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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment Pronounced on: 26<sup>th</sup> July, 2013*

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**C.R.P. No.40/2013**

MANISH SEHGAL ..... Petitioner  
Through: Mrs. Geeta Luthra, Sr. Adv. with  
Mr. Vikas Tomar and Mr. Saman  
Yadav, Advocates

versus

MEENU SEHGAL ..... Respondent  
Through: Mr. Bharat Arora, Adv.

**CORAM:  
HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The respondent herein filed a petition under Sections 7 and 17 of the Guardians and Wards Act, 1890 read with Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1890, seeking custody of the minor daughters namely, Ms. Sara Sehgal and Ms. Sana Sehgal. The respondent also filed an application alongwith for the interim custody of children during Diwali holidays.

2. After receiving the summons, petitioner appeared and apprised the Court about the facts of the case and further as provided under Section 9 of Hindu Minority and Guardianship Act, 1890 filed an application under Order 7 Rule 11 CPC seeking rejection of the petition due to lack of territorial jurisdiction.

3. The petitioner also on 9<sup>th</sup> January, 2013 filed a petition under Section 25 of Guardianship and Wards Act, read with Section 7(1)(a) of the Family Court, before the Principal Judge, Family Court, Lucknow.

4. It is contended by the petitioner that since the children are residing

in Lucknow where they are attending school presently, the said petition for their custody ought to have been filed at Lucknow and not Delhi. The case of the respondent is that the permanent place of residence of the minor children is Delhi being the place where there is matrimonial home of the respondent as well as that of the parents of the petitioner. Both the parental home and maternal home are in Delhi. Even otherwise petitioner being an army personnel gets transferred from one place to another and Delhi is the permanent residence of the petitioner as well as the respondent and both the children so the Delhi court has jurisdiction to decide the petition filed by her.

5. It is also argued by the respondent that around April 2012, it was decided between the Petitioner and the respondent that the respondent with the kids would settle in Delhi and so they got them admitted to ASN School, Delhi. After marriage, the couple were residing in Delhi. However, there were frequent transfers of the petitioner to Secunderabad, Jodhpur, Assam, Alwar and Lucknow and because of the frequent transfers, the schools were getting changed frequently and daughters could not settle. Keeping this in mind, it was decided that Respondent alongwith the daughters would settle in Delhi. The salary account of the petitioner is in Delhi in ICICI Bank in Kalkaji and also bank lockers in State Bank of Bikaner and Jaipur, Kalkaji and the permanent address given for correspondence is also of Delhi. The present address of the Petitioner keeps on changing whereas the permanent address remains in Delhi. It is contended that the petitioner had filed a divorce petition on false and frivolous grounds in Lucknow in which also he mentioned his permanent address as 4/15, Kalkaji, New Delhi-19.

6. The findings of the learned court below are that the admission on the part of the petitioner that the kids have been residing in Lucknow from June, 2012 after being brought there by the Respondent shows that

Lucknow is not the ordinary place of residence and is not the place where the minor children ordinarily reside. It is also admitted by the petitioner that his job is transferable and in such circumstances, every place where he is posted cannot be said to be place of ordinary residence. The respondent cannot be expected to be running after the Petitioner with her petition for guardianship wherever he is transferred and to file the petition in that jurisdiction. A mere enrolling of minor children in Lucknow school for 4 months will not confer the jurisdiction of the Lucknow court.

7. The fact that the petitioner is serving in Indian Military and has a transferable job is admitted by the learned Senior counsel for the petitioner. In the application under Order 7 Rule 11 CPC the petitioner admits that it was only in June, 2012 that the respondent brought the children from Delhi to Lucknow after the petitioner was posted at Lucknow.

8. It is not disputed that the marriage between the parties took place in Delhi, he was transferred to Delhi at some point of time and the children had earlier studied in Delhi. It is further not disputed by the learned senior counsel of the petitioner that the respondent i.e. his wife/the mother of the children as well as his parents (grandparents of the children) are residing in Delhi.

9. In fact the permanent address of the petitioner in the divorce petition filed by the petitioner in Lucknow as well as in his employment records has been given as Delhi. The said divorce petition has now been transferred within the jurisdiction of this Court by the order passed by the Supreme Court on 27<sup>th</sup> May, 2013 in Transfer Petition (Civil) No. 163 of 2013 filed by the respondent.

10. The question before this court is what would be the ordinary place of residence of a minor to decide the jurisdiction of the court for the purpose of the custody within the meaning of Section 9 of the Guardians

and Wards Act, 1890 which reads as under :

*“Section 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.”*

11. The term “resides” has been discussed on a number of occasions by various courts and it has been held that the word “resides” means something more than a stay. The expression “ordinarily resides” should be given its natural meaning, so as to advance the intention of the legislature. The word “ordinarily resides” are identical and do not have the same meaning as “residence at the time of application”. It is to be seen in the larger canvass where the children are ordinarily residing and not where they are temporarily put up.

(i) In ***Vinayak Rao and Ors Vs. Smt. Shweta Jadhav, II (1996) DMC 374***, it was observed that *“A perusal of Section 9(1) of the Act makes it apparent that it is the ordinary place of residence of minor which determines the jurisdiction of the Court for entertaining an application for guardianship of the minor. Such jurisdiction cannot be taken away by temporary residence elsewhere on the date of presentation of the petition. The fact that the minor is found actually residing at a place when the application for the guardianship of minor is made does not determine the jurisdiction of the Court. There can again be no*

*dispute that the term "residence" is an elastic word of which an exhaustive definition cannot be given. It is to be construed differently as per the purpose for which an enquiry is made. Section 9(1) uses' the words "Ordinarily resides" and this means more than a temporary residence. These words indicate a regular, normal and settled home and not a place where the minor is on account of compulsion."*

- (ii) In ***Parshant Chanana Vs. Mrs. Seema alias Priya, AIR 2010 P& H 99*** it was observed that *"Section 9(1) makes it clear that it is the ordinary place of residence of minor which determines the jurisdiction of a particular Court to entertain an application for guardianship of the minor. Such jurisdiction cannot be taken away by temporary residence elsewhere at the date of presentation of the challan."*

12. In common parlance, ordinary place of residence means a place where one intends to settle down. However, the question that arises is whether the minor children, like that in the present case, would be in a position to form an "intention" considering their age. In such a scenario, the residence of the minor is generally linked with that of the parents. As the petitioner has been posted in different cities at different times for work and has not intended to settle down in any of those cities, and the fact that the respondent and the petitioner had decided to settle down in Delhi, their ordinary place of residence is to be considered.

13. The following decisions are necessary to be referred to in order to discuss the issue involved in the present case:

- (i) In ***Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey, [1982] 1 SCR 1003*** it was held that *"In its ordinary sense "residence" is more or less of a permanent character. The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has fixed home or abode. In Webster's Dictionary, "to reside" has been defined as meaning "to dwell permanently or for any length of time", and words like "dwelling place" or "abode" are held to be synonymous. Where there is such fixed home or such abode at one place the person*

*cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change.*

- (ii) In ***Bhagwan Dass & Anr. Vs. Kamal Abrol & Ors.***, AIR 2005 SC 2583, the Supreme Court observed that *it is apparent that the word 'residence' is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of 'residence'.*
- (iii) In ***Rabindra Sharan Vaish Vs. Kusum Agrawal***, 1987 (1) Cur. Civ. Cases 397 (M.P.), the father was residing at Bhopal. The mother removed the child permanently to Lucknow forsaking her matrimonial home. It was held that Lucknow is the place where the minor ordinarily resides. Accordingly, it was held that Lucknow Courts and not the Bhopal Courts would have jurisdiction to entertain the dispute with regard to guardianship of the minor. Reference may be made to the decision given by the Madras High Court reported as ***R. Geetha Vs. A.T. Rajan***, I (1991) DM C 139. As to what meaning is to be given to the words "ordinarily resided" would be found elaborated in para 5 and this reads as under :

“5. The words "ordinarily resides" cannot, a regular, normal or settled home and not a temporary or forced one to which a minor might have been removed either by stealth or by compulsion. 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, as it would be easy to stifle proceedings under the provisions of the Act by the mere act of moving the minor from place to place and consequently from one jurisdiction to another. Whether the minor was ordinarily residing in any particular place has to be primarily decided on the facts of the particular case. It may be that ordinarily the paternal family house may be taken to be the place of ordinary residence, but the words "ordinarily resides" are incapable of any exhaustive definition as those words have to be construed according to the purpose for which the enquiry is made and the absence of animus revertendi would normally be relevant, but in the case of minors, it is difficult to impute any such

intention to them. It has also to be borne in mind that the temporary residence or residences by compulsion however long cannot be treated as ordinary residences at that place. Bearing these in mind, it is necessary to ascertain from the available materials as to when the minor ordinarily resided for purposes of the Act.”

14. It is alleged by the petitioner that the daughters were admitted in Lucknow school on 26<sup>th</sup> April, 2013. Thereafter, they were again admitted in ASN School, Delhi on 4<sup>th</sup> May, 2013 where they studied for only 5-6 days since from 15<sup>th</sup> May, 2013 the summer vacations had started. They were again brought to Lucknow on 19<sup>th</sup> June, 2013 and since then they are residing in Lucknow.

15. For the purpose of application under Order 7 Rule 11 CPC, it is established law that the court has to only see the plaint i.e. bare plaint alongwith document filed alongwith plaint. In the present case, the respondent as invoked the territorial jurisdiction before the Guardianship Judge, Saket Court, Delhi, in para XX of the petition which reads as under:

“XX. That this Hon’ble Court has jurisdiction as the minors are ordinarily resident of Delhi. Both the parental home and maternal home is in Delhi and the Respondent being an army personnel is being transferred from one place to another and Delhi is the Permanent Residence. Also the paramount concern of this Hon’ble Court is to provide and look after the welfare and interest of the children, who are currently not being cared and provided for by the Respondent. The children are being physically and verbally abused by the respondent and it is for this Hon’ble Court to provide them the protection against such abuse otherwise the children would be ruined for life”

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.

17. In view of the abovesaid 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 27<sup>th</sup> May, 2013 as Divorce Petition No.2501/2012.

18. In view of the above, the revision petition is hereby dismissed. No costs.

**(MANMOHAN SINGH)**  
**JUDGE**

**JULY 26, 2013**