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IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 385 of 1991

Decided On: 09.07.1991

Y. Narasimha Rao and Ors. **Vs.** Y. Venkata Lakshmi and Ors.

Hon'ble Judges/Coram:
Ranganath Misra, C.J. and P.B. Sawant, J.

Counsels:
For Appellant/Petitioner/Plaintiff: M.C. Bhandare, Senior Adv. an C.K. Sucharita, Adv

For Respondents/Defendant: C.N. Sreekumar and G. Prabhakar, Advs.

JUDGMENT

P.B. Sawant, J.

1. Leave is granted. Appeal is taken on board for final hearing by consent of parties.

The 1st appellant and the 1st respondent were married at Tirupati on February 27, 1975. They separated in July 1978. The 1st appellant filed a petition for dissolution of marriage in the Circuit Court of St. Louis County Missouri, USA. The 1st respondent sent her reply from here under protest. The Circuit Court passed a decree for dissolution of marriage on February 19, 1980 in the absence of the 1st respondent.

2. The 1st appellant had earlier filed a petition for dissolution of marriage in the sub-Court of Tirupati being O.P. No. 87/76. In that petition, the 1st appellant filed an application for dismissing the same as not pressed in view of the decree passed by the Missouri Court. On August 14, 1991 the learned sub-Judge of Tirupati dismissed the petition.

3. On November 2. 1981, the 1st appellant married the 2nd appellant in Yadgirignita. Hence, 1st respondent filed a criminal complaint against the appellants for the offence of bigamy. It is not necessary to refer to the details of the proceedings in the said complaint. Suffice it to say that in that complaint, the appellants filed an application for their discharge in view of the decree for dissolution of marriage passed by the Missouri Court. By his judgment of October 21, 1986, the learned Magistrate discharged the appellants holding that the complainant, i.e., the 1st respondent had failed to make out prima facie case against the appellants. Against the said decision, the 1st respondent preferred a Criminal Revision Petition to the High Court and the High Court by the impugned decision of April 18, 1987 set aside the order of the Magistrate holding that a photostat copy of the judgment of the Missouri Court was not admissible in evidence to prove the dissolution of marriage. The Court further held that since the learned Magistrate acted on the photostat copy, he was in error is discharging the accused and directed the Magistrate to dispose of the petition filed by the accused, i.e., appellants herein for their discharge, afresh in accordance with law. It is aggrieved by this describe that the present appeal is filed.

4. It is necessary to note certain facts relating to the decree of dissolution of marriage passed by the Circuit Court of St.Louis County Missouri, USA. In the first instance, the Court assumed jurisdiction over the matter on the ground that the 1st appellant had been a resident of the State of Missouri for 90 days next preceding the commencement of the action and that petition in that Court. Secondly the decree has been passed on the only ground that there remains no reasonable likelihood that the marriage between the parties can be preserved, and that the marriage is, therefore, irretrievably broken". Thirdly, the 1st respondent had not submitted to the jurisdiction of the Court. From the record, it appears that to the petition she had filed two replies of the same date. Both are identical in nature except that one of the replies begins with an additional averment follows: "without prejudice to the contention that this respondent is submitting to the jurisdiction of this hon'ble court, this respondent submits as follows". She had also stated in the replies, among other things, that (i) the petition was not maintainable, (ii) she was not aware if the first appellant had been living in the State of Missouri for more than 90 days and that he was entitled to file the petition before the Court, (iii) the parties were Hindus and governed by Hindu Law and they were married at Tirupati in India according to Hindu Law, (iv) she was an Indian citizen and was not governed by laws in force in the State of Missouri and, therefore, the Court had no jurisdiction to entertain the petition, (v) the dissolution of the marriage between the parties was governed by the Hindu Marriage Act and that it could not be dissolved in any other way except as provided under the said Act, (vi) the Court had no jurisdiction to enforce the foreign laws and none of the grounds pleaded in the petition was sufficient to grant any divorce under the Hindu Marriage Act.

Fourthly, it is not disputed that the 1st respondent was neither present nor represented in the Court and the Court passed the decree in her absence. In fact, the Court has in terms observed that it had no jurisdiction "in personam" over the respondent or minor child which was born out of the wed-lock and both of them had domiciled in India. Fifthly, in the petition which was filed by the 1st appellant in that Court on October 6, 1980, besides alleging that he had been a resident of the State of Missouri for 90 days or more immediately preceding the filing of the petition and he was then residing at 23rd Timber View Road, Kukwapood, in the County of St. Louis, Missouri, he had also alleged that the 1st respondent had deserted him for one year or more next preceding the filing of the petition by refusal to continue to live with the appellant in the United States and particularly in the State of Missouri. On the other hand, the averments made by him in his petition filed in the court of the Subordinate Judge, Tirupati in 1978 shows that he was a resident of Apartment No. 414, 6440, South Claiborne Avenue, New Orleans, Louisiana, United States and that he was a citizen of India, He had given for the service of all notices and processes in the petition, the address of his counsel Shri PR Ramachandra Rao, Advocate, 16-11-1/3, Malakpet, Hyderabad-500 036. Even according to his averments in the said petition, the 1st respondent had resided with him at Kuppanapudi for about 4 to 5 months after the marriage. Thereafter she had gone to her parental house at Relangi, Tanuka Taluk, West Godavari District. He was, thereafter, sponsored by his friend Prasad for a placement in the medical service in the United States and had first obtained employment in Chicago and thereafter in Oak Forest and Greenville Springs and ultimately in the Charity Hospital in Louisiana at New Orleans where he continued to be employed. Again according to the averments in the said petition, when the 1st respondent joined him in the United States, both of them had stayed together as husband and wife at New Orleans. The 1st respondent left his residence in New Orleans and went first to Jackson, Texas and, thereafter, to Chicago to stay at the residence of his friend, Prasad. Thereafter she left Chicago for India. Thus it is obvious from these averments in the petition that both the 1st respondent and the 1st petitioner had last resided together at New Orleans, Louisiana and never within the

jurisdiction of the Circuit Court of St. Louis County in the State of Missouri. The averments to that effect in the petition filed before the St. Louis Court are obviously incorrect.

5. Under the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") only the District Court within the local limits of whose original civil jurisdiction (i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at the time, residing outside the territories to which the Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive, has jurisdiction to entertain the petition. The Circuit Court of St. Louis County, Missouri had, therefore, no jurisdiction to entertain the petition according to the Act under which admittedly the parties were married. Secondly, irretrievable breakdown of marriage is not one of the grounds recognised by the Act for dissolution of marriage. Hence, the decree of divorce passed by the foreign court was on a ground unavailable under the Act.

6. Under Section 13 of the CPC 1908 (hereinafter referred to as the "Code"), a foreign judgment is not conclusive as to any matter thereby directly adjudicated upon between the parties if (a) it has not been pronounced by a Court of competent jurisdiction; (b) it has not been given on the merits of the case; (c) it is founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable; (d) the proceedings an: opposed to natural justice, (e) it is obtained by fraud, (f) it sustains a claim founded on a breach of any law in force in India.

7. As pointed out above, the present decree dissolving the marriage passed by the foreign court is without jurisdiction according to the Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that Court. The decree is also passed on a ground which is not available under the Act which is applicable to the marriage. What is further, the decree has been obtained by the 1st appellant by stating that he was the resident of the Missouri State when the record shows that he was only a bird of passage there and was ordinarily a resident of the State of Lousiana. He had, if at all, only technically satisfied the requirement of residence of ninety days with the only purpose of obtaining the divorce. He was neither domiciled in that State nor had he an intention to make it his home. He had also no substantial connection with the forum. The 1st appellant has further brought no rules on record under which the St. Louis Court could assume jurisdiction over the mutter. On the contrary, as pointed out earlier, he has in his petition made a false averment that the 1st respondent had refused to continue to stay with him in the State of Missouri where she had never been. In the absence of the rules of jurisdiction of that court, we are not aware whether the residence of the 1st respondent within the State of Missouri was necessary to confer jurisdiction on that court, and if not, of the reasons for making the said averment.

8. Relying on a decision of this Court in Smt. Satya v. Teja Singh [1975] 2 SCR 1971 it is possible for us to dispose of this case on a narrow ground, viz., that the appellant played a fraud on the foreign court representing to it incorrect jurisdiction facts. For, as held in that case, residence does not mean a temporary residence for the purpose of obtaining a divorce but habitual residence or residence which is intended to be permanent for future as well. We refrain from adopting that course in the present case because there is nothing on record to assure us that the Court of St. Louis does not assume jurisdiction only on the basis of a mere temporary residence of the appellant for

90 days even if such residence is for the purpose of obtaining divorce. We would, therefore, presume that the foreign court by its own rules of jurisdiction had rightly entertained the dispute and granted a valid decree of divorce according to its law. The larger question that we would like to address ourselves to is whether even in such cases, the Courts in this country should recognise the foreign divorce decrees.

9 . The rules of Private International Law in this country are not codified and are scattered in different enactments such as the Civil Procedure Code, the Contract Act, the Indian Succession Act, the Indian Divorce Act, the Special Marriage Act etc. In addition, some rules have also been evolved by judicial decisions. In matters of status or legal capacity of natural persons, matrimonial disputes, custody of children, adoption, testamentary and intestate succession etc. the problem in this country is complicated by the fact that there exist different personal laws and no uniform rule can be laid down for all citizens. The distinction between matters which concern personal and family affairs and those which concern commercial relationships, civil wrongs etc. is well recognised in other countries and legal systems. The law in the former area tends to be primarily determined and influenced by social, moral and religious considerations, and public policy plays special and important role in shaping it. Hence, in almost all the countries the jurisdictional, procedural and substantive rules which are applied to disputes arising in this area are significantly different from those applied to claims in other areas. That is as it ought to be. For, (sic) country can afford to sacrifice its internal unity, stability and tranquility for the sake of uniformity of rules and comity of nations which considerations are important and appropriate to facilitate international trade, commerce, industry, communication, transport, exchange of services, technology, manpower etc. This glaring fact of national life has been recognised both by the Hague Convention of 1968 on the Recognition of Divorce and Legal Separations as well as by the Judgments Convention of the European Community of the same year. Article 10 of the Hague Convention expressly provides that the contracting States may refuse to recognize a divorce or legal separation if such recognition is manifestly incompatible with their public policy. The Judgments Convention of the European Community expressly excludes from its scope (a) status or legal capacity of natural persons, (b) rights in property arising out of a matrimonial relationship, (c) wills and succession, (d) social security and (e) bankruptcy, A separate convention was contemplated for the last of the subjects.

10. We are in the present case concerned only with the matrimonial law and what we state here will apply strictly to matters arising out of and ancillary to matrimonial disputes. The Courts in this country have so far tried to follow in these matters the English rule of Private International Law whether common law rules or statutory rules. The dependence on English Law even in matters which are purely personal, has however time and again been regretted. But nothing much has been done to remedy the situation. The labours of the Law Commission poured in its 65th Report on this very subject have not fructified since April 1976, when the Report was submitted. Even the British were circumspect and hesitant to apply their rules of law in such matters during their governance of this country and had left the family law to be governed by the customary rules of the different communities. It is only where there was a void that they had stepped in by enactments such as the Special Marriage Act, Indian Divorce Act, Indian Succession Act etc. In spite, however, of more than 43 years of independence we find that the legislature has not thought it fit to enact rules of Private International Law in this area and in the absence of such initiative from the legislature the courts in this country have been forced to fall back upon precedents which have taken their inspiration, as stated earlier, from the English rules. Even in doing so they have not been uniform in practice with the result that we have some conflicting decisions in the

area.

11. We cannot also lose sight of the fact that today more than ever in the past, the need for definitive rules for recognition of foreign judgments in personal and family matters, and particularly in matrimonial disputes has surged to the surface. Many a man and woman of this land with different personal laws have migrated and are migrating to different countries either to make their permanent abode there or for temporary residence. Likewise there is also immigration of the nationals of other countries. The advancement in communication and transportation has also made it easier for individuals to hop from one country to another. It is also not unusual to come across cases where citizens of this country have been contracting marriages either in this country or abroad with nationals of the other countries or among themselves, or having married here, either both or one of them migrate to other countries. There are also cases where parties having married here have been either domiciled or residing separately in different foreign countries. This migration, temporary or permanent, has also been giving rise to various kinds of matrimonial disputes destroying in its turn the family and its peace. A large number of foreign decrees in matrimonial matters is becoming the order of the day. A time has, therefore, come to ensure certainty in the recognition of the foreign judgments in these matters. The minimum rules of guidance for securing the certainty need not await legislative initiative. This Court can accomplish the modest job within the framework of the present statutory provisions if they are rationally interpreted and extended to achieve the purpose. It is with this intention that we are undertaking this venture. We are aware that unaided and left solely to our resources the rules of guidance which we propose to lay down in this area may prove inadequate or miss some aspects which may not be present to us at this juncture. But a beginning has to be made as best as one can, the lacunae and the errors being left to be filled in and corrected by future judgments.

12. We believe that the relevant provisions of Section 13 of the Code are capable of being interpreted to secure the required certainty in the sphere of this branch of law in conformity with public policy, justice, equity and good conscience, and the rules so evolved will protect the sanctity of the institution of marriage and the unity of family which are the corner stones of our societal life.

Clause (a) of Section 13 states that a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. We are of the view that this clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in Section 41 of the Indian Evidence Act has also to be construed likewise.

Clause (b) of Section 13 states that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognise such judgment. This clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the

court, or an appearance in the Court either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision on the merits of the case. In this respect the general rules of the acquiescence to the jurisdiction of the Court which may be valid in other matters and areas should be ignored and deemed inappropriate.

The second part of Clause (c) of Section 13 states that where the judgment is founded on a refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognised by the courts in this country. The marriages which take place in this country can only be under either the customary or the statutory law in force in this country. Hence, the only law that can be applicable to the matrimonial disputes is the cine under which the parties are married, and no other law. When, therefore, a foreign judgment is founded on a jurisdiction or on a ground not recognised by such law, it is a judgment which is in defiance of the Law. Hence, it is not conclusive of the matters adjudicated therein and, therefore, unenforceable in this country. For the same reason, such a judgment will also be unenforceable under Clause (f) of Section 13, since such a judgment would obviously be in breach of the matrimonial law in force in this country.

Clause (d) of Section 13 which makes a foreign judgment unenforceable on the ground that the proceedings in which it is obtained are opposed to natural justice, states no more than an elementary principle on which any civilised system of justice rests. However, in matters concerning the family law such as the matrimonial disputes, this principle has to be extended to mean something more than mere compliance with the technical rules of procedure. If the rule of audi alteram partem has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent himself/herself and contest effectively the said proceedings. This requirement should apply equally to the appellate proceedings if and when they are filed by either party. If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice. It is for this reason that we find that the rules of Private International Law of some countries insist, even in commercial matters that the action should be filed in the forum where the defendant is either domiciled or is habitually resident. It is only in special cases which is called special jurisdiction where the claim has some real link with other forum that a judgment of such forum is recognised. This jurisdiction principle is also recognised by the Judgments Convention of this European Community. If, therefore, the courts in this country also insist as a matter of rule that foreign matrimonial judgment will be recognised only if it is of the forum where the respondent is domiciled or habitually and permanently resides, the provisions of Clause (d) may be held to have been satisfied.

The provision of Clause (e) of Section 13 which requires that the courts in this country will nor recognise a foreign judgment if it has been obtained by fraud, is self-evident. However, in view of the decision of this Court in Smt. Satya v. Teja Singh (supra) it must be understood that the fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.

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

court as well as the ground 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.

The aforesaid rule with its stated exceptions has the merit of being just and equitable. It does no injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law. They cannot be heard to make a grievance about it later or allowed to bypass it by subterfuges as in the present case. The rule also has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of the Private international Law of the different countries with regard to jurisdiction and merits based variously on domicile, nationality, residence-permanent or temporary or ad hoc forum, proper law etc. and ensuring certainly in the most vital field of national life and conformity with public policy. The rule further takes account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to women, the most vulnerable section of our society, whatever the strata to which they may belong. In particular it frees them from the bondage of the tyrannical and servile rule that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction and judges the merits of the case.

14. Since with regard to the jurisdiction of the forum as well as the ground on which it is passed the foreign decree in the present case is not in accordance with the Act under which the parties were married, and the respondent had not submitted to the jurisdiction of the court or consented to its passing, it cannot be recognised by the courts in this country and is, therefore, unenforceable.

15. The High Court, as stated earlier, set aside the order of the learned Magistrate only on the ground that the photostat copy of the decree was not admissible in evidence. The High Court is not correct in its reasoning. Under Section 74(l)(iii) of the Indian Evidence Act (hereinafter referred to as the "Act") documents forming the acts or records of the acts of public judicial officers of a foreign country are public documents. Under Section 76 read with Section 77 of the Act, certified copies of such documents may be produced in proof of their contents. However, under Section 86 of the Act there is a presumption with regard to the genuineness and accuracy of such certified copy only if it is also certified by the representative of our Central Government in or for that country that the manner in which it has been certified is commonly in use in that country for such certification.

Section 63(1) and (2) read with Section 65(e) and (f) of the Act permits certified copies and copies made from the original by mechanical process to be tendered as secondary evidence. A photostat copy is prepared by a mechanical process which in itself ensures the accuracy of the original. The present photostat copies of the judicial record of the Court of St. Louis is certified for the Circuit Clerk by the Deputy Clerk who is a public officer having the custody of the document within the meaning of Section 76 of the Act and also in the manner required by the provisions of the said section. Hence the photostat copy per se is not inadmissible in evidence. It is inadmissible because it has

not further been certified by the representative of our Central Government in the United States as required by Section 86 of the Act. The expression "certified copy" of a foreign judgment in Section 14 of the Code has to be read consistent with the requirement of Section 86 of the Act.

16. While, therefore, holding that the document is not admissible in evidence for want of the certificate under Section 86 of the Act and not because it is a photostat copy of the original as held by the High Court, we uphold the order of the High Court also on a more substantial and larger ground as stated in paragraph 14 above. Accordingly, we dismiss the appeal and direct the learned Magistrate to proceed with the matter pending before him according to law as expeditiously as possible, preferably within four months from now as the prosecution is already a decade old.