

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
THE HON'BLE SRI JUSTICE RAMESH CHANDRA KHULBE

APPEAL FROM ORDER NO. 224 OF 2022

1st SEPTEMBER, 2022

Between:

Abhishek Rajput Appellant

and

Smt. Pooja Rajput & another Respondents

Counsel for the appellant : Mr. Sanjay Kumar, learned counsel

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

Delay Condonation Application (IA No. 02 of 2022)

Considering that the delay is only 26 days, we condone the same. Delay condonation application is, accordingly, allowed.

2) The present appeal is directed against the order dated 25.04.2022, passed by the Family Court, Kashipur, District Udham Singh Nagar, in Family Case No. 14 of 2020.

3) By the impugned order, the Family Court has dismissed the petition preferred by the appellant-father under Section 25 of the Guardians and Wards Act, 1890, in respect of his minor son Kunj Rajpur. The said petition has been dismissed on the ground of jurisdiction by the Family Court in the light of the uncontroverted assertions of the respondent-mother of the child, that she had shifted to Mohali, and was carrying on her job through the on-line process, and that her minor son had been admitted to a school in Mohali. She has also provided her address at Mohali, which was also the address mentioned by the appellant-father in his petition, thereby acknowledging that the respondents were residing at Mohali at the relevant point of time.

4) The submission of learned counsel for the appellant is that the respondent No. 1 had gone to Mohali when the school at Kashipur where she was teaching, was being run on the on-line mode. According to the appellant, the respondent No. 1 has since returned to Kashipur to resume her duties at her school. At the same time, it is not denied by the appellant that the minor child is residing at Mohali and is studying in a school there.

5) Aforesaid being the position, in our view, Section 9(1) was clearly attracted, and the appellant, could

have preferred the petition for guardianship only at the District Court having jurisdiction at the place where the minor is ordinarily residing. Since the minor is studying at a school in Mohali, it is that place where he is ordinarily residing. It does not matter whether the minor is residing at the said place only for a few months before the filing of the petition. What is relevant is the nature of residence, i.e., whether it is continuous and on a permanent basis, or it is only a casual visit. Since the minor child is studying at Mohali, it cannot be said that the child is making only a casual visit to Mohali. Therefore, in our view, the Family Court has rightly held that it does not have the jurisdiction to entertain the petition preferred by the appellant under the Guardians and Wards Act, because the District Court / Family Court at Mohali would have jurisdiction in the matter.

6) The appeal is, accordingly, dismissed.

VIPIN SANGHI, C.J.

R.C. Khulbe, J.

Dt: 01st SEPTEMBER, 2022
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