

(2015) 12 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Misc. Appeal No. 4561/2015 and Stay Application No. 3147/2015

Shivika (Taneja) Sharma and Others

APPELLANT

Vs

Sanjay Sharma and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Guardians and Wards Act, 1890 — Section 25, 7, 9(3)

Citation : (2016) 1 CDR 158

Hon'ble Judges : Mohammad Rafiq and J.K. Ranka, JJ.

Bench : Division Bench

Advocate : Rajat Ranjan, Counsel, for the Appellant; Rajeev Surana and Hemant Taylor, Counsels, for the Respondent

Final Decision : Dismissed

Judgement

1. Appellants have filed this appeal aggrieved by order dated 27.10.2015 passed by learned Family Court No. 2, Jaipur, in Application No. 7/2015 (1017/2014) and prayed that application filed by respondents for custody of the child be dismissed or returned for filing in the court of competent jurisdiction.

2. Respondents/ filed an [application under Section 7 read with Section 25 of the Guardians and Wards Act, 1890 (for short, "the Act of 1890"), against appellants seeking custody of minor child Medhansh, alleging that it would be in the welfare of the child. Respondent-husband alleged that appellant-wife is engaged in Information and Technology Business Organization and she is too busy to take care of the child. Appellant-wife moved an application under Order 7 Rule 11 of the Code of Civil Procedure (for short, "CPC") read with Section 9(3) of the Act of 1890, even before filing reply to the custody application of the respondent-husband. A reply was filed by respondent-husband to the said application of appellant-wife contending that during the course of proceedings in the custody application in Panipat court, he lodged an F.I.R. against brother of appellant-wife, on allegation of beating him. Thereafter, respondent-husband withdrew the

application from Panipat court and filed the same in the Family Court No. 2, Jaipur. Appellant-wife earlier filed a Transfer Application (Civil) No. 589/2015 before the Supreme Court, which was dismissed vide order dated 24.07.2015. This court vide its order dated 19.03.2015 in S.B. Civil Writ Petition No. 3170/2015 filed by respondent-husband, directed him to approach the concerned Family Court at Jaipur, which Court was required to take up the matter and decide the same as expeditiously as possible, according to the spirit of the Family Court Act.

3. Shri Rajat Ranjan, (learned counsel for appellants contended that the learned Family Court No. 2, Jaipur, has no jurisdiction to decide the application filed by respondent-husband for custody of the child as ordinary place of residence of the child is not Jaipur. Respondent-husband initially filed such application in the Court of Panipat and on the pretext of frivolous criminal complaint, which was not filed against the appellant-wife, he withdrew the same and filed the application before Family Court, Jaipur. At the time of filing of said application in the Family Court, Jaipur, the judgments passed by the Supreme Court and this Court were not in existence. Appellant-wife had filed application for transfer of the case from Family Court Jaipur to Panipat. Mere dismissal of the transfer application by the Supreme Court does not take away right of the appellant-wife to object to jurisdiction of the Family Court, Jaipur. Merits of the case were left untouched by the Supreme Court. Writ Petition No. 3170/2015 filed by respondent-husband was with regard to securing visitation right for the child and the same was disposed of ex-parte. This Court was informed by the respondent-husband that the had filed custody application before the Family Court, Jaipur, as such this court relegated him to approach the Family Court, Jaipur, for his grievance, but this did not amount to conferring jurisdiction on the Family Court, Jaipur, if otherwise it does not have such jurisdiction. Issue as to whether the Family Court, Jaipur, has jurisdiction to try the custody application filed by respondent-husband, has not been adjudicated by the Supreme Court or this Court. Merits of the case, rights of the parties and questions of law and jurisdiction were not dealt with in either of the said proceedings. Jurisdiction of the court in the cases arising out of proceedings under the Act of 1890, is determined on the basis where the minor ordinarily resides. If the answer to the question of territorial jurisdiction is in negative, logical result has to be an order of dismissal of the application or return of the application for presentation before the court competent to entertain the same. A court, that has no jurisdiction to entertain a petition, cannot pass any order or issue any direction. It is further argued that welfare of a child is paramount consideration for deciding question of custody of child and welfare of the child is not in directing the mother of child to travel a long distance to attend custody application. Sole intention of respondent-husband is to take revenge from appellant-wife. Respondent-husband owns an it Company, whereas appellant-wife works for an it Company. The it Company of appellant-wife is already making a lot of adjustments for her considering the fact that she is a single parent. The child is living with his mother at Panchkula under

her care and custody and he is studying in the Gurukul, Sector 20 Panchkula, in 1st standard. It is also argued that respondent-husband had come to Panchkula and tried to take away the child from his school and at that time, appellant-wife was called by the school administration and the matter was taken to the police station, where the respondent-husband threatened appellant-wife of dire consequences.

4. Shri Rajeev Surana, learned counsel for respondents submitted that objection raised by appellants with regard to competence of the court, was not entertained by the Supreme Court. When the matter has been adjudicated by the Supreme Court as well as this Court, then nothing remains to be decided in this petition. Appellant moved appropriate application for withdrawal of the case from Panipat court and that court granted liberty to the appellant to file a case before the competent court having jurisdiction. The custody application was filed by respondents before the Family Court No. 2, Jaipur. Appellants want to deprive the child from love and affection of father and are deliberately attempting to make the child a shuttle cock as he was removed from Jaipur and Panipat. Child Medhansh S/o respondent Sanjay Sharma, was removed from Jaipur on 15.09.2015 when he was studying in Turtle School, Jaipur, in mid session and taken to Panipat. Place of temporary residence howsoever long, cannot be treated as place of ordinary residence. Date of birth of the child is 14.10.2009 and he was born in Jaipur. The respondent-wife (mother of the child) is a very busy person and working as Director in it Company. She is very aggressive and has committed crimes of assault on respondent-husband in the court premise for which fir was registered and challan has also been filed.

5. On hearing learned counsel for appellants as also learned counsel for respondents and considering that marriage of appellant No. 1 (wife) and respondent No. 1 (husband) was solemnized in Jaipur and they were lastly residing in Jaipur, where the proceedings with regard to custody of child at the instance of the appellant-wife, are pending before the Family Court, Jaipur, and that the Supreme Court has also dismissed the application filed by appellants for transfer of proceedings from Family Court, Jaipur to the court at Panipat, where the respondent-husband had to withdraw the proceedings for custody of child because he was subjected to beating by the brothers of the appellant-wife and that the fir was filed for that incidence and the charge-sheet has also been filed against them, we are not persuaded to uphold the contention that the court at Jaipur would have no jurisdiction to entertain the petition.

6. The appeal is accordingly dismissed. Stay application, filed therewith, is also dismissed. However, the Family Court, Jaipur, is directed to expedite and conclude the same within a period of six months from the date next fixed before it.