

Madhavendra L Bhatnagar vs Bhavna Lall on 19 January, 2021

Bench: A.M. Khanwilkar, B.R. Gavai, Krishna Murari

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2020
(Arising out of SLP(C)No. 14948 of 2020)

MADHAVENDRA L BHATNAGAR

Appella

VERSUS

BHAVNA LALL

Respond

O R D E R

Leave granted.

Heard learned counsel for the parties. This appeal takes exception to the judgment and order dated 11.11.2020 passed by the High Court of Madhya Pradesh, Principal Seat at Jabalpur in M.P. No. 2193 of 2020, whereby the order passed by the Trial Court, namely, Court of First Additional Principal Judge, Family Court, dated 02.07.2020 in Case RCS No. 1089 of 2019 rejecting application filed by the appellant under Order 39 Rule 3 read with Section 151 of Civil Procedure Code for granting interim anti-suit injunction against the respondent came to be affirmed.

The reliefs claimed in the application filed before the Trial Court read thus:

“(a) Pass an order allowing the present application thereby granting temporary anti-suit ex parte injunction in favour of the Plaintiff/Applicant and against the Defendant by restraining her from proceeding with the petition bearing case no. FC2019-090049 before Superior Court of Arizona in Maricopa County as well as further restraining her from initiating any other or further action or proceeding of filing of any suit or claims against Plaintiff in any Court/Tribunal/Forum in any country outside India with regard to matrimonial disputes of the Plaintiff and Defendant;

(b) Pass any other or further order as this Hon’ble Court may deem fit and proper in the facts and circumstance of the case and in the interest of justice.” It was urged before the Trial Court that the respondent had resorted to proceedings for divorce before the Superior Court of Arizona, where according to the appellant, the parties

had never resided. Both the parties are Hindu and were married under the Hindu law.

The child was also born in California. The parties had never resided in the State of Arizona.

Moreover, in the proceedings before the Superior Court of Arizona, objection regarding the jurisdiction of that court had been taken by the appellant and while dealing with the preliminary objection, that court made it amply clear, that it intends to apply the laws of State of Arizona and would not take into account the laws applicable to Hindu marriage, namely, Hindu Marriage Act for dissolution of the marriage.

In view of this observation, the appellant apprehends that some drastic order is likely to be passed by the Superior Court of Arizona at the instance of respondent- wife. Notably, the respondent is bent upon precipitating the matter before the Court at Arizona, despite the appellant having resorted to proceedings for divorce as well as custody of the minor child in India before the Court at Bhopal in the State of Madhya Pradesh. Those proceedings are still pending, where the respondent has had entered appearance after the subject application was moved by the appellant.

Be that as it may, during the pendency of the stated suit for declaration and for direction to handover custody of the minor child, an application had been moved by the appellant before the Trial Court which came to be rejected on the ground, that the Superior Court of Arizona was outside India and not subordinate to that court. This view noted by the Trial Court is completely erroneous and ill-advised. For, the relief claimed by the appellant was for grant of interim anti-suit injunction against the respondent and not against the Superior Court of Arizona, as such.

When the matter traveled to the High Court at the instance of the appellant, even the High Court proceeded on an incorrect basis, that the courts in India could adjudicate the controversy between the parties, only after the Superior Court of Arizona would pass an order in the pending proceedings. That was not the purpose for which the ex parte ad interim relief was sought by the appellant. In any case, no judgment of this Court has been brought to our notice, which says that if the other party had already resorted to proceedings before another court including outside India, an anti-suit injunction cannot be issued even if the fact situation so warrants.

In our opinion, both the Trial Court and the High Court mis-applied the legal position and committed manifest error, in rejecting the ad-interim relief claimed by the appellant against the respondent during the pendency of the proceedings between the parties before the Court at Bhopal.

Accordingly, we have no hesitation in setting aside the impugned decisions and to grant interim relief as prayed in the application filed before the Court at Bhopal as reproduced above, including to restrain the respondent from proceeding with the pending suit instituted by her in the Superior Court of Arizona or to file any other proceedings, including interim application(s) in any proceedings hereafter (except in the proceedings pending in court at Bhopal) until further orders to be passed by the Court at Bhopal.

During the hearing, a disconcerting aspect has been brought to our notice by the counsel for the appellant. In the communication or response given by the respondent in reference to the service of notice issued by this court in the present appeal, it has been asserted by the respondent that her Attorney in India had advised her that the appeal pending before this Court will not succeed at all. We fail to understand as to how an advocate appearing in the matter or instructing the litigant who is party before the Supreme Court of India would be in a position to prejudge the outcome of the proceedings or if we may say so speculate about the outcome thereof. Prima facie, this, in our opinion, is bordering on professional misconduct and needs to be proceeded with.

To take this issue to its logical end, we direct the respondent to file an affidavit and disclose the name of the advocate from India, who had so advised the respondent and on the basis of which she was advised to take a stand before the Superior Court of Arizona, as noted in Annexure P-2 to the I.A. No. 6177 of 2021. This proceeding will be treated as suo moto action initiated by this Court. The respondent shall file affidavit within two weeks from today and the suo moto proceedings to be notified by the Registry on 05.02.2021.

Reverting to the main proceedings before us, we allow the appeal in the above terms and injunct the respondent in terms of prayer clause of the application filed before the Court at Bhopal, as reproduced above in the fourth (unnumbered) paragraph.

While parting, we must place on record, that the respondent had circulated a letter seeking adjournment to which the appellant had filed counter letter opposing the adjournment, on the ground that the real intention of the respondent was to precipitate the matter before the Superior Court of Arizona despite the pendency of this appeal. We called upon the counsel for the respondent to make a statement on behalf of the respondent that she would not resort to any such misadventure. The counsel for the respondent was unable to take a firm stand that the respondent will not precipitate the matter before the Superior Court of Arizona. Therefore, we had no other option but to reject the request for adjournment of the case and to proceed with the hearing of the appeal, in the interest of justice.

Pending applications, if any, stand disposed of.

.....J (A.M. KHANWILKAR)J (B.R. GAVAI)J (KRISHNA MURARI) New Delhi January 19, 2021 ITEM NO.13 Court 5 (Video Conferencing) SECTION IV-A SUPREME COURT OF INDIA RECORD OF PROCEEDINGS Petition(s) for Special Leave to Appeal (C) No(s). 14948/2020 (Arising out of impugned final judgment and order dated 11-11-2020 in MP No. 2193/2020 passed by the High Court Of M.p Principal Seat At Jabalpur) MADHAVENDRA L BHATNAGAR Petitioner(s) VERSUS BHAVNA LALL Respondent(s) (FOR ADMISSION and I.R. and IA No.127986/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.127989/2020-EXEMPTION FROM FILING O.T. and IA No.127990/2020-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.127991/2020-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Date : 19-01-2021 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE KRISHNA MURARI For Petitioner(s) *Ms. Meenakshi
Arora, Sr. Adv.

Charu Sangwan, AOR For Respondent(s) Mr. Yunus Malik, Adv.

Mr. Kanishk Chaudhary, Adv.

Ms. Chitra Chaudhary, Adv.

Mr. Anish Maheshwari, Adv.

Mr. Sanjay Mathur, Adv.

Mr. Prashant Chaudhary, AOR UPON hearing the counsel the Court made the
following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]

*Appearance is not given.