

Discussion of Caselaw

Arunima Naveen Takier v/s Takier

Divorce.....2019(3)Mh.L.J.885

Facts.....

- By this notice of motion the applicant (original plaintiff) being the wife, seeks ex-parte ad-interim order for staying the divorce proceedings by the defendant and pending before the Family Court, Manchester, United Kingdom (UK) and also seeks an injunction against the defendant from proceeding with the said proceedings

Hindu Marriage Act (25 of 1995) S. 19, 13 & 1(2)

- Facts
 - Divorce Proceedings
 - Grant of Anti Suit injunction
 - Couple – Hindus- Married in Mumbai as per Hindu rites & ceremonies.

Issue

- > Merely because defendant- husband is having domicile of U.K. would be of no significance and would not divest jurisdiction of Court provided under s.19 for purpose of filing proceedings under provisions of HMAc.
- > Anti Suit injunction granted against defendant from proceeding against plaintiff in Family Court in U.K.

Further facts to consider;-

- Wife never given up domicile in India.
- She was in UK for a short period and returned back & continuously been staying within the jurisdiction of this Court.
- Husband created such a situation for the wife that she could not defend her suit nor did she get any relief from the UK court.

And so this became a fit case.....

- For exercising the powers of the High Court in granting an order of the anti -injunction as Wife (Plaintiff) is not expected to defend the suit filed by the husband inspite of them being Hindus solemnized under Hindu Marriage Act.
- Part of the judgment discusses couple married in Mumbia, provisions of Hindu Marriage Act 1955 is applicable. (Para 48)

Further facts.....

- After marriage, wife had joined husband in UK, immediately thereafter, husband picked up fights with wife, and took help of police to make her leave his home and made her stay in a hotel. Wife took several steps to reconcile but was of no use.
- Wife then was informed by electronic email that divorce proceedings were initiated by husband in UK

Wife sent a reply

- That Indian laws are applicable and refusing to accept jurisdiction of the UK court. And then wife filed this anti injunction suit for various reliefs.
- Wife also filed motion inter-alia praying for interim reliefs.
- Husband filed his say objecting the jurisdiction but Courts passed an order of ad interim injunction restraining UK proceedings.

To refer to judgments relied..... Modi

Entertainment AIR 2003 SC 1177

- Principle prescribed by the Hon'ble Supreme Court in the said judgment to be considered by exercising discretion to grant anti injunction is that in a case where more forums than one are available, the Court in exercise of its direction to grant anti-suit injunction will examine as to which is the appropriate Forum having regard to the convenience of the parties and may grant anti-suit injunction with regard to proceedings which are oppressive or vexatious or in a Forum Non-Conveniens.
- > In this case the husband had stopped wife's entry into UK with the help of the police and did everything in his power not allowing her to defend her suit in UK.

Sondur Gopal v/s Sondur Rajini

- > Even if domicile in UK and married in Mumbai then provisions of Hindu Marriage act is applicable.
- It has been held that the domicile are of three kinds:
 - domicile of origin,
 - the domicile by operation of law and
 - the domicile of choice.

The Hon'ble Supreme Court considered the fact that the wife at the time of presentation of petition for judicial separation and for custody of children was resident of India. Parties were governed by the [Hindu Marriage Act, 1955](#).

Defendant's say

- Husband defendant denies jurisdiction of Indian Court and how anti injunction suit is not maintainable.
- The husband relied on the provision of s.1 (2) of Hindu Marriage Act 1955

Section 1(2) in The Hindu Marriage Act, 1955. (2) applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

Husband took the stand just being Hindu does not answer domicile status.

The Wife took the stand.....

- Marriage was solemnized in India.
- Wife has not given up jurisdiction of Courts in India.
- And not filed any appearances in the proceedings in the UK Court.

SC: Y.Narasimharo v/s Y. Venkatalakshmi

- It has been held that:-
 - Under private International law, domicile of wife does not follow that of the husband & so domiciliary law of the husband cannot determine jurisdiction of the forum or applicable law.
 - Hon'ble SC held decree obtained by husband in a foreign Court was not enforceable in law in India.

To cont....

The Court of the opinion that;-

- Wife was not able to defend the proceedings filed by the husband.
- No maintenance given by husband.
- When wife was in UK, husband took help of police and forced her to return to India.
- Husband cancelled her sponsorship.

Surindar Kaur Sandhu vs Harbax Singh Sandhu

- **1984 AIR SC 1224**
- It was held by the Hon'ble Supreme Court that it is the duty and function of the Court to protect the wife against the burden of litigating in an inconvenient Forum.
- The Division Bench held that a wife had no support in U.S.A., she was always an Indian citizen domiciled. It would be unfair to ask the wife to travel to hostile territory only to redress her grievance.

Admittedly in this case.....

- The marriage was solemnized in Mumbai and thus merely because the defendant is having domiciled of U.K. whether by birth or by choice or otherwise would be no significance and would not divest the jurisdiction of the Court provided under [section 19](#) of the Hindu Marriage Act, 1955 for the purpose of filing the proceedings under the provisions of the [Hindu Marriage Act](#), 1955.