

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****Reserved on: December 19, 2024****Pronounced on: January 07, 2025****CR No.3925 of 2024 (O&M)****Sulbhi and others****. . . . Petitioners**

Vs.

Bhavnesk Kumar**. . . . RESPONDENT**

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Siddarth Sharma, Advocate for the petitioner.

Mr. Harish Chhabra, Advocate for the respondent.

DEEPAK GUPTA, J.

The dispute pertains to territorial jurisdiction of the court to entertain a petition for child custody, when the parents of said child are fighting legal battle due to their acrimonious relationship.

2. Sulbhi (*petitioner No.1 herein*) and Bhavnesk Kumar (*respondent herein*) were married on 30.09.2017 as per Hindu rites and ceremonies. They were blessed with a daughter, named Rehanshi on 18.05.2019. Said daughter is presently residing at Jalandhar (Punjab) with petitioner Nos.2 and 3 herein, who are the parents of Sulbhi, ever since 12.06.2021.

3.1 On 01.11.2022, the father of the child, i.e. Bhavnesk-respondent filed a petition [Annexure P-2] under Section 7 read with Section 17 & 25 of the Guardian and Wards Act, 1890 (*in short 'Act of 1890*) and Section 6 & 13 of the Hindu Minority and Guardianship Act, 1956 (*in short 'Act of 1956*) seeking the grant of custody/visitation rights of the minor child – Rehanshi against his wife and parents-in-law i.e., petitioners herein. Said petition was filed before Guardian Judge, Chandigarh.

3.2 The mother of the child – Sulbhi, i.e. petitioner No.1 herein moved an application under Order VII Rule 11 CPC for rejection of the

petition on the ground that the child – Rehanshi born on 18.05.2019 is ordinarily residing at Jalandhar (Punjab) and therefore, the Court did not have territorial jurisdiction to entertain the petition.

3.3 However, the Court of learned Civil Judge (Sr. Divn.)/Guardian Judge, Chandigarh rejected the said application by way of the impugned order dated 29.05.2024 (Annexure P-1). The reasoning given by Ld. Court is that both father and mother of the child are residing in Chandigarh; that the custody of a child below 05 years of age (especially female child) would naturally lie with the mother and therefore, the deemed custody would be with the mother, even if the actual custody was with the parents of the mother. With this reasoning, the Court held that the Chandigarh Court has the jurisdiction in the matter and as such, dismissed the application.

4. Assailing the aforesaid order by way of present petition, it is contended by Ld. Counsel for the petitioners i.e. mother of the child alongwith her parents that as per the own case of the father, the child was residing at Jalandhar ever since 12.06.2021. Learned counsel contends that the said child is pursuing her studies for the last more than 03 years at Jalandhar and therefore, in view of Section 9 of the Guardian and Wards Act, 1890, the ordinary place of residence of the child is Jalandhar and therefore, the Court at Chandigarh do not have the jurisdiction to entertain the petition. Learned counsel has referred to **FAO No.2294 of 2024, titled as “Rajesh v. Komal”**, decided by the Division Bench of this Court on 27.08.2024; **“J K v. NS”, 2019: DHC: 3125-DB**, a decision of the Division Bench of Delhi High Court, besides **“Ruchi Majoo v. Sanjeev Majoo” (2011) 6 SC 479**.

5. Refuting the aforesaid contentions, it is urged by learned counsel for the father of the child, i.e. respondent herein that both the parties, i.e. father as well as mother of the child are residing in Chandigarh; that as per the own contention of the mother of the child, i.e. petitioner No.1 herein, the child was removed from the custody of her ordinary residence of Chandigarh on 12.06.2021 and therefore, such removal from the ordinary residence of the child will not oust the jurisdiction of the Chandigarh Court. It is also the

contention of learned counsel that parties are under litigation in numerous cases, all of which are pending before the Chandigarh Courts. With these submissions, he prays for dismissal of the present petition.

6. I have considered submissions of both the sides and have appraised the record carefully.

7. Section 9 of the Guardian and Wards Act, 1890 reads as under:-

“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.”

8. Section 6 of the Hindu Minority and Guardianship Act, 1956 reads as under:-

“6. Natural guardians of a Hindu minor.—

The natural guardian 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 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).”

9.1 A Division Bench of this Court in ***Rajesh vs. Komal's case (supra)***, considered the same issue relating to the jurisdiction of the Court in the case of custody of the minor child. After referring to the aforesaid provisions, i.e. Sections 9 of the Guardian and Wards Act, 1890 and Section 6 of the Hindu Minority and Guardianship Act, 1956 besides Section 12, 17 and 25 of the Guardian and Wards Act, 1890; and Section 4 of the Hindu Minority and Guardianship Act, 1956, this Court has held as under:-

“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.

ANALYSIS OF JUDGMENTS REFERRED TO BY THE LEARNED COUNSEL FOR THE RESPONDENT AND THE FAMILY COURT

1.Smt. Sarabjit Vs. Piara Lal and Another (2005(3) RCR (Civil) 213);

2. Amit Kashyap Vs. Pooja [2017(1) Law Herald]

3. Akshay Gupta Vs. Divya [2021(1) RCR (Civil) 7221

9. In all the above referred to judgments learned Single Bench of this Court decided the question of jurisdiction by interpreting the expression "minor ordinarily resides" as used in Section 9 of the Guardian and Wards Act, 1890 to mean, for the children below 5 years of age to be residence of the mother in view of Section 6 (a) of the Hindu Minority and Guardianship Act, 1956. We find that all the above referred to decisions of learned Single Judge are per-incuriam and Section 9 of the Guardian and Wards Act 1890, has been wrongly interpreted.

10. A perusal of the definition of 'Guardian' shows that the guardian is the person who is having the care of the person of a minor or his property or both his person and property which includes natural guardians.

11. Section 6 defines natural guardian of the Hindu minor, as per which the natural guardian of Hindu minor in respect of minor's persons as well as in respect of minor's property is in case of boy or unmarried girl, the father and after him, the mother. Proviso to this section states that the custody of minor who has not completed the age of five years shall ordinarily be with the mother.

12. By using the language "shall ordinarily be with the mother" the intention of the legislature is that since the child below 5 years is normally breast-feeding child and requires love and affection from the mother and since mother gives birth to the child, the child is more comfortable in the lap of the mother, therefore the intention of the legislature is welfare and the comfort of the child. For that the language is "shall ordinarily be with the mother" and not "shall be with the mother". By using the words "shall ordinarily be with the mother", the intention of the legislature is to see the welfare of the child. The custody of the minor cannot be with the mother who is unchaste, insane, leading immoral life, insensitive, leading to estranged matrimonial relationship with her husband (the father of the child), sick, physically or mentally suffering from any disability, not conducive for ideal upbringing of the child. Therefore, the intention of the legislature is that the proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956 is not mandatory but depends upon the welfare of the child. If the intention of the legislature under Section 6 of the Hindu Minority and Guardianship Act, 1956 would have been that the natural guardian of Hindu minor who has not completed the age of 5 years shall be the mother, then the provisions under Sections 12, 17 and 25 of the Guardian and Wards Act, 1890 would be redundant for the minor below the age of 5 years.

13. A bare perusal of the provision of Section 17 of the Guardian and Wards Act, 1890 shows that this is mandatory provision, which reads that in appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of Section 17 of Guardian and Wards Act 1890, be guided by

what, consistently with the law to which minor is subject, appears in the circumstances to be for the welfare of the minor. It further reads that 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.

14. Section 25 deals with the title of guardian to custody of ward. It reads that if a ward leaves or is removed from the custody of the guardian of his person, the Court, if of the 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.

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 and not as per the proviso to Section 6 (a) of Hindu Minority and Guardians Act, 1956.”

9.2 Hon’ble Division Bench of this High Court in ***Rajesh vs. Komal’s case (supra)***, further referred to ***“Rosi Jacob v. Jacob A. Chakramakkal” 1973 AIR Supreme Court 2090***, and held as under:-

“17. A perusal of the above referred to judgment shows that the Hon’ble Supreme Court while interpreting Section 25 of the Guardian and Wards Act held that the object and purpose of this provision being ex facie to ensure the welfare of the minor child, which necessarily involved due protection of the right of his guardian to properly look after the ward’s health, maintenance and education, this section demands reasonably liberal interpretation so as to effectuate that object. It is further held hyper-technicalities should not be allowed to deprive the guardian of the necessary assistance from the Court in effectively discharging his duties and obligations towards his ward so as to promote the latter’s welfare.”

18. In ***“Ruchi Majoo v. Sanjeev Majoo”***, **2011(6) SCC 479**, para 3 of the judgment 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: within"

16A. In *Mrs. Annie Besant v. Narayaniah 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 dis-

strict 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."

After above referred to discussion the Hon'ble Supreme Court answered the question in negative."

9.3 After observing as above, the Division Bench of this Court in ***Rajesh vs. Komal's case (supra)***, held that it is the Court at the place, where the child was ordinarily residing, which will have the jurisdiction in the matter.

10. Similarly, ***J K v. N S (cited supra)***, a Division Bench of Delhi High Court was considering the same question and it was held as under:-

“71. We would now decide on the issue of interplay between Section 9 of GWA and Section 6 of HMGA. Section 9 of the GWA vests jurisdiction in a Court where the minor ordinarily resides. Section 6 of HMGA deals with natural guardians of a Hindu minor and 6 (a), more particularly, deals with the custody of a minor who is below 5 years of age and provides that ordinarily the custody would be with the mother. We have already quoted Section 9 of GWA and Section 6(a) of HMGA in the earlier part of the judgment.

a. In the case of ***Sarbjit (supra)***, the Punjab & Haryana High Court had held that under Section 6(1) HMGA, it is mandatory that the custody of a child below five years of age should be with the mother and the expression "where the minor ordinarily resides" was held to mean the residence of the mother and thus the residence of the child would follow the residence of the mother. However, we find that the said judgment was categorically dissented to by the High Courts of Andhra Pradesh, Himachal Pradesh, Gujarat and Rajasthan respectively in the cases which have referred to above. What has been held in these judgments is that Section 6(a) of HMGA and Section 9 of GWA operate in different fields. Both are independent of each other. While Section 6 deals with natural guardian of a Hindu Minor, Section 9 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 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. However, this is not how Section 9 reads. Thus, in our view, HMGA of 1956 does not make any overriding provision, and therefore, provision of Section 6 cannot be imported to interpret Section 9 of GWA..... “

11. Calcutta High Court in **“Smt. Soumi Mukherjee v. Manas Mukherjee”**, AIR Online 2019 Cal 431 considered the similar question and held that requirement of the statute is where the ward 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. It will be relevant to reproduce the observations made by the Calcutta High Court in this regard:-

“29. Mr. Bardhan tries to impress upon this Court that the minor child of the parties actually does not reside under the care and protection of his mother, the petitioner herein, because the petitioner is an employee of Eastern Coal Fields Limited and works as a nurse at Sanctoria Hospital near Asansol. Since the petitioner does not ordinarily reside at Makhla in the district of Hooghly with the minor child, the said residence cannot be treated as ordinary residence of the minor. I cannot accept such submission made by Mr. Bardhan. Requirement of the statute is "where the ward for the time being ordinarily resides". It does not require that the father or mother must ordinarily reside with the ward. Such question may be raised at the time of final hearing of the application under Section 25 of the said Act. The opposite party may raise the question, if the said minor normally gets love and affection, care and protection of the mother or not. In the instant proceeding, we are concerned with the question as to whether the minor ordinarily resides at Makhla in the district of Hooghly or not. In view of uncontroverted facts and circumstances, irresistible answer to the question is in the affirmative.”

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.

13. Learned counsel for the respondent-father of the child has referred to ***“Akshay Gupta v. Divya & Ors.” 2021(1) R.C.R. (Civil) 722***, wherein it was held that even though minor below 05 years may not be in physical custody with the mother, but her/his custody would be deemed to be at place where mother is residing for purpose of jurisdiction the Court.

14. I am afraid that the above judgment rendered by the Single Bench is indirect contrast to the decision of the Division Bench of this Court in ***Rajesh’s case (supra)*** and so it does not advance the case of the respondent. For the same reason, ***“Tejbir Singh v. Baljit Kaur”, Law Finder Doc ID # 1501557***, relied by the counsel for the respondent is not applicable to the facts of this case.

15. Learned counsel for the respondent has also argued that in order to adjudge the point of jurisdiction being mixed question of law and fact, it cannot be decided summarily and that while dealing with the application for rejection of the petition on the ground of jurisdiction, the Court has only to consider the averments made in the plaint/petition as a whole. Learned counsel for the respondent has also referred to ***“Dr. Arun Kant v. Rekha Tanwar”, 2017(4) PLR 192***.

16. There can be no dispute to the aforesaid proposition, but in this case also, it is the admitted position that ever since June 2021, the child is residing at Jalandhar at the place of her maternal grandparents. This petition was filed in November 2022, i.e. after 1-1/2 years from the time, when the child started residing at Jalandhar. It would be question of trial, whether the child was removed from the custody, as is alleged by the husband; or whether the wife was compelled to take away the custody of the child to her parents. The fact remain that the child is residing at Jalandhar with her maternal grandparents since June, 2021 and is studying there in the school. The petition has been filed after 1-1/2 year from the date when the child started residing at Jalandhar. Thus, for all intents and purposes, it is the courts at Jalandhar, where the child presently ordinarily resides within the meaning of Section 9 of the Guardian and Wards Act, 1890 and therefore, relying upon the legal position as explained in *Rajesh's case (supra)* and also by Hon'ble Supreme Court in *Rosi Jacob's case (supra)*, this Court comes to the conclusion that the impugned order as passed by the trial Court cannot be sustained. The Court at Chandigarh would not have the jurisdiction to entertain the petition.

17. The petition is allowed accordingly and the impugned order is hereby set aside.

January 07, 2025
Sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes