JUDICIAL ATTITUDE ON THE JUDICIAL SEPARATION IN FOREIGN MARRIAGES

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In the case of Ms. Jordan Diengdeh v. S.S. Chopra[i], the petitioner is now a member of the Indian Foreign Service. The respondent husband is a Sikh. They were married under the Indian Foreign Marriage Act, 1969. The petitioner wife filed a petition for declaration of 1judicial separation or nullity of marriage under Sections 23 of the Act on the ground of the impotence of her husband. A Single Judge of the High Court discarded the prayer for declaration of nullity of marriage but granted a decree for judicial separation on the ground of cruelty. The Division Bench confirmed the decision of the Single Judge on appeal.

In this case, the marriage appears to have broken down irreversibly. If the conclusion of the High Court stand there is no way out for the spouses. They will not carry on to be tied to each other. Mutual consent and irretrievably break down of marriage is a ground for divorce. There is no point or intention to be served by the continuation of a marriage which has so totally and signally broken down. The spouses are bound mutually by a matrimonial tie which is better untied.

Further held, that it is thus seen that the law relating to judicial separation, divorce and nullity of marriage is far from consistent. Surely the time has now come for an absolute improvement of the law of marriage and makes a uniform law applicable to all citizens irrespective of religion or caste. It appears to be necessary to initiate irretrievable break down of marriage and mutual consent as grounds of divorce in all cases. The case before us is an example of a case where the spouses are bound mutually by a matrimonial tie which is better untied. There is no point or intention to be served by the continuation of a marriage which has so wholly and signally broken down.

In the matter of Sondur Rajini v Sondur Gopal[ii], the appellant wife's petition was filed inter-alia seeking judicial separation under Section 23 of the Foreign Marriage Act, 1969. The respondent husband took the protestation that the petition filed by the wife was not maintainable on the ground that the parties were citizens of Sweden and not domiciled in India and therefore the jurisdiction of the Family Court was debarred by the provisions of the Act. As against this, the case set up by the wife was that their domicile of origin was in India and that was by no means given up or deserted though they had acquired citizenship of Sweden and then moved to Australia.

The husband's application was also challenged by her on the basis that even if it was assumed that he acquired domicile in Sweden, she never changed her Indian domicile and continued her domicile in India. In the option, it was contended that even if it was understood that she also had acquired domicile of Sweden that was discarded by both of the spouses shifting to Australia and therefore their domicile of origin i.e. India got revitalized.

In brief, the case of the wife was that she and the respondent both were domiciled in India and therefore the Family Court in Mumbai had jurisdiction to think about her petition seeking a decree of judicial separation. She also submitted that once the Special Marriage Act applies, there is no provision in the said Act stating that it ceases to apply at any subsequent stage and the issue of domicile raised by the husband was therefore completely immaterial keeping in vision the scheme of Act and that achievement of nationality and domicile are self-governing of each other and in any case it could not be said that by acquiring nationality of 1Sweden they also acquired domicile in that country.

The Court therefore held that under Section 23 read with Section 27 of the Special Marriage Act her petition would be maintainable in the Family Court, Mumbai. The Court then explored that since a domicile of India is a condition precedent for invoking the provisions of Special Marriage Act, what would be the relevant time, whether the date of marriage or of 1petition.

Therefore, the system of law which should control a marriage should stay behind constant and cannot change with vagaries or the whims of the spouses to the marriage. It has also been commonly approved that questions touching the personal status of a human being should be controlled constantly by one and the similar law, irrespective of where he may occur to be or

of where the facts giving increase to the question may have occurred. If the situation is taken that the time at which the domicile is to be determined is when the proceedings under Special Marriage Act are commenced, then every petition filed by the wife whose husband moves from one country to another for the purposes of job or for any purpose whatsoever, he would be competent to aggravate a petition brought by the wife by changing his domicile even between the filing of the petition.

The ruling consequently predictable by the Court was once competent, always competent even if the spouse domiciled in India at the time of their marriage has since changed his domicile, disassociated himself from the fortitude of his status by the Court in India. The intention of law researched that the time at which the domicile is to be resolute is when the procedures are originated, consequently was not established being against the public policy in this country and which may generate a grave communal trouble.

As a normal consequence thereof even if a spouse to the marital petition of judicial separation proves that after marriage he acquired domicile of some other country, it would not take away the authority of the Court in India, if on the marriage he were domiciled in India. It is unfair that a spouse to the marriage can alter his whole scheme of personal law by his/her independent conclusion. If that were permitted than it would create the place of a wife very unhappy or powerless.

The stipulations of the Foreign Marriage Act and the Special Marriage Act will carry on to apply to spouses of the foreign marriage, who were admittedly domiciled in India on the date of 1their marriage and they cannot be heard to create a complaint about it later or permitted to bypass it by subterfuges. The Court also observed that under both the English and Indian Private International Law there are four universal provisions in respect of 1domicile, these are as following:

No person can be without a domicile; No person can have concurrently two domiciles; Domicile denotes the relationship of a person with a territorial system of law; and The assumption is in favour of continuation of an existing domicile.

In the case of Smt. Anubha v. Vikas Aggarwal[iii], that was a case where both the wife and husband were Hindus and the wife had filed a petition for judicial separation and maintenance in Indian Court. For the duration of 1the pendency of which, the respondent husband had obtained the decree of divorce from the Court in the USA. On particulars, it was not establish by the Court that the wife had not presented to the jurisdiction of the Foreign Court nor had she assented for award of divorce by the Foreign Court. Therefore, the decree obtained by the respondent husband in the Foreign Court was neither enforceable nor identifiable in India.

The respondents husband has also located confidence on the cases of Satya v. Teja[iv] and Y. Narasimha Rao v. Y. Venkata Lakshmi[v], apart from a decision of the Madras High Court in V.S. Subramanya Iyer v. V.V. Ramasami Pillai[vi], for the proposal that in view to proceedings awaiting in Foreign Courts a spouse is not have a right to declaratory remedy as of right. The Court should not and would not provide an announcement as it had no authority in relation to the property positioned in Foreign Countries as if such an announcement were to be specified, it would violate upon the absolute rights of the Foreign Tribunal to make a decision on cases pending before it and that it would be inappropriate and extremely disparaging to the reputation of the Foreign Court, if it is observe that the pronouncement of the Foreign Court was incorrect for one basis or the other. Still if a Court did, it would be brutum fulmen as the Foreign Court would surely take no notice of 1the judgment of a Local Court. The matter went to trial and decision was turn into awarding judicial separation.

Thus, in concluding mode of this chapter it is clear that Judicial separation is frequently viewed as the smaller immorality in contrast with divorce, since it leaves open a door for settlement or reconciliation in a foreign marriage. Ordinarily judicial separation may lead to divorce and reconciliation. It is significant to note at this phase that the very purpose of a foreign marriage, notwithstanding what personal law it comes under is to make sure that the people who come into the matrimonial relationship are there for each other through thick and thin. The objective of providing this particular remedy for a foreign marriage through the Special Marriage Act not in specified in the Foreign Marriage Act, 1969 is to give the spouses an option to set aside their differences and if probable give their marriage an another attempt. If this does not work, then the spouses of the foreign marriage can very well apply for divorce.

Further, very few cases were found on the remedy of judicial separation on the foreign marriage or marriage solemnized under Foreign Marriage Act, 1969, where lots of problem arises relating to marital remedy as well dissolution of marriage, the issue of ex-parte decree by Foreign Court also arises. The facial appearance is only due to be short of of strong Private International Law as well ambiguity present in the Foreign Marriage Act. To finish the problems relating to foreign marriages the Government has to amend the Foreign Marriage Act, 1969 and have to present muscular legislature for the Private International Law.

Ram Awadh v. State of U.P.,& ors.,[vii]and Deepa v. Balaji,[viii] both cases the courts observed that are governed under the personal laws to which the parties are subjected to, such as Hindu Marriage Act, 1955, Indian Divorce Act, 1869, Parsi Marriage and Divorce Act, 1936, Dissolution of Muslim Marriages Act, 1939, in view of Muslim Personal Law (Shariat) Application Act, 1937 'Sharia' of Islamic law, Foreign Marriage Act, 1969 and for those who have no faith in any religion or rationalists the Special Marriages Act, 1954. In the matrimonial proceedings instituted under the said personal laws, the wife and children can seek maintenance against the husband/father, as the case may be. It is to provide them financial support. It is for their survival, as long as the matrimonial proceedings are pending. Thus, they came to be called 'pendent lite maintenance'. It is also a 'temporary alimony' to the wife. They are in the nature of granting 'interim relief, 'interim measure', 'interim protection'.

Thus, it is clear that the current law is not sufficient deal rather the proposition as well authority of statute matters. Although, having Foreign Marriage Act, 1969, it seems unsuccessful some time as its not capable to transaction with the some of very important matter due to lack of 1suitable provision. The Parliament of India has to modify the present Foreign Marriage Act, 1969 in accordance with the requirement of the modern picture which may generate a disincentive result.

In this chapter, the researcher has tried to analyze and investigate the scope, concept, essential elements, validity and merits and demerits of various factors which affect the remedy of the judicial separation in a foreign marriage with the help of the various case laws and legal Provisions contained in the Foreign Marriage Act, 1969 and Special Marriage Act, 1954. After that here one significant question arises in regard of judicial separation in a foreign marriage,

whether any one spouse, who obtains a decree of judicial separation and after that does not try to comply of this decree for one year, can file a petition of divorce or take advantage of his fault under Section 27(2) of the Special Marriage Act, 1954?

Thus, the remedy of judicial separation tries in promoting and encourages reconciliation or settlement between the spouses and maintenance for marital life. This tries to guard our society and culture from condescending. But, the concluding judgment is that of the spouses whether to abide by the decree of judicial separation and to carry on with the nuptials or not. Lastly, in a concluding mode of this chapter, the researcher have a opinion that various rules originated by the case laws and provisions relating to the foreign marriage in the petition for the judicial separation shall apply completely in the matter of foreign marriage with the help of the Special Marriage Act, 1954.

ENDNOTES

[i] 1985 SCR Supl. (1) 704.
[ii] (2005)4 MhLJ 688
[iii] AIR 2003 Del. 175
[iv] AIR 1975 SC 105
[v] (1991) 3 SCC 451
[vi] AIR 1951 Mad. 531
[vii] Appeal No. 192 of 12017 decided on 16 July 2019 by Allahabad High Court
[viii] C.R.P. (PD) No. 1366 of 12017 decided on 13 April 2017 by Madras High Court