



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR**

WRIT PETITION NO.6687 OF 2022

Dr. Vanita W/o Sandeep Agrawal
D/o Dharamraj Dwivedi
Aged about 43 Years, Occu : Doctor,
R/o.Kanpur, Uttar Pradesh,
C/o.CMO, Kharia Khanager,
Dist. Jodhpur, Rajasthan.
Through P.O.A. Kalicharan Rajendra Thakur,
Nagpur ...Petitioner

Versus

Sandeep S/o Shivkumar Agrawal
Aged about 44 years, Occ: Business,
R/o. Flat No.6, Miraj Apartment,
Plot No.C-14, Hill Top Ramnagar, Nagpur ...Respondent

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Shri. Anand Parchure, Advocate for the Petitioner.

Shri. M.P. Khajanchi, Advocate for the Respondent.

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CORAM : N. R. BORKAR, J.
RESERVED ON : 11th DECEMBER, 2024
PRONOUNCED ON : 17th APRIL, 2025

ORDER :

1. This Petition takes exception to the order dated 28.09.2022 passed by the Family Court Nagpur below Exhibit-37 in Petition No.D-1/2021.

2. The Petitioner is the wife of the Respondent. They have a daughter named Sanvi.

3. The Respondent has filed the Petition under Section 7 read with Section 25 of the Guardians and Wards Act (for short “the Act”). The Respondent has prayed that the custody of said minor daughter Sanvi, who at present is in the custody Petitioner, be granted to him.

4. The Petitioner taking exception to the jurisdiction of the Family Court, Nagpur to entertain the Petition filed by the Respondent sought it's dismissal by filing application under Order 7 Rule 11 read with Section 9 of the Act. By the impugned order the learned Family Court has rejected the said application.

5. The learned counsel for the Petitioner submits that the Petitioner is permanent resident of Kanpur. It is submitted that on 05.10.2020 due to matrimonial differences, she left the Nagpur and shifted to Kanpur, where she has already filed the Petition under Section 10 of the Hindu Marriage Act for judicial separation. It is submitted that Nagpur had thus ceased to be the ordinary place of residence of the Petitioner

and thus the Family Court, Nagpur has no jurisdiction to entertain the Petition filed by the Respondent. The learned counsel for the Petitioner submits that the learned Family Court thus erred in rejecting the application filed by the Petitioner by holding the act of the Petitioner taking the child to Kanpur without the consent of Respondent, amounted to unilaterally withdrawing the child from the jurisdiction of Nagpur. The learned counsel for the Petitioner in support of the submission that Petition for the Guardianship/Custody has to be filed in the Court having jurisdiction in the place, where the minor ordinarily resides has relied upon the decision of the Hon'ble Supreme Court in the case of **Ruchi Majoo Vs. Sanjeev Majoo**¹.

6. On the other hand, the learned counsel for Respondent submits that the Petitioner and the Respondent were co-habiting at Nagpur. It is submitted that daughter Sanvi was born at Nagpur and was studying in Nagpur. It is submitted that the Petitioner without the consent of Respondent took the daughter to Kanpur. It is submitted that the Family Court has thus rightly rejected the application filed

¹ (2011) 6 SCC 479

by the Petitioner. The learned counsel for Respondent submits that the issue is squarely covered by the decision of this Court in **Shri. Prakash Balkrishna Naidu Vs. Sou. Shashanka Prakash Naidu**².

7. In **Shri. Prakash Balkrishna Naidu Vs. Sou. Shashanka Prakash Naidu** (supra) the parties were residents of Nagpur and the daughter was taking education in Nagpur. She was removed and taken to Rajamundry in State of Andhra Pradesh. This Court after referring to the various decisions of the Hon'ble Supreme court has held thus :

“ 8. The sum and substance of the discussion made in the earlier paragraph is that in order to determine the issue of territorial jurisdiction, only thing that a Court is required to do is to find out where the minor ordinarily resides. The ascertainment of the place of ordinary residence of minor would depend upon the intention of the parties and the intention of the parties, cannot be ascertained just from the perspective of only one of the parents. It has to be taken to be an intention expressed by both the parents upto the point the issue of jurisdiction is decided or where father and mother are at loggerheads, it has to be taken as intention of that parent who, in law, can be considered to be entitled to the custody of the child or where the question of custody is subjudice, it has to be taken as intention of both the parents upto the point when differences between them arose.

9. In the present case, there is no order passed by any Court about granting of custody to either of the parents

² 2018 (7) ALL MR 87

so far. Therefore, this Court would have to ascertain from the facts present on record as to what was the intention of both the parents upto the point of discord occurring between them so that the question of ordinary place of residence of the minor can be resolved appropriately.

10. The admitted facts present on record, in my view, throw a clear light on the intention of the parents till the minor was shifted, and they are stated now. The minor, in the present case, a daughter, was born at Nagpur on 03.08.2010 and till 21st November, 2016, the minor resided at Nagpur. The minor had her education both in school and kindergarten at Nagpur. The minor was, when she was taken away on 21st November, 2016, studying in 1st standard of primary school at Nagpur which was named the “Centre Point School, Nagpur” and her admission in this School continues even today. The minor was taken away from the custody of the appellant, without his consent, on 21.11.2016 and then, the minor was admitted to a School of Rajamundry, Andhra Pradesh again unilaterally. Presently, the minor is actually studying at Rajamundry, Andhra Pradesh. The appellant now, is also seeking custody of the minor, apart from his being appointed as her guardian.

11. These admitted facts clearly show as to what was the intention of the appellant and the respondent since the birth of their daughter in the year 2010 till 21.11.2016 when the respondent unilaterally took away the child from Nagpur and relocated her at Rajamundry in what was to be her own move disapproved by the appellant. Their intention, since birth of the child till the point of discord occurring between them thus, was to keep the child at Nagpur only for all purposes; residential, developmental and educational thereby making Nagpur as ordinary residence of their minor daughter. The act of shifting of minor from Nagpur to Rajamundry by the respondent, being without consent of the appellant, was unilateral and hardly expressive of the intention of the parents, as understood by law. This being so, Rajamundry cannot be seen as a place where the minor ordinarily resides or the minor would have interest to adopt it as her ordinary place

of residence eventually, at least for the present. If there is any evidence led suggesting another inference, it would be a different matter. But, that would depend upon what evidence is ultimately adduced by the parties and that could be only when the case is tried on merits. But, till that happens, the admitted facts would reasonably demonstrate that the ordinary place of residence of the minor in the present case is none other than the city of Nagpur.”

8. In the present case also after marriage the Petitioner and Respondent started co-habiting at Nagpur. The minor daughter whose custody is sought was born in Nagpur. She was admitted in the school at Nagpur and was studying in second standard when she was taken to Kanpur on 05.11.2020. The matter is thus squarely covered by the decision of this Court in **Shri. Prakash Balkrishna Naidu Vs. Sou. Shashanka Prakash Naidu** (supra). In that view of the matter no interference is called for in the impugned order.

9. In **Ruchi Majoo Vs. Sanjeev Majoo** (supra) the parents and the child were American Citizens. The Petition was filed in the Court at Delhi. The Hon’ble Supreme Court after considering the facts of the said case has held that minor was an ordinary resident of Delhi. The finding to that effect read thus :

“45. It is difficult to appreciate how the respondent could in the light of the above communications still argue that the decision to allow the appellant and Master Kush to stay back in India was taken under any coercion or duress. It is also difficult to appreciate how the respondent could change his mind so soon after the above e-mails and rush to a Court in US for custody of the minor accusing the appellant of illegal abduction, a charge which is belied by his letter dated 19.07.2008 and the e-main extracted above. The fact remains that Kush was ordinarily residing with the appellant, his mother and has been admitted to a school, where he has been studying for the past nearly three years. The unilateral reversal of a decision by one of the two parents could not change the fact situation as to the minor being an ordinary resident of Delhi, when the decision was taken jointly by both the parents.”

10. The decision in **Ruchi Majoo Vs. Sanjeev Majoo (supra)** would be therefore of no help to the Petitioner. The Petition is dismissed.

(N. R. BORKAR, J.)