

Vinisha Jitesh Tolani @ Manmeet ... vs Jitesh Kishore Tolani on 28 April, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1915, 2010 AIR SCW 2955, (2010) 90 ALLINDCAS 57 (SC), 2010 (4) AIR BOM R 79, (2011) 1 MARRILJ 584, (2010) 3 CAL HN 35, AIR 2011 SC (CIV) 2477, (2010) 6 MAD LJ 332, 2010 (5) SCC 748, (2010) 3 ALLMR 964 (SC), (2010) 2 RECCIVR 866, (2010) 4 SCALE 488, (2010) 3 JCR 29 (SC), (2010) 2 CAL LJ 52, (2010) 1 DMC 812, (2010) 3 CIVILCOURTC 222, (2010) 1 WLC(SC)CVL 705, (2010) 80 ALL LR 932, (2010) 4 ALL WC 3423, (2010) 6 BOM CR 145

Author: Altamas Kabir

Bench: Cyriac Joseph, Altamas Kabir

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO.1127 OF 2008

Vinisha Jitesh Tolani
@ Manmeet Laghmani

..Petitioner

Vs.

Jitesh Kishore Tolani

..Respondent

WITH

TRANSFER PETITION (CRL.) No.74 of 2009

J U D G M E N T

ALTAMAS KABIR, J.

1. This is a petition filed by the wife of the respondent under Section 25 of the Code of Civil Procedure for transfer of Matrimonial Petition No.9 of 2008 pending before the Civil Judge, Senior Division, at Vasco-da-Gama, Goa, to a Court of competent jurisdiction in Delhi.
2. The case of the petitioner is that she is a Sikh by religion and was born in Kabul in Afghanistan on 16th October, 1984. Till January, 1998, she pursued her primary education in Afghanistan. Her family shifted to Delhi in the month of February, 1988, where she continued to live with her grandparents. She thereafter continued her studies at the Guru Harkrishan Public School, Nanak Piao, Rana Pratap Bagh, Delhi, and continued her education there till 1999.
3. The petitioner's father who had stayed behind in Kabul on account of his business commitments till 1992, finally shifted to London where he was granted Afghan Refugee Asylum by the United Kingdom. In May, 2001, the petitioner also migrated to United Kingdom where her parents had been given British Nationality.
4. While in the United Kingdom, the petitioner started her own business and was self-employed and independent till she got married to the respondent in October, 2007. The respondent is a partner in a construction business with his father under the name and style of Tolani Developers at Panaji, Goa.
5. It appears that the petitioner met the respondent through her brother-in-law who were both Merchant Naval Officers and, thereafter, talks of marriage between the petitioner and the respondent were commenced. The Rokka ceremony was performed at London and the marriage was fixed in New Delhi. However, on the insistence of the respondent the marriage was performed before the Civil Registrar of Mormugao Taluka, Vasco-da-Gama, Goa, on 15th November, 2007 and the same was registered in the presence of three witnesses arranged by the respondent. Thereafter, the petitioner along with the respondent shifted to a flat in Kamat Place, Mangoor Hill in Vasco-da-Gama, Goa. According to the petitioner, her troubles began thereafter and in the month of February, 2008, she was informed by the respondent and his parents that she had to go to London for completion of certain formalities as the marriage registration had not been accepted by the authorities and the marriage was a nullity according to them. Ultimately, on arriving at London, she was informed by the Indian Consulate that since the marriage had been performed within India, the formalities had to be completed within India itself.
6. Several incidents occurred thereafter which caused her to commute between the United Kingdom and India till finally she took up residence in a rented accommodation in New Delhi. During the said period the petitioner was served with certain papers from the Court and she had no option but to engage a lawyer to obtain a copy of the petition filed by the respondent to enable her to protect her rights. To her surprise she found that the matter had been proceeded with ex-parte, without even serving summons to her, showing her address as Flat No.12, 2nd Floor, Kamat Place, Mangoor Hill, Vasco-da-Gama, Goa, although, it was within the knowledge of the respondent that she no longer resided in the said flat. The petitioner also discovered that proceedings for declaring her marriage to be a nullity had been commenced while she was in London and much before she returned to India after her marriage. Even when the petitioner was in India, she was not informed about the pendency

of the said proceedings during her stay between April, 2008 to July, 2008. This compelled her to fight for her rights while staying at Delhi, but it was near impossible to contest the litigation filed at Goa, as a result of which the petitioner was compelled to file the present transfer petition.

7. Appearing in support of the Transfer Petition, Mr. S.K. Sharma, learned Advocate, submitted that the marriage between the petitioner and the respondent had been conducted in Goa according to Hindu rites and customs, on 25th October, 2007. Subsequently, the marriage was registered on 15th November, 2007, also at Goa. On 18th April, 2008, the respondent filed a petition under Section 12 of the Hindu Marriage Act, 1955, for annulment of the marriage, although, the petitioner was then residing in the United Kingdom having been given the status of an Afghan refugee. However, between 1989 and 1999, the petitioner and her parents lived in Delhi and it is only in 1999 that the petitioner left for the United Kingdom along with her parents. It was also submitted that the petitioner came back to India in order to contest the petition filed by the respondent for annulment of the marriage between him and the petitioner in Goa. Learned counsel submitted that having lived in Delhi for about 10 years, the petitioner has a circle of friends and acquaintances in Delhi to provide her support for contesting the annulment petition filed by the respondent, which she would not be in a position to do in Goa, where she has no friends or acquaintances. In fact, the petitioner went to Goa for the first time after her marriage with the respondent.

8. Mr. Sharma submitted that this was a fit case where an order for transfer, as prayed for, was required to be made in keeping with the decision of this Court in *Sumita Singh vs. Kumar Sanjay* [(2001) 10 SCC 41]. In the said decision, it was held that since it was a matrimonial proceeding instituted by the husband against the wife, the convenience of the wife had to be considered in contesting the suit and, accordingly, the matrimonial proceedings ought to be transferred to Delhi, where the wife was residing. Mr. Sharma submitted that this was a case where the facts are more or less similar and hence the transfer petition was liable to be allowed.

9. Ms. Suruchi Aggarwal, learned Advocate appearing for the respondent-husband, while opposing the stand taken on behalf of the petitioner, denied that the petitioner was in fact living in Delhi. Ms. Aggarwal submitted that the petitioner was a resident of the United Kingdom where she stayed with her parents on the basis of the residential status of an Afghani refugee, as granted to her by the U.K. Government. It did not really matter to her whether the petition under Section 12 of the Hindu Marriage Act was heard either in Delhi or in Goa. Furthermore, Ms. Aggarwal also raised a point of some interest to the effect that civil proceedings relating to marriage were governed by the Civil Code of 1867 which was in force in Goa and that as a result, the petition for annulment could only be tried in the State of Goa and not in any other State. Ms. Aggarwal urged that the family laws of Goa, Daman & Diu apply uniformly to all persons residing within the State of Goa and that by virtue of the provisions of the Goa, Daman & Diu (Administration) Act, 1962, enacted on 27th March, 1962, provision was made for continuance of existing laws and their adaptation. Learned counsel referred to Section 5 of the Act which reads as follows :-

"5. Continuance of existing laws and their adaptation. (1) All laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by the competent

Legislature or other competent authority.

(2) For the purpose of facilitating the application of any such law in relation to the administration of Goa, Daman and Diu as a Union Territory and for the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may, within two years from the appointed day, by order, make such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon, every such law shall have effect subject to the adaptations and modifications so made."

10. Ms. Aggarwal also pointed out that by virtue of Section 6 of the aforesaid Act, the Central Government was empowered to extend different enactments to Goa, Daman & Diu, and the same reads as follows :-

"6. Power to extend enactments to Goa, Daman and Diu. The Central Government may, by notification in the Official Gazette, extend with such restrictions or modifications as it thinks fit, to Goa, Daman and Diu any enactment which is in force in a State at the date of the notification."

11. Relying on Shri M.S. Usgaocar's book on Family Laws of Goa, Daman & Diu, Ms. Aggarwal submitted that family law in Goa treats the law of marriage as a civil contract. It was pointed out that Article 3 of the Chapter on Civil Marriage and its solemnization provides that all Portuguese shall solemnize their marriage before the respective officers of Civil Registration, under the conditions and in the manner established in civil law, and only such marriage would be valid. Ms. Aggarwal contended that having regard to the provisions of the Civil Code as prevalent in Goa, the pending proceedings could only be heard and disposed of within the State of Goa. Reference was made by Ms. Aggarwal to a decision of the Bombay High Court in LPA No.31 of 1998, *Monica Variato vs. Thomas Variato* [(2000) 2 Goa L.T. 149], in which it was held that the Special Marriage Act, 1954, did not have any application in the State of Goa since the same had not been extended to the State of Goa. It was ultimately held that even applying the provisions of Private International Law and bearing in mind the various personal laws in the country, it would be the Civil Court exercising jurisdiction in divorce matters in the State of Goa that could hear and decide the petition. Ms. Aggarwal, therefore, urged that it is only the Civil Court in Goa which would have the jurisdiction to try matrimonial disputes and no other Court would have jurisdiction in that regard. Accordingly, the transfer petition had to fail and the annulment petition would have to be heard within the State of Goa.

12. We have carefully considered the submissions made on behalf of the respective parties, and, in particular, the submissions made by Ms. Aggarwal with regard to the application of the Goa, Daman & Diu (Administration) Act, 1962, the Civil Code as enacted on 25th December, 1910, and the provisions of the Law of Marriage as a Civil Contract, which came into force in Goa, Daman and Diu with effect from 26th May, 1911.

13. As far as the Civil Code as enacted on 25th December, 1910, and the provisions of the law of Marriage as a Civil Contract in Goa, Daman and Diu which came into force on 26th May, 1911, are concerned, we are unable to agree with Ms. Aggarwal that all marriages performed within the territory of Goa unless registered should be void. The said provision was altered by the decree of 22nd January, 1946, which restored the validity of both Catholic marriages and Hindu marriages. Two Hindus, therefore, can contract a marriage according to Hindu religious rites or by way of a civil marriage. Section 2 of the Hindu Marriage Act extends the operation of the Act to the whole of India except Jammu and Kashmir and also applies to Hindus domiciled in the territories to which the Act extends who are outside the said territories. In other words, the provisions of the Hindu Marriage Act, 1955, would be applicable to the petitioner's case and can be heard by any Court having jurisdiction within the territories to which it applies.

14. We are not convinced with the submissions made by Ms. Aggarwal that the annulment proceedings cannot be heard outside the State of Goa in view of the existing laws which made the Civil Code and the laws relating to marriage applicable to all persons residing within the State of Goa. In addition to the above, Sections 5 and 6 of the Goa, Daman & Diu (Administration) Act, 1962, indicate that the Central Government has the authority to extend enactments applicable to the rest of the country. In other words, even if it were to be held that it is the customary law in Goa which would prevail over the personal law of the parties, the same could not be a bar to the transfer of the matter outside the State of Goa to any other State. What would be of relevance is the finding arrived at by the Bombay High Court in Goa in Monica Variato's case (supra) that even applying the principles of Private International Law, bearing in mind various personal laws in this country, even though the spouses are domiciled in Goa in respect of a marriage performed outside Goa but in any other State of the Union, they would be governed by their personal laws in so far as dissolution of marriage is concerned. Notwithstanding the fact that the marriage between the parties had been conducted in Goa, the same having been conducted under their personal laws and under Hindu rites and traditions, we are satisfied that the claim of the petitioner is justified and there can be no difficulty in allowing the prayer of the petitioner.

15. We, accordingly, allow the Transfer Petition (Civil) No.1127 of 2008 and direct that Matrimonial Petition No.9/2008/A titled Jitesh Kishore Tolani Vs. Vinisha Jitesh Tolani @ Manmeet Laghmani pending in the Court of Civil Judge, Senior Division, at Vasco-da-gama, Goa, be transferred to the Family Court at Tis Hazari, Delhi, for disposal, in accordance with law.

16. Transfer Petition (Crl.) No.74 of 2009 filed by the husband is, therefore, dismissed.

.....J. (ALTAMAS KABIR)J. (CYRIAC JOSEPH) New Delhi Dated: 28th April, 2010.

ITEM NO. 1A
(For judgment)

Court No.3

SECTION XVIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

TRANSFER PETITION (CIVIL.) NO(s). 1127 OF 2008 VINISHA JITESH TOLANI @ MANMEET LAGHMANI Petitioner(s) VERSUS JITESH KISHORE TOLANI Respondent(s) WITH T.P.(CRL) NO. 74 of 2009 Date: 28/04/2010 This Petition was called on for judgment today.

For Petitioner(s) Mr. S.K. Sharma,Adv.

Mr. Dhruv Kumra,Adv.

Mr. Sanjay Jain,Adv.

For Respondent(s) Ms. Suruchii Aggarwal,Adv.

Hon'ble Mr. Justice Altamas Kabir pronounced the Judgment of the Bench comprising His Lordship, and Hon'ble Mr. Justice Cyriac Joseph.

The Transfer Petition) No. 1127 of 2008 is allowed.

The Transfer Petition (Crl.) No. 74 of 2009 is dismissed.

(Ganga Thakur)
PS to Registrar

(Juginder Kaur)
Court Master

Signed reportable judgment is placed on the file.