JUDICIAL ATTITUDE ON THE DIVORCE IN FOREIGN MARRIAGE

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In the case of *Harmeeta Singh v. Rajat Taneja*[i] where wife was deserted by husband within six months of marriage, as she was bound to depart the marital home within 3 months of co-habitation with her husband in the USA. When she initiated a petition for maintenance under the Act in India then the High Court disposed of the interim application in the petition by awarding an order of restraint against the husband from continuing with the proceedings in the US Court in the divorce petition filed by the husband there and also asking him to place a copy of the order of the High Court before the US Court.

The Court given some interpretations while giving this order that even if the husband succeeded in getting a decree of divorce by the US that decree would be unreliable to obtain recognition by the Indian Court had jurisdiction and the jurisdiction of the US Court would have to be recognized under Section 13, CPC. The Court then held that till the US decree was acknowledged in India, he would be held responsible of committing bigamy in India and would be accountable to face criminal action for that. The Court further held that the wife's residence in the USA was very brief, temporary and casual and she may not be monetarily competent of prosecuting the litigation in the US Court, and hence the Delhi Courts would be appropriate Court.

In *Venkat Perumal v. State of A.P.*[ii], where an application for quashing of the proceedings of Section 498A IPC filed by an NRI husband against matrimonial cruelty meted out to her. The High Court observed that the offence under Section 498A IPC is a continuing offence and the mental harassment on the wife had continued during the stay with her parents at Hyderabad. The Court discarded argument of the husband that permit of the Central Government, as contemplated under Section 188 of the Code is necessary to prosecute and held that even

otherwise, it is not a condition precedent to start criminal actions and the same may be attained, if need be, during trial and hence, it could not be said that the procedures were liable to be quashed on that ground. The Court also declined to influence its verdict with the divorce decree from the US Court produced by the husband.

Veena Kalia v. Jatinder N. Kalia[iii], was one more case where the NRI husband got ex parte divorce decree in Canada Court. The Delhi High Court observed that the decree of divorce may not bar the divorce petition by wife in India, as it couldn't be construed as res judicata. The Court also viewed the conditions in which the wife didn't contest the husband's divorce petition in Canada Court, that she had no means to challenge the procedures there and the decree was passed because she was not capable to present and challenge the proceedings as the excessive cost of going to Canada and other conditions disabled her and husband got benefit of that handicap. The only ground on which the husband sought divorce was that there had been an eternal breakdown of marriage and which was not a ground recognised in India.

In the case of *Mr. Niklesh Anil Rodrigues v. Mrs. Rachelle Anne Ornillo Montero*[iv], both the spouses were distressed by a decree passed by the Family Court Mumbai in an application which was filed under Section 18 of the Foreign Marriage Act, 1969 with Section 22 and 27 of the Special Marriage Act, 1954. In this case the petitioner was Hindu and respondent was Muslim at the time of marriage and they solemnized marriage according to the Foreign Marriage Act. The petition was filed under the Special Marriage Act and the respondent wife was residing in Philippines. The Family Court, Mumbai held that this Court did not have jurisdiction to entertain the petition divorce and also held that petitioner could not convert the petition into a petition for divorce by mutual consent.

Being distressed the petitioner filed the present appeal, while the respondent wrote a letter to registrar in which she stated that she has no objection if decree of divorce is passed. A question arises for the consideration of the Court, whether the Family Court has authority to entertain the petition? This is well settled situation that jurisdiction of the Court in a petition seeking marital remedies is found in Section 31 of the Special Marriage Act. This Section says that Court to which petition should be filed and which is District Court within the local limits of

whose original civil jurisdiction.

The Court observed that the Family Court overlooked one important material fact that the appellant has annexed a copy of his passport, which demonstrates that he is an Indian citizen. The Court further observed that we therefore set aside the order passed by the Family Court. The respondent has never appeared before the Court, we are therefore of a view that the petition for divorce can be converted into divorce by mutual consent under Section 28 of the said Act. The Court therefore passed the decree of divorce by mutual consent and the foreign marriage between the spouses is hereby dissolved by consent under the provision of Section 28 of 1the Special Marriage Act read with Section 18 of the Foreign Marriage Act, 1969.

In the case of *Mrs. M v. Mr. A*[v], where the appellant wife had prayed for a decree of nullity of her marriage solemnized at Huston, U.S.A. On the other hand, she prayed for a decree of divorce on the ground of cruelty. This petition was originally filed before the Court at Bombay under the provisions of the Special Marriage Act, 1954, which applied to the spouses by virtue of the provisions of Section 18 of the Foreign Marriage Act, 1969. The trial Court rejected this petition on the ground that the Court was not vested with the requisite jurisdiction that the petitioner should have been residing in India continuously for a period of 13 years immediately preceding the presentation of the petition.

The High Court in appeal held that the trial Court was not justified in having grafted on the word 'continuously'. The Court also took into description the fact that the petitioner had not emigrated from India, which was recognized by the fact that she had gone out of the country only on a tourist visit and she did, actually return and has been enduringly domiciled and resident in India all through. The Court said that in marital laws in this country, the law awards local jurisdiction on a Court if the spouse concerned is actually occupant there and not on the ground of 1casual short-term visits.

In *Vikas Aggarwal v. Anubha*[vi] the Supreme Court had been struck-off the defence of NRI husband in a maintenance petition filed by the wife in the High Court because he had not

appeared before the High Court despite the High Court's order. The High court had directed him to individually appear to furnish explanations to the Court on the conditions in which the US Court had proceeded with and granted decree of divorce in the US despite order of restraint having been issued by the Indian Court against the procedures in the US.

Further, the Supreme Court upheld the High Court's order and held that Order X of CPC is an enabling stipulation that provides power to Courts for definite functions. The Delhi High Court was justified in wanting the husband to personally appear, particularly since the affidavit of his advocate in America annexed with the affidavit filed in the trial Court was not sufficient to clarify the position. Also, the inherent power of 1the Court under Section 151 CPC may always be exercised to advance interests of justice and it was open for the Court of law to pass an appropriate significant order under Section 151 CPC as may be essential for ends of justice or to stop the abuse of process of the Court.

The most noticeable and troubling tendency is that the foreign Courts appear to award divorce, even when solemnization took place according to the Indian law. In various cases, the foreign Court passes the divorce ex parte, without knowing the ancestry of the trouble. This precludes the Indian Courts from having any authority to act against such verdict of the Court. There is no special and comprehensive law to control the jurisdictional problems concerned in deciding marital cases. But, there are some cases in which the Supreme Court has passed verdict

In marital remedy, which is against the decree passed by the foreign Court.

Similarly, in the matter of *Sheenam Raheja v. Amit Wadhwa*[vii], the Court confirmed that the Indian Court shall not identify the decree of the foreign Court in marital matters. Therefore, it may be contingent that, the only power for dissolution of nuptials have merely near the law by which nuptials solemnized and that is the basic law. Thus, if a nuptial is annulled under foreign jurisdiction then the proceeding would become void ab initio and the decree of 1divorce would have no worth.

In *Minoti Anand v. Subhash Anand*[viii], the petitioner and respondent were married in Japan and

marriage was solemnized in a Japani temple by a priest. The marriage was registered under the foreign marriage Act and a certificate of registration was issued by the Consulate General of India in Japan. After that the respondent filed a petition of divorce. The Court observed that a Marriage Officer may register a foreign marriage, if he is satisfied that it has been solemnized according to the law of that country. This is very apparent that a nuptial registered under the Foreign Marriage Act shall be deemed to have been solemnized or performed under that Act. Consequently, once a nuptial is registered the spouses can not challenge that they are controlled by any other Act. Further, it was held that Section 14(2) explains that certificate of marriage is deemed to be conclusive of the fact that a nuptial under the foreign marriage Act has been solemnized. Decree of divorce granted.

In *Smt. Joyce Sumathi v. Robert Dickson Brodie*[ix], Section 18 of the Foreign Marriage Act provides stipulation for awarding marital remedy under the Special Marriage Act, 1954, not only in the nuptials solemnized under the Foreign Marriage Act but also in any nuptials solemnized in the foreign country between spouses of whom at least one is a Indian citizen. The Court has unnoticed this side rejected the petition because the marriage in question was not solemnized in according to the stipulation of the Foreign Marriage Act. The Appellant being an Indian citizen is as much entitled to maintain a petition under the Special Marriage Act as any spouse to a nuptial which was solemnized under the Foreign Marriage Act, 1969.

The Court further observed that we therefore set aside the order of learned Court and hold that the petition for divorce made under Section 27 of the Special Marriage Act read with Section 18 of the Foreign Marriage Act is completely maintainable because the evidences on record shows that the respondent has deserted the appellant without justified reason for a period of over 3 years immediately preceding the presentation of the petition for divorce which constitutes a legal ground for the appellant to seek decree of divorce and appellant is therefore entitled to a decree of divorce as prayed for.

In the case of *Subhasis Gupta v. Dr. Saritama Kar*[x], where the petitioner husband filed a written objection taking a beginning issue as to the maintainability of the application on the basis that the nuptial had been performed in New Jersey, USA and that a proceeding of divorce was

pending before the Superior Court of New Jersey Chancery Division, Family Part Sussex Country. It has also been pleaded that the nuptial of the spouses, one of which is a citizen of Indian was not registered under the Foreign Marriage Act, 1969 and consequently no remedy may be awarded by an Indian Court in view of Section 18(4) of the said Act. The conflicting spouse has also contested such subject in her reply.

The Court held that Section 17 of 1the Foreign Marriage Act provides for registration of 1a nuptial entered in to by and between the spouses in a foreign country. Such nuptial can be registered before a Marriage Officer as defined in Section 17(2) of the Act. In the occasion of such registration of marriage, marital remedies as provided under the Special Marriage Act would be completely accessible to the spouses to such a marriage.

Further, a variety of cases were found on the topic of foreign marriage or Marriage Solemnized under the Foreign Marriage Act where many question arises regarding matrimonial remedy as well divorce. The question of ex parte decree of divorce by Foreign Court also arises. The Indian Court has to face lots of complications, while dealing with such cases, which already had ex parte decree of divorce by a foreign Court. The complications are merely due to require of muscular Private International Law because some deficiencies present in the said Act.

To come to an end the problems of foreign marriages, the Government of India have to amend the Foreign Marriage Act, 1969 and have to enacted powerful statute for the Private International Law. Therefore, the present law is not a huge deal rather the implication as well jurisdiction of legal matters. Though, having Foreign Marriage Act, 1969, it seems useless some time as it is not capable to contract with the some of very important issue due to be short of of suitable stipulation. The Parliament of India has to amend the present Foreign Marriage Act 1969 according to want of present situation which can generate a deterrent impact.

The Foreign Marriage Act covers within its ambit, a marriage between an Indian and a Foreign National. The Foreign Marriage Act is not concerned about religion; it focuses on the legal aspects governing the institution of nuptials. Its features are derived from both The Hindu

Marriage Act and The Special Marriage Act. A marriage, which is usually considered to be a family and a religious occasion, has its own legal impacts, which is not given much importance. The Foreign Marriage Act however, highlights these legal implications[xi]of the institution of marriage.

In *Prateek Gupta v. Shilpi Gupta & Ors.,*[xii] case the Supreme Court held that If a child is brought from foreign country being its native country to India then court in India may conduct (a) summary enquiry of (b) an elaborate enquiry on the question of custody, if called for simply because a foreign court has taken a particular view on any aspect concerning the welfare of child is not enough for courts in India to shut out an independent consideration of the matter. If a matter of custody of child, decision of foreign court is not a bar to Indian court to decide independently.

In *Thersiamma Manshoum v. Thersiamma Manshoum*[xiii] the Court observed that couple was married under Foreign Marriage Act on dated 27.03.1985, husband was resident of 1Belgium and wife is an Indian citizen by birth. They have two sons born out of wedlock and the couple remained at Belgium till August 1987. Thereafter they shifted to India at Thiruvananthapuram. Husband invested his most of the money in business which was established in his wife's name. Other properties were also purchased in the name of his wife. Sometime later on disputes arose between then and husband filled recovery of money against wife in family court in May 2012. The family court dismissed the petition on the ground of limitation. High Court confirmed the order of family court.

ENDNOTES

[i] (2003)I DMC 443 (SC)
[ii] (1998)II DMC 523
[iii] AIR 1996 Del 54
[iv] AIR 2016(6) Bom 634
[v] (1993)I DMC 384.
[vi] AIR 2002 SC 1796
[vii] (2012)131 DRJ 568.
[viii] AIR 2011 (Bom) 61.
[ix] AIR 1982 AP 389.
[x] (2014) 2 CHN (CAL) 449.

[xi] Lakshmi Jambholkar, "Recognition of Foreign Divorce Decrees in India: A case for contextual interpretation", Journal of Indian Law Institute, Vol. 33, 1991, pp. 432.

[xii] (2018)1 CriLJ 61

[xiii] Mat Appeal No. 2012 of 12012 decided on 30.05.2019 by Kerala High Court