



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

125+257+258

FAO-878-2025 (O&M)

Date of Decision: 28.04.2025

Rahul Lamba

....Appellant

Versus

Tanya Prashar

....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Anil Kumar Garg, Advocate for the appellant.

Mr. Vipin Mahajan, Advocate for the respondent.

Sureshwar Thakur, J. (Oral)

1. The instant appeal is directed against the impugned order rendered on 30.01.2025 by the learned Principal Judge, Family Court, Gurdaspur, wherebys became dismissed an application filed under Order 7 Rule 11 CPC, thus seeking the rejection of the petition in view of Section 9 of the Guardian and Wards Act, 1890, (hereinafter in short to be referred as 'the Act of 1890'), wherebys became espoused, thus the restoration of the custody of the minor child to the petitioner from the respondent.

2. Before proceeding to determine the justifiability of the passing of the impugned order, it is relevant to extract, the provisions as embodied in Section 9 of the Act of 1890. The said provision becomes extracted hereinafter:-

"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.”

3. Readings of the provisions embodied in sub-Section 1 of Section 9 of the Act of 1890, unfolds that the test(s) *qua* assumption of valid jurisdiction over an application filed by the aggrieved parent, thus, seeking restoration of custody, viz-a-viz her/him from the opposite party, who has purported illegal custody over the minor child, thus become(s) rested on an able interpretation being made, viz-a-viz the legal coinage as carried therein i.e. “where the minor ordinarily resides”.

4. Though the learned Family Court while making an interpretation of the supra phrase, appertaining to the assumption of the jurisdictional, over a petition filed under Section 25 of the Act of 1890, thus made a conclusion in paragraph 4 thereof, para whereof becomes extracted hereinafter:-

“4. Having heard both the sides, it is not a disputed fact that the petitioner is the wife of the respondent and has sought the custody of the minor child from him. As per the date of birth of



*the minor child as mentioned in the petition, the child was born on 03.08.2019. The present petition has been filed on 19.04.2024. Meaning thereby, the child whose custody has been sought, was aged less than 5 years at the time of filing the present petition and she is in the custody of the respondent/father. It is not a disputed fact that the child is presently with the respondent/father. As per law, the petition for custody of the child under Guardians and Wards Act can be maintained at the place where the child ordinarily resides. However, Hon'ble Punjab & Haryana High Court has held in case titled as "**Akshay Gupta Vs. Divya & Ors. 2021 (1) RCR (Civil) 722**" that in case of custody of the child aged less than 5 years, the mother is the deemed natural guardian of the minor child at the time of instituting the proceedings. Therefore, the natural custody would also be presumed to be with the mother, regardless of the place where the child is actually residing physically at that time."*

5. The said conclusion became rested upon the principle, that since this Court in a judgment rendered in case "**Akshay Gupta Vs. Divya & Ors. 2021 (1) RCR (Civil) 722**", declared, that in case the relevant contest is with respect to the issue relating to the contentious custody of a child, who is below 5 years, thereupon the mother of the said minor child, rather is deemed to be the natural guardian of the minor child, thus at the time of initiation of the relevant proceedings. Consequently therebys, it was further declared, that the natural custody of the minor child, but would be presumed to be with the mother, but irrespective of the factum of the actual residence of the minor child, rather at the relevant time. The said judgment was passed by the learned Single Bench of this Court.

6. The said judgment fell for consideration before a Division Bench



of this Court, upon it being seized with case titled as "***Rajesh Vs. Komal***".

7. The controversy as setforth in the said decision appertains to the respondent-wife therein, moving an application cast under Section 25 read with Section 12 of the Act of 1890, thus before the Principal Judge, Family Court Kaithal, whereby she claimed the custody of the minor child, whose custody at the relevant time, was assumed by the respondent therein i.e. the husband.

8. During the pendency of the said petition, as has happened in the instant case, the husband instituted an application cast under Order 7 Rule 11 CPC seeking therebys relief for rejecting the plaint supra. It is pertinent to refer to the submissions addressed then, before this Court by the learned counsel for the appellant, which dwell upon the factum, thus relating to the fact that the order of dismissal passed therein, on the application cast under Order 7 Rule 11 CPC, rather was an infirmly rendered order. The said argument became premised in the groove, that since the minor son was actually residing with the respondent-husband at Panchkula, and was also prosecuting his studies in Manav Mangal School, Sector-11, Panchkula, therebys since the minor son was with the appellant since 24.11.2022, date whereof when is contemporaneous to the respondent-wife abandoning the company of the husband, the appellant in the supra *lis*. Consequently, it was argued that the order of dismissal as made on an application cast under Order 7 Rule 11 CPC, was an inapt order.

9. On the other hand, the learned counsel for the respondent therein i.e. wife, had depended upon the judgments, which became rendered



respectively, in case titled as “*Smt. Sarabjit Vs. Piara Lal and another, 2005(3) RCR (Civil) 213; Amit Kashyap Vs. Pooja, 2017(1) Law Herald* and *Akshay Gupta Vs. Divya, 2021(1) RCR (Civil) 722*”, whereins, it was stated that since the interpretation to employed *qua* the apposite statutory coinage “ordinarily resides”, thus is *qua*, upon the minor child being aged 5 years, at the relevant time, thereupon the mother being deemed to be the natural guardian of the minor child, but irrespective of the actual residence of the minor child, at the relevant time. In other words therebys, the mother of the minor child was deemed to be holding vicarious custody over the minor child. As such, in the said judgment(s) an exposition of law was made, that the conferment of natural guardianship over the minor child aged about 5 years, but viz-a-viz his/her mother, thus extends even to the territory, where the minor child is actually and physically residing, even though, the actual and physical residings of the minor child, at the relevant time rather being not with the mother and may be being with the respondent-husband.

10. This Court in case bearing FAO No.2294 of 2024 titled as “*Rajesh Vs. Komal*”, had incisively analysed the provisions embodied in Section 9 of the Act of 1890. More importantly, this Court had then made an objective analysis of the word “where the minor ordinarily resides or to a District Court having jurisdiction in the place where he has property”, rather wherefroms, the assumption of valid jurisdiction over a child custody matter, thus requires becoming tested. Furthermore, this Court then had also made an incisive analysis of the provisions as embodied in Sections 12, 17 and 25 of the Act of 1890, provisions whereof become extracted hereinafter:-



“Section 12. Power to make interlocutory order for production of minor and interim protection of person and property.—

(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

Section 17. Matters to be considered by the Court in appointing guardian.—

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased



parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) *If the minor is old enough to form an intelligent preference, the Court may consider that preference.*

* * * * *

(5) *The Court shall not appoint or declare any person to be a guardian against his will.*

Section 25. Title of guardian to custody of ward.—

(1) *If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.*

(2) *For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882 (10 of 1882).*

(3) *The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.”*

11. Moreover, this Court had also alluded to the definition of “minor” and “guardian”, as embodied in Sections 4 and 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter in short to be referred as ‘the Act of 1956’). The said provisions are extracted hereinafter:.

“Section 4. Definitions.—In this Act,—

- (a) “minor” means a person who has not completed the age of eighteen years;
- (b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—



- (i) a natural guardian,
- (ii) a guardian appointed by the will of the minor's father or mother,
- (iii) a guardian appointed or declared by a court, and
- (iv) a person empowered to act as such by or under any enactment relating to any Court of wards.

(c) "natural guardian" means any of the guardians mentioned in section 6.

Section 6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

- (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- (b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;
- (c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—
 - (a) if he has ceased to be a Hindu, or
 - (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expressions "father" and "mother" do not include a step-father and a step-mother."

12. Consequently, this Court had framed the hereinafter extracted substantial question of law.



“8. The question which is to be decided by this Court is interpretation of the expression “the place where the minor ordinarily resides” referred to in Section 9(1) of the Guardian and Wards Act, 1890.”

13. On the above formulated substantial question of law, this Court in paragraph 15 thereof, after making a conjoint reading of all the supra alluded to statutory provisions, thus declared that therebys the legislature, had manifested its intention in Section 9 of the Act of 1890, appertaining to the contentious jurisdictional aspect, *qua* whether the application, rather for assuming guardianship over the minor child, thus is to be cast before the District Court, within whose jurisdiction the minor child is actually and physically residing and or whether the said jurisdictional aspect is not to be tested in terms of the proviso to Section 6(a) of the Act of 1956.

14. More especially in paragraph 18 thereof, para whereof becomes extracted hereinafter, while making a connotative evaluation of the expression “ordinary residence” as used in the Representation of the People Act, 1950, proceeded to conclude, that the said expression i.e. ordinarily resides, but denotes that it is primarily directed not to duration but to purpose.

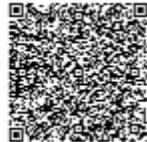
*“18. In **Ruchi Majoo Vs. Sanjeev Majoo [2011(6) SCC 479]**, para 3 of the judgement refers to the facts of the case, which is reproduced as under:-*

“3. The present happens to be one such case where legal proceedings have engaged the parties in a bitter battle for the custody of their only child Kush, aged about 11 years born in America hence a citizen of that country by birth. These proceedings included an action filed by the father-respondent in this appeal, before the American Court seeking divorce from the



respondent- wife and also custody of master Kush. An order passed by the Superior court of California, County of Ventura in America eventually led to the issue of a red corner notice based on allegations of child abduction levelled against the mother who like the father of the minor child is a person of Indian origin currently living with her parents in Delhi. The mother took refuge under an order dated 4th April, 2009 passed by the Addl. District Court at Delhi in a petition filed under Sections 7, 8, 10, 11 of the Guardians And Wards Act granting interim custody of the minor to her. Aggrieved by the said order the father of the minor filed a petition under Article 227 of the Constitution of India before the High Court of Delhi. By the order impugned in this appeal the High Court allowed that petition, set aside the order passed by the District Court and **dismissed the custody case filed by the mother primarily on the ground that the Court at Delhi had no jurisdiction to entertain the same as the minor was not ordinarily residing at Delhi - a condition precedent for the Delhi Court to exercise jurisdiction. The High Court further held that all issues relating to the custody of child ought to be agitated and decided by the Court in America not only because that Court had already passed an order to that effect in favour of the father, but also because all the three parties namely, the parents of the minor and the minor himself were American citizens.** The High Court buttressed its decision on the principle of comity of courts and certain observations made by this Court in some of the decided cases to which we shall presently refer.”

Three questions were framed by the Hon'ble Supreme Court for determination. In the present case only the first question would be relevant “**whether the High Court was justified in dismissing the petition for custody of the minor on the ground that the Court at Delhi had no jurisdiction to entertain the same**”



*Hon'ble Supreme Court in the case of **Ruchi Majoo (supra)** while dealing with Section 9 of the Guardian and Wards Act, 1890, held as under:-*

"5. There is no gainsaying that any challenge to the jurisdiction of the court will have to be seen in the context of the averments made in the pleadings of the parties and the requirement of Section 9 of the Guardian and Wards Act, 1890. A closer look at the pleadings of the parties is, therefore, necessary before we advert to the legal requirement that must be satisfied for the Court to exercise its powers under the Act mentioned above.

* * * *

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 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."

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. 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. The factual aspects relevant to the question of jurisdiction are not admitted in the instant case. There are serious disputes on those aspects to which we shall presently refer. 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 characterised by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

15. *The word 'reside' has been explained similarly as under : "Reside : live, dwell, abide, sojourn, stay, remain, lodge. (Western-Knapp Engineering Co. V. Gillbank, C.C.A. Cal., 129 F2d 135, 136.) 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. (State ex rel. Bowden v. Jensen Mo., 359 S.W.2d 343, 349.)"*

16. *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"

16A. *In Mrs. Annie Besant v. Narayaniyah AIR 1914 Privy Council 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."

17. *In Mst. Jagir Kaur and Anr. v. Jaswant Singh, AIR 1963 Supreme Court 1521*, this Court was dealing with a case under Section 488 Criminal Procedure Code 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 : "

.....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....."

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 **Cicutti 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.

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."

19. *Reference may be made to Bhagyalakshmi and Anr. v. K.N. Narayana Rao, AIR 1983 Madras 9, Aparna Banerjee v. Tapan Banerjee, AIR 1986 Punjab and Haryana 113, Ram Sarup v. Chimman Lal and Ors., AIR 1952 Allahabad 79, Smt. Vimla Devi v. Smt. Maya Devi & Ors., AIR 1981 Rajasthan 211, and in re: Dr. Giovanni Marco Muzzu and etc. etc., AIR 1983 Bombay 242, in which the High Courts have dealt with the meaning and purport of the expressions like 'ordinary resident' and 'ordinarily resides' and taken the view that the question whether one is ordinarily residing at a given place depends so much on the intention to make that place ones' ordinary abode."*
15. Further, it is also declared therein, that in the said 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 the some special or limited purpose. Moreover, "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 at the particular place. 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 provisions, as cast under Section 20 of the Representation of the People Act, 1950, i.e. the date



whereons any person seeks to be registered as an elector in a particular constituency. Therefore, it was concluded that 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, rather having the effect, thus enjoining the requirement *qua* the person always using a particular place for dwelling or using it on a permanent or an 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.

16. In consequence therebys, it was concluded that the word/coinage "ordinarily resident", on well interpretation thereofs, becoming made therebys, there would be valid conferment of adjudicatory jurisdiction upon the learned Family Court concerned, to receive and to make an adjudication upon an application relating to the custody of a minor child. Nonetheless, the supra conjunct does not require, the actual/physical residing of the minor child, thus being at a place where the parent resides alongwith him or her, but as a further necessity, there has to be *prima facie* a sense of permanence of habitation of the minor child. In other words, the said coinage may not have an implication, that therebys the person concerned, is required to be holding a permanent residence, thus on an uninterrupted basis. Tritely, thus for making any pragmatic valid interpretation thereofs, the relevant point of time, but is of conspicuous interpretation.

17. In the said judgment i.e. *Ruchi Majoo's* case, all the supra made interpretations are purveyed to a similar besides an analogous to the instant



case, thus the expression “ordinarily resides”. It is from the supra interpretation(s), that the jurisdictional competence of the Family Court, both to entertain and to decide the child custody application, rather is to be gauged. Therefore, in the judgment delivered in *Ruchi Majoo*’s case, thus on an interpretation becoming afforded to the statutory expression supra, which is analogous to the statutory expression carried in the instant case i.e. “ordinarily resides”, that inferences became drawn (a) that the person concerned holding a permanent residence, thus on an interrupted basis at the place concerned, rather for therebys, their occurring conferment of adjudicatory jurisdiction (b) the concept/coinage “ordinarily resides”, rather is a concept that may also be transitory, besides the fact whether the quality of residence either is ordinary or general, rather than being merely for some special or limited purpose, but is of grave importance, more especially, the impartings of interpretations thereto, but is dependent on the intention to make the place “ones ordinary abode”.

18. The said analogical applications, thus to the facts at hand, though is both apt and tenable. Furthermore, for applying the said interpretation onto statutes carrying a similar thereto coinage. Consequently, for the supra interpretation becoming employed, thus to a similar phrase, cast in the instant statute i.e. the coinage “ordinarily resident”, insofar as, the same requiring, an interpretation thereofs being made viz-a-viz the determination of the adjudicatory jurisdiction of a Family Court concerned, upon child custody application, thus this Court considers that the coinage “ordinarily resident”, does require, that a more incisive analysis be made but bearing in mind the relevant facts attached thereto.



19. The importance of evaluating such attendant facts, as pertinent to the minor child being declared to be ordinarily resident, thus are:

- a) A minor child having no independent volition, and or, but having a limited volition to choose a place of his residing with one or the other parent;
- b) The natural corollary thereof being that a child being amenable to be removed by one of his parents from the custody of the other parent, which whom he was earlier to his being removed, rather was residing.
- c) As such therebys, a minor child, thus cannot be construed to be holding at any place concerned, thus at the relevant time, rather any permanent residence nor therebys, a minor child can be stated to be ordinarily resident, at any place concerned, especially when he/she is *prima facie* deprived of exercising an independent volition, rather is *prima facie* under the dominant control of the parent, who assumes custody over him/her.

20. Moreovers, the manner of removals of the apposite custody, but is also of grave importance inasmuch as, appertaining to the removal of the child from the custody of the parent with whom he or she rather was ordinarily residing, especially when removals of custody of a minor child aged below 5 years, if is made, through force or compulsion and or is made, rather without the consent or in the absence of the parent, thus with whom the minor child was earlier residing at the relevant time. Consequently, the compulsive



manners qua removal of a minor child from the custody of the parent with whom he/she was earlier residing, especially when then a minor child, thus has no independent volition, but thus to the considered mind of this Court, has a material bearing, upon the conferment of adjudicatory jurisdiction upon the Family Court concerned, where before whom, an application is laid by the parent, who compulsively acquires custody of a minor child, and the conferment of adjudicatory jurisdiction over the Family Court concerned, but is contended to be a lawful conferment, on the ground of actual physical residence of the minor child, thus in contemporaneity to the filing of the application.

21. If so, the facts as averred in paragraphs 3 and 4 of the application filed under Section 12 of the Act of 1980, and in paragraph 7 of the application filed under Section 25 read with Sections 7 and 8 of the Act of 1980, do assume grave importance. The said paragraphs becomes extracted hereinafter:-

“3. That, the respondent has taken the minor daughter with him after locking his rental accommodation at Chandigarh. When, he took minor with him, she was just 4 years old. The respondent is not allowing the applicant to meet with the minor since 13.11.2023. The minor is fully depended upon the applicant as she is only 5 years old. The respondent having knowledge that the applicant is having great love and affection towards the minor and he has kept the minor in his illegal custody against the wishes and desire of the applicant and the minor just to pressurize the applicant. Moreover, the applicant observed in Mediation Proceedings that the minor was emotionally distressed and threatened as the minor continuously requesting the



applicant to take her along with her.

4. *That, the applicant also approached the Child Welfare Committee on 10.01.2024 followed by multiple reminders till July 2024 to know the whereabouts of the minor daughter Manasvi. Then, the CWC has also sent representation to the SSP, Pathankot.*

7. *That, on 29.12.2022 with intervention of respectable petitioner and respondent and his family members agreed to allow the petitioner to reside at her matrimonial home and on 12.01.2023 compromise was executed between petitioner and respondent in the light of compromise petitioner and respondent started residing separately from the family members of respondent at rental accommodation at Sector 44, Chandigarh, but even after compromise respondent started harassing the petitioner again for not fulfilling demand of more dowry. It is worthwhile to mention here that parents of respondent used to instigate the respondent against applicant/petitioner. The respondent started beating the petitioner whenever she tried to raise an objection to his undue demand of more dowry and cash then respondent started threatening petitioner to leave her matrimonial home.”*

22. In the face of the grave importance being assumed, rather by the said averments, whereupons, thus they did require a pointed rebuttal theretos, thus becoming rendered whereafter, issues were to be struck thereovers by the learned Family Court concerned, besides subsequent thereto, necessarily cogent evidence thereons was required to be adduced by the litigant whereupons, whom the evidence adducing discharging of onus, rather became cast.

23. Resultantly, without awaiting for the entire supra process



becoming undertaken or being undergone, yet the application under Order 7 Rule 11 CPC seeking rejection of the petition, rather became filed. Though therebys, *prima facie* the said application was prematurely filed, as therebys the said application derogates from the settled position of law, thus governing the makings of valid adjudication(s) upon an application filed under Order 7 Rule 11 CPC, exposition of law whereofs clearly state, that until and unless at the very threshold, there is clear cogent categorical evidence suggestive, that the institution of the apposite application before the learned Court concerned, is barred by law or to the extent, that the Court wherebefore whom, such an application is filed, has evidently at the very threshold, thus no jurisdiction to make an adjudication thereovers, that only thereupons, an application under Order 7 Rule 11 CPC may be considered to be allowed.

24. Be that as it may in the instant case, thus with the said averments being cast in the apposite application, and which required theirs being proven, therebys, at this stage, it could not have been stated, as aptly done by the learned Trial Judge concerned, that there was complete want of adjudicatory jurisdiction over the relevant application.

25. After finding no merits in the instant appeal, the same is dismissed.

26. The learned Family Court, concerned, is directed to forthwith proceed with the trial of the instant petition. The trial of the instant petition be ensured to be concluded within six months from today. In case, any application is filed by any of the contesting litigants before the learned Family Court concerned, seeking therebys the conferment of visitation rights or



interim custody, over the minor child, thereupon the said application shall be lawfully considered and shall also be ensured to be most expeditiously decided. It is further clarified that in making the apposite adjudication, the *prima donna* requirement, of the welfare of the minor child being keenly discerned from the material adduced on record, rather shall be throughout borne in mind. The gravity qua primacy viz-a-viz the supra requirement being borne in mind, ensues from the stark factum, that the Family Court is required to be functioning as *parens patriae* towards the minor child.

27. Pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

April 28, 2025
Varinder

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No