

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 4128 of 2024

With

CAN 1 of 2026

Shantilal Sharma

Vs

Susant Vyas @ Sushanta Vyas & Ors.

For the Petitioner : Mr. Atis Kr. Biswas,
Mr. Amit Singh,
Mr. Ranjit Balmiki.

For the Respondents : Mr. Pratip Mukherjee (Through VC),
Mr. Rahul Agarwal,
Mr. Arpit Agarwal,
Mr. Sk. Shakil Warsi.

Judgment reserved on : 10.03.2026

Judgment delivered on : 27.03.2026

Shampa Dutt (Paul), J.:

1. The civil revision has been preferred against an Order no. 10 dated 04.10.2024 passed by the learned Additional District Judge, 5th Court, Howrah in Misc Case No. 141 of 2023.

2. Vide the impugned order the trial Court, rejected the petitioner's application under order 7 Rule 10 r/w Section 151 CPC and Section 9 of the Guardian and Wards Act, on the (relevant) findings as follows:-

*".....The ordinary place of residence of a child depends on the factor **where the child resides for a considerable period of time and where the child receives his initial education and upbringing.** Camping here and there with the paternal relatives of the mother of the minor cannot be treated as a place of ordinary residence of the minor and considering the above factor this court is of the view that before the death of the mother of the minor Hriday Vyas his ordinary place of residence was in the house of his father where he together lived with his father and mother and has received his initial upbringing there and that place is the ordinary place of residence of the minor son of the petitioner which is situated within the jurisdiction of Golabari PS in the district of Howrah and as such this court has jurisdiction to try this application filed by the petitioner for the custody of the minor Hriday Vyas.*

In the result, the petition filed by the OP u/o 7 rule 10 r/w section 151 of the CPC and section 9 of the Guardians and Wards Act, is of no merit and thus stand dismissed on contest without any order as to cost.

Fix 29.11.2024 for filing of Written Objection by the opposite party in the Misc Case against the petition filed by the petitioner praying for custody of the minor.

Dictated & Corrected by

Sd/-

A.D.J., 5th Court, Howrah."

3. **Hence, the revision**, praying for setting aside of the impugned order.
4. The custody case is between the father (natural guardian) and maternal grandparents, the petitioner herein, after the death of the child's mother during the covid pandemic.

5. By virtue of a memorandum of understanding dated August 3, 2021, the child is residing with his maternal grandparents, since the death of his mother when he was aged about 8 years.
6. The child is now about 12 years of age and has lived for more than 4 years with the petitioner and his wife, his maternal grandparents.
7. The petitioner states that the child is a permanent resident of Thane, Maharashtra since June, 2022 and presently resides at Pune since April, 2024, where he has also been enrolled in a school.
8. Change of residence and intimation of the change of address has been done as per the MOU.
9. The petitioner states that the Learned trial Judge acted illegally and with material irregularity, by not considering that the present/permanent/ordinary residence of the minor child is at Flat No. 403, 4th Floor, 18, Casita, Block- Sector Baner, Pand Card Club Road, Baner, **District- Pune- 411045** and also studies there.
10. The petitioner further states that as the child stays at Pune for his education, it's in his welfare that he stays at Pune and that it will be difficult for the child and his grandparents to attend the Court at Howrah on regular basis to contest the custody case.
11. **Section 9 of the Guardians and Wards Act, lays down:-**

“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.”

12. The High Court of Punjab and Haryana at Chandigarh, Sulbhi & Ors. Bhavnesh Kumar, in CR No. 3925 of 2024 (O & M), decided on 7th January, 2025, Manu/PH/0001/2025, held:-

“15. A conjoint reading of all the above referred to statutory provisions shows that the intention of the legislature in Section 9 with respect to the jurisdiction is *that application for the guardianship of the person of the minor shall lie to the District Court having jurisdiction in the place where the minor is actually and physically residing.....*

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 in this case. 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.....*

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 *Cicu 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.....*

*.....Section 9 of 1890 Act lays down the rules with respect to territorial jurisdiction of the Court, in which the application for custody of the child has to be filed. **The ordinary residence of a child would determine the jurisdiction of the Court under Section 9 of 1890 Act and thus, the natural guardianship of a minor will not determine the jurisdiction.....”***

13. Regulation 2(9) of the Adoption Regulation, 2017 defines “Habitual residence” is as follows:-

“2(9) “habitual residence” means a place of settled dwelling, which constitutes the *ordinary residence* of a person *at least for a period of one year;*”

- 14. When speaking of the “habitual residence” of a child it will usually be very important to examine where the person or **persons who are caring for the child live where those persons have their “habitual” residence.****

To determine the habitual residence, the court must focus on the child, not the parents.

The intention of the person with parental responsibility (herein the maternal grandparents) to settle permanently with the child in another State, manifested by certain tangible steps, such as the purchase or rental of accommodation in the host State, may constitute an indicator of the transfer of the “habitual” residence.

- 15. In the present case, the child is staying at Pune since 2024, and has also been enrolled in a school there.**
- 16. Though the petitioner has also given an address at District Thane, Maharashtra, admittedly the child now studies and also stays at District Pune, Maharashtra, since 2024, that is more than one year and is also enrolled in a school there.**
- 17. Thus the child is a Habitual/ordinary resident of Pune, Maharashtra and the Court at Pune has the territorial jurisdiction to decide the custody of the child in this case.**

18. The impugned order no. 10 dated 04.10.2024 passed by the learned Additional District Judge, 5th Court, Howrah in Misc Case No. 141 of 2023, being not in accordance with law, **is set aside.**
19. The opposite party is at liberty to withdraw the case and file the same before the Court at Pune, having jurisdiction and may pray before the learned Court at Pune for leave to **appear virtually**, considering the distance of Court at Pune from the residence of the opposite party herein.
20. **CO 4128 of 2024 is disposed of as allowed.**
21. Connected application, if any, stands disposed of.
22. Interim order, if any, stands vacated.
23. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)