RECOGNITION OF FOREIGN DECREE IN FOREIGN MARRIAGES

Written by ***Dr. Vijay Pal Singh***

Assistant Professor, Biyani Law College, Jaipur, Rajasthan, India

Marriage and matrimonial causes raise questions where there is conflict of laws viz., where the marriage is contracted between persons governed by different laws. The parties in question may have contracted marriage which, though valid, according to the lex loci celebrationis, may not be valid marriage according to the Indian law. When such a case of conflict of law arises in the Indian Courts the law to be applied will depend upon the rules of Private International law as recognised in India. A case of Indian conflict of laws may require that the law of a foreign country ought to be applied in a given situation which contains a foreign element. An understanding of foreign law in a parallel jurisdiction would be a useful guideline in determining the rules of Private International Law in India.

A foreign decree would be recognised in India if parties were domiciled in that foreign country at the commencement of the matrimonial proceedings and the decree would be recognised by the Courts of the country where at the commencement of the proceedings parties are domiciled. If the wife obtains a decree in a foreign country though the husband is not domiciled in that country on the basis of jurisdiction to grant a decree under the law of that country, it would be recognised in India115.

The validity of 1a foreign judgment in a civil proceeding is governed in India by Section 13, Code of Civil Procedure. In the matter of Y. Narasimha Rao v. Y. Venkata Lakshmi116, the Supreme Court has interpreted the provisions of 1Section 13 of the Code of 1Civil Procedure in conformity with public policy, justice, equity and good conscience, with a view to protecting the sanctity of marriage and the unity of family. The interpretation is as follows:

The foreign judgment must be given on merits i.e., on grounds available in the law under which the parties are married and arrived at after a contest or consent between them. The foreign judgment must be pronounced by a Court of competent jurisdiction. It is that Court which the law under which the parties are recognizes as a Court competent to entertain matrimonial disputes or the Court to which both the parties submit voluntarily. The proceedings in foreign Court must comply with the principle of natural justice. For this purpose the foreign Court must ascertain that the respondent can present or represent before the Court. To that end the petitioner must have made necessary provisions for the respondent's costs of travel, residence and litigation. The foreign judgment is not obtained by fraud. The foreign judgment must not be based on the refusal to recognize the law of this country. There are exceptions to rules (i) and (ii) stated above. They are: (a) the action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief 1is granted in accordance with the law under which they were married; (b) the respondent voluntarily and effectively submits to the jurisdiction of the Court as discussed above and contests the claim on a ground under the matrimonial law of their marriage; (c) where the respondent consents to the grant of the relief although the forum has no jurisdiction under the matrimonial law of 1the parties.

In an earlier case of 1Satya v. Teja Singh117, the Supreme Court held that a foreign decree of 1divorce obtained by the husband from the Nevada State Court in U.S.A. in absence of the wife without her submitting to its jurisdiction was not valid and binding when it was found from facts on record that the decree of divorce was obtained by fraud or by making a false representation as to a jurisdictional fact. In order to give jurisdiction, the residence in the foreign jurisdiction must answer 'a qualitative as well as quantitative test' which was not satisfied in this case.

In Neeraja Saraph v. Jayant V, which involved a case of an NRI marrying in India and later deserting the wife and obtaining a decree of annulment of the marriage from an American Court, the Court made following suggestions for law to protect the interests of the deserted wives:

There should be a provision for adequate alimony to the wife in the property of the husband, both in India and abroad; Decree of Indian Court should be executable in foreign Courts, both

on principles of comity and by entering into reciprocal agreement like Section 44A of the Civil Procedure Code, 1908, which makes foreign decrees executable; and No marriage between an NRI and an Indian woman solemnised in India may be annulled by a foreign Court.

In deciding the question of jurisdiction the test adopted in recent years is the real and substantial connection between that country or territory in which such a decree was granted and the party, who had obtained the decree. The mere fact that a marriage is celebrated in a particular jurisdiction is not enough to create a real and substantial connection between the petitioning spouse and that jurisdiction. When a certified copy of foreign judgment is produced, there is a presumption under Section 14 of the Code of Civil Procedure that such judgment was pronounced by a Court of competent jurisdiction unless the contrary appears on record. Such presumption may be displaced by proving want of jurisdiction.

In T. Siva Raman v. P. Ranganayaki[i] a marriage solemnised under the Foreign Marriage Act, 1969, was dissolved by a court in California. The wife filed a petition for restitution of conjugal rights before a family Court in India. The plea that parties were divorced was not accepted as the dissolution of the marriage by the foreign Court was held to be not valid on the ground that the Court in California, U.S.A., had no jurisdiction. The wife's application for restitution was, accordingly, held to be maintainable.

If the foreign Court grants a decree of divorce after satisfying itself about the availability of the grounds for divorce under Section 27 of the Special Marriage Act or declares the marriage void according to the provisions of the Act, then that judgement decides the controversy once and for all between the parties, and in view of Section 13 of the Code of Civil Procedure it is conclusive between the parties.

In Varinder Singh v. State of Rajasthan[ii] the petitioner wife, a resident of Canada, had obtained a divorce in respect of her earlier marriage from the Supreme Court of British Columbia and remarried in India under the provisions of the Hindu Marriage Act. The District Collector-cum-Registrar of marriages rejected her application for registration of the marriage on the ground, inter alia, that she had obtained the divorce from her former husband from a foreign Court which was not valid, and so the provisions of the Hindu Marriage Act in respect of registration of the marriage could not be applied. On appeal, however, the Rajasthan High Court held that

the earlier divorce was valid and the District Magistrate was directed to register the marriage.

In Kashmira Kale v. Kishore Kale[iii], both parties to the marriage were domiciled in the US. The wife filed a divorce petition before the Court in US and a judgment was passed on merits after service of summons upon the husband and after his filing of the written statement.

The husband, however, did not appear thereafter. The decree was held to be binding and conclusive. Merely because he did not appear after the filing of the written statement would not make the judgment ex parte so as to be excluded under the provision of Section 13 of the Code of Civil Procedure. So also in Sharmistha v. Sujoy Mitra[iv], where a husband filed a divorce case in USA (Pennsylvania) and the wife submitted to its jurisdiction, the divorce decree granted by that court was held to be valid.

Decree for Judicial Separation in a Divorce Petition:

Beneath the English law before the reformation, the Church is measured the marriage as a sacrament which made it not possible to gain a decree of divorce. The Ecclesiastical Courts in the case of a marriage validly contracted granted 'divorce a mensa et thoro' means divorce from bed and board which did not permit the spouses to re-marry. This clarification was not divorce and it did not break up the marriage bond. This elucidation is now called judicial separation allowing the parties to live unconnectedly from each other without dissolving the marriage bond with the choice of re-living and re-uniting mutually, if circumstances alter consequently.

As previously explained that it is extensively recognised that judicial separation is the smaller of the two evils in comparison to divorce. It is thus frequently seen that Courts award a decree for judicial separation in a petition for divorce even supposing no such request is made in the petition.

In a famous case namely Chandra v. Suresh[v], a petition for divorce was filed in January 1966. The Divorce Court granted a decree of divorce on September 1967. On the appeal, the High Court changed the decree of divorce to a decree of judicial separation on the latter's patent appeal, the High Court held that the decree was effective from the date on which it was granted by the Divorce Court and since by the time the latter's patent appeal came for hearing, a period

of two years had expired since the granting of the decree of judicial separation thus the petitioner was entitled to a decree of divorce. This means that the Court was now bound to award a divorce decree which was not wanted in the original petition.

On the other hand the Courts do not have discretion to pass a decree of judicial separation, when an order of divorce is wanted under a ground that is not accessible for judicial separation. For instance, the Court has no authority to grant a decree for judicial separation in a petition for divorce on the ground of presumption of death. The Madhya Pradesh High Court in the case of Rakesh v. Lata[vi], held that where neither of spouse pleads for judicial separation in petition, the Court cannot grant for judicial separation. The court is bound to decide the case only four corners of case pleaded by parties not beyond that.

Effects of the Decree:

The decree of judicial separation provides rights to the spouses to breathe separately and cohabitation as the necessary of matrimonial relation is not obligatory on either spouse. But, it does not fracture the matrimonial status of wife and husband. No one can remarry till the decree for divorce. Either spouse may present a petition for divorce to the District Court on the ground that there has been no resumption of cohabitation as between the spouses for a period of one year or upwards after granting the decree for judicial separation.

The word of the Section 23(2) of the said Act is 'where the Court grants a decree for judicial separation it shall be no longer obligatory for the petitioner to cohabit with the respondent.' Here Cohabit means to reside or live mutually to inhabit the similar place as wife and husband as respects bed and board[vii]. This is more than a simple visit to someone.

The very principle of the remedy of judicial separation is that, it must not be obligatory for the petitioner to cohabit with the respondent. Though, visit to each other and sharing bed and board during that visit is not forbidden by the decree of judicial separation. The decree of judicial separation differs from the decree of divorce. The second cannot be rescinded, if the parties wish to restore their marital life; the earlier can be rescinded. The reason is that this decree does not crack the matrimony. Thus, the subject matter is in the judicial discretion of the Court. The circumstances for the rescission of this decree are following:

There should be an application by either spouse, it may be even a joint application by both the spouses; the statements of the application should be true to the satisfaction of the Court; and The Court should consider it reasonable and just to rescind the decree.

ENDNOTES

[i] (2005) 3 MLJ 1.

[ii] 2005(3) Raj. LW 1791
[iii] AIR 2010 (NOC) 632 (Bom)
[iv] (2008)II DMC 633 (Del.)
[v] AIR 1980 SC 582
[vi] AIR 2009 (NOC) 218 (MP)
[vii] P. Ramanatha Aiyar's Law Lexicon, 2nd Edition, Reprint 2007