



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 66 OF 2025
WITH
CIVIL APPLICATION NO. 8023 OF 2025
IN AO/66/2025

1. Sayma Mujahid Patel
Age: 32 years, Occu: Service,
R/o: Plot No.19, Near Madarsa,
Pardhade Road, Pachora,
Taluka Pachora, District Jalgaon
2. Mohammad Umar Yusuf Khan
Age: 10 years, Occu: Education,
(Under the guardianship of application no.1 – Mother)
(At present in the illegal custody of Respondent)

**.....APPELLANTS/
Original Applicants**

VERSUS

Yusuf Khan Abdul Samad Khan
Age: 34 years, Occu: Nil,
R/o: Plot No.58, Gut No. 109,
Renuka Mandir Kaman,
Beed Bypass Road,
Behind J.K. Medical,
Satara Parisar,
Chhatrapati Sambhajanagar

**.....RESPONDENT
Original Respondent**

Mrs. Rani Bharuka – Bora, h/f. Mr. Mr. Satyajit S. Bora, Advocate for
Appellants
Mr. Ramiz K. Pathan, Advocate for Respondent

CORAM : SHAILESH P. BRAHME, J.
RESERVED DATE : 17.01.2026
PRONOUNCED DATE: 22.01.2026

JUDGMENT :-

1. Taken up for final disposal with the consent of the parties.
2. Appellants are aggrieved by the order passed by the learned Adhoc District Judge-1 at Jalgaon, rejecting the application for the custody of the minor on the ground of territorial jurisdiction. It is recorded that the minor is residing with his father at Aurangabad and the District Court, Aurangabad would have the jurisdiction.
3. Appellant no.1 and the respondent contracted marriage on 05.06.2011 and appellant no.2 – son was born on 01.01.2015 from the wedlock. The marriage was dissolved on 14.09.2016. Appellants are residing at Pachora, District Jalgaon and the respondent is residing at Aurangabad. The minor was removed from the custody of appellant no.1 on or about 13.03.2023 and he was taken to Aurangabad and since then he is with the respondent who refused to hand over custody. Appellants preferred Miscellaneous Civil Application No.128 of 2023 under Section 7 r/w 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as “the Act”) before District Court, Jalgaon.
4. Application is contested by the respondent. It is

specifically stated that it was agreed between the parties that appellant no.1 was to have custody of the minor till he attained the age of seven years and thereafter the custody was to be handed over to the respondent. Accordingly, it is handed over to him. It is further contended that appellant no.1 contracted second marriage and has suppressed material facts. It is further contended that she does not reside at Pachora but resides at Kasabkheda, Taluka and District Aurangabad.

5. Both parties have produced documentary evidence on record to show that the custody of the minor is with them. Application exhibit – 25 was presented by the respondent before District Court at Jalgaon, for rejection of the petition on the ground of territorial jurisdiction which was allowed by the impugned order.

6. Learned counsel Mrs. Rani Bharuka– Bora for the appellants would submit that the ordinary place of the residence of the minor son is at Pachora and she has adverted my attention to the documentary evidence to show that he was being admitted in the School at Pachora. His Adhar Card also discloses the same address. It is further submitted that temporary custody of the minor with the respondent is not a decisive factor and an error of jurisdiction has been committed by the learned Judge. It is submitted that the minor was being removed from ordinary place of residence and from the custody of appellant no.1 under foul pretext and by deception. It is further

submitted that the residence of appellant no.1 is not relevant for deciding territorial jurisdiction. Impugned order is stated to be perverse because the vital aspects of the matter have not been dealt with by the learned Judge.

7. Per contra, learned counsel for the respondent submits that as per the *Khulanama*, the custody was voluntarily handed over to the respondent and the minor is in his custody. It is further submitted that in March 2022, appellant no.1 remarried and her husband is having a daughter from his first marriage and therefore, it would be in the welfare of the minor to be with the respondent. My attention is adverted to the various documentary evidence to show that minor is being admitted in a School at Aurangabad. It is vehemently contended that appellant no.1 is residing at Kasabkheda and she cannot maintain a petition before the District Court, Jalgaon. The application for temporary custody preferred by appellant no.1 is stated to have been rejected by the Court observing that the minor was being maintained properly.

8. I have considered rival submissions of the parties. At the outset it is made clear that the issue of territorial jurisdiction needs to be decided. The merits of the matter need not be delve upon at this juncture, which is left for consideration of competent jurisdictional Court.

9. The marriage stood dissolved by *Khulanama* whereby it was agreed between the parties that custody of the minor boy up to 7 years

should be with appellant no. 1. Accordingly, minor was in the custody of appellant no. 1. There is no recital in the *Khulanama* that custody was to be handed over to the respondent after seven years. It is his defence that custody was handed over to him after completion of seven years. Further, there is no evidence to show that such custody was ever handed over to the respondent.

10. There is no material on record except bare statement in the say of the respondent that the custody of the minor has been handed over to the respondent amicably and peacefully. On the contrary, the application shows that he was being removed from the custody under false pretext. The respondent was not responsive for handing over custody. The custody of minor is with the respondent from 13.03.2023 and in all probabilities he might have been admitted in the school at Aurangabad thereafter.

11. The appellants have placed on record *bona fide* certificates of a school from Pachora and Aadhar card of the minor to show that he was admitted in the school at Pachora. By way of affidavit in reply respondent has brought on record that minor has been admitted in Scholar English School, Aurangabad. The certificates produced by the respondent including *bona fide* certificate indicate that he was admitted in the school in the year 2023-2024. Presently, he is at Aurangabad staying with the respondent.

12. As per Section 9 of the Act, the ordinary place of residence of the minor is the only relevant factor for deciding territorial

jurisdiction. Minor was not staying all the while with the respondent rather he was with the appellant-mother and going by the averments of the plaint he was being removed from her custody deceitfully. The physical custody of the minor at the time of filing application under Section 7 is not relevant.

13. Learned counsel Mrs. Bora has relied on judgment of Delhi High Court in the matter of **Manish Sehgal Vs. Meenu Sehgal; 2013 DHC 3633**. In that case also territorial jurisdiction of the competent Court was questioned. The application seeking custody of the minor daughter was filed by mother in Court at Delhi. Father filed similar application for custody in Court at Lucknow. It was the case of mother that place of permanent residence of her parents was the ordinary place of residence of the minor. It is contended by father that due to his transferable job minors were admitted in school at Lucknow. After considering various judgments, following conclusions are drawn:

“15. It is settled law that the place of residence at the time of the filing of the application under the Act does not help to ascertain whether a particular court has jurisdiction to entertain the proceedings or not. The moving of minors from one place to another and consequently from one jurisdiction to another does not help the party who raises the plea of jurisdiction. The main question i.e. whether the minors were ordinarily residing in any particular place has to be primarily decided on the facts of the particular case.

16. In view of the above said facts and circumstances as explained earlier, I am of the view that the impugned order cannot be interfered with. In view of facts stated in the petition, it is clear that the place where the children have gone to study cannot be presumed to be place of their ordinary residence. The children were residents of Delhi and were studying in Delhi prior to starting of matrimonial dispute. The removal of children by either side to Lucknow cannot be established permanent home of the children. Further, the divorce petition filed by the petitioner at Lucknow has been ordered to be transferred from Lucknow to Family Courts at Saket, Delhi by the Supreme Court in the respondent's Transfer Petition No. 163/2013 decided on 27th May, 2013 as Divorce Petition No. 2501/2012. In view of the above, the revision petition is hereby dismissed. No costs.”

14. Further reliance is placed on the judgment of **Dheeraj Vs. Chetna Goswami; AIR 2024 All 188**. It is relevant to refer to paragraph nos. 14 and 29:

“14. Further, in the case of Manish Sehgal versus Meenu Sehgal reported in MANU/DE/2252/2013: (2013) 202 DLT 87, rendered by the High Court of Delhi and affirmed by the Hon'ble Supreme Court of India vide its order dated 30.01.2014 In Manish Sehgal versus Meenu Sehgal, S.L.P.

(Civil) No(s). 1590-1590 of 2014; it has been held as follows:

"16. It is settled law that the place of residence at the time of the filing of the application under the Act does not help to ascertain whether a particular court has jurisdiction to entertain the proceedings or not. The moving of minors from one place to another and consequently from one jurisdiction to another does not help the party who raises the plea of jurisdiction. The main question i.e. whether the minors were ordinarily residing in any particular place has to be primarily decided on the facts of the particular case.

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29. The question, whether the minor is ordinarily residing at a given place is primarily a question of fact which cannot be decided without an enquiry into the factual aspects of the case. Moreover, the residence by volition or by compulsion within the territorial jurisdiction of the Court cannot be treated as place of ordinary residence. The words "ordinarily resides are not identical and cannot have the same meaning

as residence at the time of filing of the application for grant of custody. The purpose of using the expressions "where the minor ordinarily resides is perhaps to avoid the mischief that minor may be forcibly removed to a distant place, but still the application for minor's custody could be filed within the jurisdiction of the Court from whose jurisdiction he had been removed or in other words where the minor would have continued to remain but for his removal."

15. It is tried to be urged by the respondent that even appellant no. 1 does not reside at Pachora. Her residence is of no consequence to decide territorial jurisdiction. A reliance is placed for that purpose on the judgment of **Sulbhi and others Vs. Bhavnesh Kumar; 2025 PHHC 299**, decided by High Court of Punjab and Haryana. It is relevant to refer paragraph no. 12 of the judgment:

"12. Thus, the legal position which emerges is that Section 6 (a) of HMGA and Section 9 of GWA operate in different fields, independent of each other. While Section 6 of 1956 Act deals with natural guardian of a Hindu Minor, 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 and the two cannot be superimposed. If the legislature intended that the residence of the mother should determine the ordinary residence of the child, it would have used this expression in Section 9 of 1890 Act. However, this is not so and therefore, provision of Section 6 of 1956 Act cannot be imported to interpret Section 9 of 1890 Act. It is further clear that jurisdiction of the court to decide custody matter of the child is where the ward/child for the time being ordinarily resides. It does not require that a father or mother must ordinarily reside with the ward and that such question may be raised at the time of final hearing of the application under Section 25 of the said Act.”

16. Considering the legal position as is obtainable from above judgments, I find that impugned order is unsustainable. I, therefore, pass following order:

ORDER

- (i) Appeal from Order is allowed.
- (ii) Impugned judgment and order is quashed and set aside and matter is relegated to District Court Jalgaon to decide Civil Misc. Application No. 128/2023 on its own merits, expeditiously.

(iii) The parties shall appear before the District Court Jalgaon on 04.02.2026.

(iv) Pending Civil Application is disposed of.

(SHAILESH P. BRAHME, J.)

mkd/-