

Dinesh Singh Thakur vs Sonal Thakur on 17 April, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2094, (2018) 2 WLC(SC)CVL 242, AIR 2019 SC (CIV) 268, (2018) 5 MAD LJ 735, (2018) 2 RECCIVR 843, (2018) 5 MAD LW 215, (2018) 6 SCALE 1, (2018) 3 CIVILCOURTC 339, (2018) 188 ALLINDCAS 141 (SC), (2018) 3 ALL RENTCAS 344, (2018) 129 ALL LR 899, (2018) 2 HINDULR 752, (2018) 5 ALL WC 4487, (2018) 5 BOM CR 749, (2018) 4 ANDHLD 117, (2018) 2 DMC 488, (2018) 3 JCR 227 (SC), (2018) 3 ICC 904, AIRONLINE 2018 SC 30

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Bench: R. Banumathi, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3878 2018
(Arising out of Special Leave Petition (Civil) No. 10078 of 2016
@ CC No.22197/2016

Dinesh Singh Thakur

Versus

.....Appellant(s)

Sonal Thakur

.....Respondent(s)

JUDGMENT

R.K.Agrawal, J.

- 1) Leave granted.
- 2) The present appeal has been filed against the impugned

judgment and order dated 03.11.2016 passed by the High Court of Punjab & Haryana at Chandigarh in CR No. 7190 of 2016 whereby learned single Judge of the High Court dismissed the revision filed by the appellant-husband against the order dated 18.10.2016 passed by the District Judge, Family Court, Gurgaon in Civil Suit No. 15 of 2016 whereby ad-interim injunction granted against the respondent-wife, vide order dated 26.09.2016 has been vacated.

Brief facts:-

3) Having regard to the nature and circumstances of the case, we do not intend to discuss all the facts in detail at this stage.

Hence, the facts are stated in a summarized way only to appreciate the issue involved in this instant appeal.

(a) The marriage between Dinesh Singh Thakur-the appellant-husband and Sonal Thakur - respondent-wife was solemnized on 20.02.1995 as per Hindu rites and two children were born out of the said wedlock. The appellant-husband was working in United States of America (USA) at the time of marriage and he took the respondent-wife to USA on Dependent Visa.

Both the parties got the citizenship of USA in May, 2003. They obtained “PIO” status (Person of India Origin) in June 2003 and “OCI” status (Overseas Citizens of India) in July 2006.

(b) The appellant-husband filed a petition being H.M.A. No. 601 of 2016 under Sections 13 and 26 of the Hindu Marriage Act, 1955 (in short ‘the Act’) against the respondent-wife at the Family Court, Gurgaon which is pending adjudication before the Court. Subsequently, the respondent-wife filed a petition being Case No. 2016-008918-FD in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, USA for divorce on the ground of irretrievable breakdown of marriage and other reliefs. Thereafter, the appellant-husband filed Civil Suit No. 15 of 2016 before the District Judge, Family Court, Gurgaon, under Section 7 of the Act for permanent injunction and declaration inter alia to restrain the respondent-wife from pursuing the petition for divorce before the Court in USA.

(c) Learned District Judge, vide order dated 26.09.2016, granted ex parte ad interim injunction to the appellant-husband. Being aggrieved, the respondent-wife filed an application for vacation and modification of the order dated 26.09.2016. Learned District Judge, vide order dated 18.10.2016, vacated the injunction granted vide order dated 26.09.2016.

(d) Aggrieved by the order vacating injunction, the appellant-husband preferred CR No. 7190 of 2016 before the High Court. Learned single Judge of the High Court, vide order dated 03.11.2016 dismissed the petition filed by the appellant-husband.

(e) Aggrieved by the judgment and order dated 03.11.2016, the appellant-husband has filed this appeal by way of special leave before this Court.

4) Heard Ms. Indu Malhotra, learned senior counsel for the appellant-husband and Mr. V. Giri, learned senior counsel for the respondent-wife and perused the record.

Point(s) for consideration:-

5) The only point for consideration before this Court is whether in the present facts and circumstances of the case, the appellant-husband is entitled to the decree of

anti-suit injunction against the respondent-wife?

Rival submissions:-

6) Learned senior counsel for the appellant-husband contended that as the appellant herein had already filed a petition seeking dissolution of marriage of the parties in which the respondent-wife was served on 04.08.2016 and she had caused appearance on 16.09.2016, the proceedings initiated by the respondent-wife seeking a decree of divorce in a Foreign Court on the ground of irretrievable breakdown of marriage which is not a ground for divorce under the Act are liable to be stayed. Further, the respondent-wife, along with her minor children is residing in India since 2003 and filing of petition for divorce in the Court at USA, after receipt of notice in the divorce petition filed by the appellant-husband in India, is an abuse of process of law and amounts to multiplicity of proceedings.

7) Learned senior counsel further contended that the respondent-wife is admittedly residing at Gurgaon, therefore, the court at Gurgaon would be the forum convenient to both the parties. She further contended that the trial Court has only considered the provisions of Section 41(b) of the Specific Relief Act, 1963 (in short 'the SR Act') and the decision in the case of Rakesh Kumar vs. Ms. Ashima Kumar – AIR 2007 P&H 63 but did not take into consideration the provisions of Section 41(a) of the SR Act, relevant in the present context. Learned senior counsel for the appellant-husband finally contended that the High Court was not right in upholding the order of the court below on vacating the ad-interim injunction and interference in this regard is sought for by this Court.

8) Learned senior counsel for the respondent-wife while refuting the claims made by learned senior counsel for the appellant-husband submitted that the petition that has been filed before the Court at Florida is not only for dissolution of marriage of the parties but also for claiming various other reliefs such as equitable distribution of marital assets, child support, alimony, partition and other reliefs that are not available under the Indian Law. Learned senior counsel further submitted that the irreparable loss or injury shall be caused to the respondent-wife and to the children in case the petition pending in the Court at Florida is stayed.

Discussion

9) Anti-Suit Injunctions are meant to restrain a party to a suit/proceeding from instituting or prosecuting a case in another court, including a foreign court. Simply put, an anti-suit injunction is a judicial order restraining one party from prosecuting a case in another court outside its jurisdiction. The principles governing grant of injunction are common to that of granting anti-suit injunction. The cases of injunction are basically governed by the doctrine of equity.

10) It is a well-settled law that the courts in India have power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. However, before passing the order of anti-suit injunction, courts should be very cautious and careful, and it should be granted sparingly and not as a matter of routine as such orders involve a court impinging on the jurisdiction of another court, which is not entertained very easily specially when the it restrains the parties from instituting or continuing a case in a foreign court.

11) In this backdrop, it is worthwhile to quote Section 41 of the SR Act which provides for various instances and circumstances under which injunction cannot be granted.

“41. Injunction when refused.—An injunction cannot be granted—

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.”

12) The appellant – husband argued that Section 41(b) is not applicable to the instant case rather it is applicable only to those cases where question is regarding the injunction for proceedings in the Indian court. In support of this argument, learned senior counsel placed reliance on Oil and Natural Gas Commission vs. Western Company of North America (1987) 1 SCC 496, wherein this Court, while interpreting the provision of Section 41(b) of the Specific Relief Act, 1963 has held as follows:-

“18....This provision, in our opinion, will be attracted only in a fact-situation where an injunction is sought to restrain a party from instituting or prosecuting any action in a court in India which is either of coordinate jurisdiction or is higher to the court from which the injunction is sought in the hierarchy of Courts in India.....”

13) Learned senior counsel for the appellant-husband further placed reliance on *Modi Entertainment Network and Another vs. WSG Cricket PTE Ltd.* 2003 (4) SCC 341, wherein this Court while dealing with the matter laid down certain principles required to be taken into consideration by any court while granting an anti-suit injunction. These principles are as under:-

The defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court. If the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated and; The principle of comity-respect for the court in which the commencement or continuation of action/proceeding is sought to be restrained-must be borne in mind.

14) In *Modi Entertainment Networks (supra)*, this Court has reiterated this position by holding that the courts in India like Court in England are courts of law and equity. The principles governing the grant of anti-suit injunction being essentially an equitable relief; the courts in India have the powers to issue anti-suit injunction to a party over whom it has personal jurisdiction in an appropriate case; this is because the courts of equity exercise jurisdiction in personam; this power has to be exercised sparingly where such an injunction is sought and if not granted, it would amount to the defeat of ends of justice and injustice would be perpetuated.

15) In *Vivek Rai Gupta vs. Niyati Gupta*, Civil Appeal No. 1123 of 2006, decided on February 10, 2016, this Court has held as under:-

“If the execution proceedings are filed by the respondent-wife for executing the aforesaid decree dated 18.09.2012 passed by the Court of Common Pleas, Cuyahoga Country, Ohio, USA against any other movable/immovable property in India it would be open to the appellant-husband to resist the said execution petition on any grounds available to him in law taking the position that such a decree is not executable.”

16) Further, in *Harmeeta Singh vs. Rajat Taneja* 2003 (67) DRJ 58, the Delhi High Court considering the fact that the parties have lived together for a very short time in the United States of America had granted anti suit injunction.

17) *Y. Narasimha Rao & Others vs. Y. Venkata Lakshmi and Another* (1991) 3 SCC 451, this Court has held as under:-

“20. From the aforesaid discussion the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the

foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.”

18) Further, during the course of hearing, various documents such as pan card, Aadhar card of the respondent-wife, lease deed which was executed by her in 2015 etc., which are also placed on record, are sufficient to show that respondent-wife is ordinarily living in India. Further, as it appears from the proceedings recorded before the US court that the respondent herself has admitted that the Family Court Gurgaon has jurisdiction in the given case. The evidence placed on record is sufficient enough to show that the respondent is amenable to the personal jurisdiction of Gurugram Family Court. Though the respondent-wife is amenable to the jurisdiction of Family Court, Gurgaon, there is nothing on record to hold that the other party will suffer grave injustice if the injunction is not granted.

There is no dispute to the fact that both the parties are permanent citizens of U.S. Undisputedly, the Circuit Court, Florida, USA is also having the concurrent jurisdiction in the given case. The contention that the appellant-husband will suffer grave injustice if the proceedings are allowed to be continued in the Circuit Court, Florida USA doesn't stand to the ground as the appellant himself has been residing there after 2007 and the proceedings for grant of anti-suit injunction were initiated by him in India through another person by empowering him through a power of attorney to file and pursue the disputed litigation on his behalf. Further, there is nothing brought on record to show how the appellant-husband would suffer grave injustice if the injunction restraining the respondent-wife from pursuing the divorce petition in Florida, is not granted. Still further, even if the injunction is declined, it cannot be said that the ends of justice will be defeated and injustice will be perpetuated.

19) The contention that the respondent-wife has filed the petition for divorce in the court at USA on the ground of irretrievable breakdown of marriage which is not the ground provided for divorce under the Act requires consideration. The mere fact that the respondent-wife has filed the case on the ground which is not available to her under the Act, doesn't mean that there are likelihood of her being succeeding in getting a decree for divorce. Specifically, in view of the fact that the appellant has raised this contention before the Circuit Court, Florida and both the parties will produce evidence with regard to the question whether their marriage is governed by the Act or any other law.

20) Foreign court cannot be presumed to be exercising its jurisdiction wrongly even after the appellant being able to prove that the parties in the present case are continued to be governed by the law governing Hindus in India in the matter of dispute between them.

21) In view of above discussion and after having regard to the nature of case and other peculiar facts, we do not deem it appropriate to interfere with the decision rendered by the High Court. We are of the opinion that the proceedings in the Foreign Court cannot be said to be oppressive or vexatious. The appeal is accordingly dismissed with no order as to costs.

.....J. (R.K. AGRAWAL)J. (R. BANUMATHI) NEW
DELHI APRIL 17, 2018