court at Nashik.

9. The Respondent-Dhananjay has, in turn, filed Misc Civil Application (Stamp) No. 23125 of 2024, seeking transfer of the Guardianship Petition No. 44 of 2023 filed by Sonali from the Family Court at Nashik to the Court of Principal District Judge, Chandrapur, where Guardian Ward Case No. 119 of 2023 is sub judice.

10. The Applications are opposed by the respective Respondent.

11. I have heard Mr. Abhijeet Kandarkar, the learned Counsel for Sonali, the Applicant in MCA No. 62 of 2024 and the Respondent in MCA (Stamp) No. 23125 of 2024 and Smt. Daksha Punghera, the learned Counsel for Dhananjay, the Respondent in MCA No. 62 of 2024 and for the Applicant in MCA (Stamp) No. 23125 of 2024, at some length. The learned Counsel for the parties took the Court through the pleadings in these Applications and the Applications filed before the respective Courts and the material on record.

12. Mr. Kandarkar submitted that these Applications are required to be determined keeping in view the matrimonial disputes between the Monali, the deceased mother of Ms “V” and the Respondent, even prior to the death of Monali. The Respondent never had the custody of Ms “V”. On account of the ill-treatment meted out to Monali, the latter was constrained to take shelter at her parental home along with Ms “V”. Unfortunately, the entire family died in an accident. In those grave circumstances, Sonali; the Applicant, took upon herself the responsibility of parenting Ms “V”. Mr. Kandarkar thus urged with tenacity that in the peculiar facts of the case, the residence of Ms “V” at Nashik is her ordinary residence. Therefore, the proceedings filed by the Respondent-father are required to be transferred to the Family Court at Nashik, lest not only the Applicant but even the child would suffer extreme inconvenience and hardship.

13. In opposition to this, Smt. Punghera, the learned Counsel for the Respondent-father, strenuously urged that the Court at Chandrapur can only be said to have jurisdictional competence to decide the Petition for custody and guardianship. Laying emphasis on the text of Section 9 of the Act of 1890, Smt Punghera would submit that the child was ordinarily residing at Bramhapuri, District Chandrapur, when the mother of the child along with the parents and brother of the mother, met with an accident. Without disputing that there was marital discord between the mother and father of the child, Smt. Punghera would urge that the said marital discord would not alter the jurisdictional competence of the Court at Chandrapur as the child was indisputably residing at Chandrapur and was also enrolled in a school at Chandrapur. Therefore, the surreptitious and unauthorized removal of the child from Chandrapur to Nashik by Sonali would can by no stretch of imagination, confer jurisdiction on the Family Court at Nashik. Thus, the Guardianship Petition filed by Sonali, must be transferred to the Court of learned Principal District Judge at Chandrapur.

14. I have given anxious consideration to the submissions canvassed across the bar. At the outset, it is necessary to note that both the underlying Applications for custody and guardianship have been instituted before the District Court at Chandrapur and Family Court at Nashik under the Act of 1890. Since the Respondent-father seeks

custody of Ms “V” in the capacity of her natural guardian, the jurisdictional competence of the Family Court at Nashik to entertain, try and decide the Petition for guardianship filed by Sonali, the maternal aunt of Ms “V”, is required to be examined predominantly.

15. Section 9 of the the Act of 1890 indicates the Courts which would have jurisdiction to entertain the Applications for guardianship. Section 9 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.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”

16. Sub-section (1) of Section 9, with which we are primarily concerned, provides that if the Application is with respect to guardianship of the person of the minor, it shall be made to the District

Court, having jurisdiction where the minor ordinarily resides. The test to determine the jurisdiction of the District Court under Section 9 of the Act of 1890 would be, “the ordinary residence of the minor”. What is the import of the expression, “the minor ordinarily resides”?

17. Ordinary residence thus brings in its trail factual inquiry as to the residence of the minor. The legislature has advisedly used the term “ordinarily”. It cannot be equated with a casual or fleeting residence of a minor, much less can the expression “the minor ordinarily resides” be equated with the residence of the minor on the date of the Application.

18. The broad submission of Smt. Punghera that if the custody of the minor has been surreptitiously and unauthorizedly obtained and the minor has been taken to a place where he is made to reside forcibly or otherwise, then the District Court at such place cannot have the jurisdiction as such residence of the minor cannot be termed as ordinary residence, appears attractive. However, the said submission cannot have universal application de hors the facts of the case. When confronted with the question of jurisdiction of the District Court, the Court must have factual enquiry into the aspect of the ordinary residence of the minor.

19. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of **Ruchi Majoo Vs Sanjeev Majoo**¹, wherein the Supreme Court has expounded the nature of the ordinary residence envisaged by Section 9 of the Act of 1890. The observations of

1 (2011) 6 SCC 479.

the Supreme Court in paragraphs 27, 28, 29 and 30 are instructive and hence extracted below.

“23 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.”

24. 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.

26. 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 characterized by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual.”

The word `reside' has been explained similarly as under:

"Reside.— live, dwell, abide, sojourn, stay, remain, lodge. (Western-Knapp Engineering Co. V Gilbank, 129 F2d 135). 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. (Bowden v. Jensen Mo., 359 S.W.2d 343.)”

27. 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”

28. In Annie Besant V G. Nayayaniah AIR 1914 PC 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.”

29. In *Mst. Jagir Kaur And Anr V Jaswant Singh* AIR 1963 SC 1521, this Court was dealing with a case under Section 488 Cr.PC. 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:

"8.....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."

30. 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 ER 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."

20. In view of the aforesaid enunciation of law, it becomes clear that the expression "ordinary residence" is a relative concept and cannot be determined without an investigation into facts. Apart from the duration of residence, the attendant factors like the circumstances on account of which the minor came to reside at a particular place, the circumstances in which the minor was removed from another place, the desirability of continued residence of the minor at the given place from the perspective of her welfare, ought to inform the decision.

21. Reverting to the facts of the case at hand, the circumstances in which the minor came in the custody of Sonali cannot be lost sight of. From the perusal of the averments in the Application for custody preferred by the Respondent-father it becomes evidently clear that the minor was residing along with Monali, at latter's parental home in the wake of the marital discord. The material on record further indicates that the mother and father of the minor were involved in a bitter matrimonial dispute.

22. Two proceedings were initially filed by Monali against the Respondent, one under the DV Act being Misc Criminal Application No. 16 of 2019 and a Petition for restitution of conjugal rights, being Marriage Petition No. 250 of 2021, and the Respondent, in turn, had

filed a marriage petition for dissolution of the marriage, being Marriage Petition No. 325 of 2020.

23. An effort was made to amicably resolve the dispute and on 21st August 2021, Monali and the Respondent withdrew their respective marriage petitions. However, the cohabitation was short lived and Monali was again forced to take shelter at her parental home. On 11th April 2022, Monali again filed a proceeding under the DV Act, being Misc Criminal Application No. 8 of 2022. Thus, for over a year prior to the death of Monali, the minor was not in the custody of the Respondent, though the minor was residing with her mother, Monali, at the parental home of Monali, albeit in Chandrapur District.

24. With the unfortunate death of Monali her parents and brother in the vehicular accident in which the minor was also injured, Sonali, the Applicant came in the frame. If viewed through the prism of the bitter matrimonial discord between the mother and father of the minor and the fact that since a year prior to the death of Monali, minor had not been residing with the father, the act of Sonali in taking the responsibility of the minor and bringing her to Nashik, where she had been residing, cannot be termed as surreptitious removal of the minor from the custody of the father.

25. There is material on record to show that the minor has been enrolled in a school at Nashik. Since the death of her mother, the minor

has been under the care and custody of Sonali. By no stretch of imagination, can it be said that the residence of the minor with Sonali, her maternal aunt at Nashik (who is probably the only relative from the side of her mother willing to take care of the minor) is a casual or fleeting residence of the minor.

26. If viewed in the totality of the circumstances, in my considered opinion, the residence of the minor at Nashik with her maternal aunt, brought about by the sheer weight of the grave and extraordinary circumstances, can only be said to be ordinary residence. Therefore, I find it difficult to accede to the submission of Smt. Phungare that since the minor was residing at Chandrapur, before the death of her mother only the said place can be construed as the ordinary residence of the minor.

27. On the aspect of the convenience of the parties, Smt Phungare would urge that other proceedings are pending before the Courts at Chandrapur, including the Motor Accident Claim Petition. The Applicant, Sonali has been regularly attending those proceedings. Therefore, there is no reason why the Applicant Sonali cannot travel to Chandrapur and participate in these Applications under the Act of 1890.

28. The distance between Nashik and Chandrapur is incontrovertibly prohibitive. In ordinary circumstances, such distance coupled with the socio-economic consideration would tilt the scale convenience in favour

of a woman. In the case at hand, there is also an element of inconvenience and trauma likely to be caused to the minor. In the Petitions for guardianship and custody, the District Court may require the presence of the minor before the Court on more than one occasion. Therefore, the inconvenience to the minor also deserves to be taken into account. In addition, the visit of Sonali to Chandrapur to attend these proceedings, while the minor remains at Nashik, is also likely to cause inconvenience to the minor having regard to the long distance between Nashik and Chandrapur and the minor's requirements of care and support.

29. For the forgoing reasons, having weighed the comparative inconvenience to the parties, in my considered view, the scale of convenience tilts in favour of the Applicant. I am, therefore, inclined to allow the Application preferred by Sonali and reject the Application preferred by the Respondent-father of the minor.

30. Hence the following order:

: O R D E R :

- (i) MCA (Stamp) No. 23125 of 2024 stands rejected.
- (ii) MCA No. 62 of 2024 stands allowed.
- (iii) The Guardian Ward Case No. 119 of 2023 stands transferred from the Court of Principal District Judge, Chandrapur to the Family Court at Nashik.

(iv) The learned Principal District Judge at Chandrapur shall transfer the record and proceedings in Guardian Ward Case No. 119 of 2023 to the Family Court at Nashik with such dispatch that it reaches within a period of four weeks from the date of communication of this order.

(v) The Family Court at Nashik is requested to decide the guardianship petitions as expeditiously as possible and, preferably, within a period of nine months for the date of the appearance of the parties.

(vi) The parties shall appear before the learned Judge, Family Court, Nasik, on 10th June, 2025.

(vii) No costs.

[N. J. JAMADAR, J.]