



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO. 8829 OF 2023

	Ms.Shikha Lodha,	...Petitioner
Versus....	
1.	Suketu Shah,	
2.	State of Maharashtra	...Respondents

Ms.Gayatri Gokhale along with Ms.Sneha Jethwa for the
Petitioner.

Mr.Siddharth Shah along with Ms.Riya Rele i/b Siddharth Shah
& Associates for the Respondent No.1

CORAM: RAJESH S. PATIL, J.
RESERVED ON : 26TH FEBRUARY, 2024.
PRONOUNCED ON : 15TH APRIL, 2024.

JUDGMENT :-

1. RULE. Rule made returnable forthwith and by

consent of both the counsel, taken up for final hearing.

2. This writ petition challenges judgment and order dated 21 April, 2022 passed by the Family Court, Mumbai thereby rejecting the application filed by the petitioner (wife) and holding that the Family Court, Mumbai has jurisdiction to entertain and decide the Divorce Petition filed by Husband.

3. The petitioner (wife) and respondent (husband) got married according to Hindu Vedic Rites and Rituals on 7 June, 2015 at Jodhpur, Rajasthan. After their marriage at Jodhpur, there was a wedding reception in a Hotel, at Grant Road, Mumbai on 11 June, 2015.

4. Thereafter, the petitioner (wife) and respondent (husband) stayed in Mumbai in the parents' house of the husband. On 15 June, 2015, the husband left for U.S.A. as even before the marriage he was residing in U.S.A. and working in U.S.A. Soon thereafter, even the wife on 1 August, 2015 left for U.S.A. and started residing with the husband and was also working in U.S.A.

5. Admittedly, on 15 October, 2019 due to matrimonial issues arising out of the wedlock, the wife and the husband separated when they were residing in U.S.A.

6. On 6 August 2020, the husband filed a divorce petition in Family Court at Bandra under Section 13 (1) (ia) of the Hindu Marriage Act, on the ground of cruelty. The said petition was a notarized at U.S.A. However, as the Department of the Family Court Mumbai does not permit filing of notarized document from a foreign country, the husband filed a notarized divorce petition through a power of attorney holder (Attorney being his father).

7. Soon thereafter on 10 December, 2020, the wife filed a divorce petition in U.S.A. The said divorce petition is pending for hearing before the U.S.A. Court.

8. The wife subsequently filed application (Ex.16) on 30 August, 2021 challenging the maintainability of the divorce petition filed by the husband before the Family Court, Bandra, Mumbai. The said application Exhibit - 16 stated that none of the

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grounds as mentioned under Section 19 of the Hindu Marriage Act were attracted. Therefore, the Family Court at Bandra, Mumbai has no jurisdiction to entertain the divorce petition in Mumbai.

9. The husband afterwards filed his reply to the application filed by the petitioner wife.

10. The Family Court, Bandra thereafter heard both the parties and by its judgment and order dated 21 April, 2022 rejected the application Exhibit - 16 filed by the wife. The present writ petition is filed by the wife challenging the impugned order dated 21 April, 2022 filed by the wife.

SUBMISSIONS :

11. Ms.Gayatri Gokhale appearing on behalf of the petitioner (wife) made her submissions :-

(i) Ms.Gokhale submitted that both the husband and wife are working and residing at U.S.A. Admittedly all the wedding rituals were held at Jodhpur, Rajasthan. In Mumbai there was only a reception which cannot be termed as any kind

of rituals. The parties only for a brief period stayed in Mumbai, in the house of the parents of the husband and thereafter the husband left for U.S.A. on 15 June, 2015 and soon thereafter on 1 August, 2015 the wife left for U.S.A. Both the husband and wife stayed together in U.S.A. from August 2015 till 15 October, 2019 for a period approximately around four years. And from 15 October, 2019 both of them are staying separately. Therefore, the last residence of both the husband and wife was in U.S.A. Therefore, under the provisions of Section 19 (iii) the Family Court at Mumbai will have no jurisdiction to try and entertain the divorce petition filed by the husband.

(ii) Ms.Gokhale submitted that even before marriage, the husband was staying in U.S.A. and working in U.S.A. from the year 2007. She submitted that both the husband and wife have applied for “Green Card”. She submitted that both the husband and wife have no intention to come back to India and reside in India.

(iii) Ms.Gokhale submitted that even the divorce petition

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has been notarized in U.S.A. and has been sent across by courier and thereafter the same has been filed in Family Court at Bandra, Mumbai. She submits that therefore, even Section 19(ii) is not attracted.

(iv) She further submitted that even the affidavit of evidence of the husband is notarized in U.S.A. and is sent across to be filed in the Family Court at Bandra. However, the Family Court refused to take the same on record since it was notarized in U.S.A. Therefore, through a power of attorney the affidavit of evidence is filed before the Family Court at Bandra, Mumbai.

(v) Ms.Gokhale submitted that earlier an application was signed by both the husband and wife for a mutual consent divorce to be filed in the Family Court at Jodhpur, Rajasthan. However, the same after signing was not filed in the Family Court at Jodhpur, Rajasthan.

(vi) She further referred to the judgment of Bombay High Court delivered in case of *Kashmira Kale vs. Kishore kumar Mohan Kale* reported in *(2010) 4 Mah.L.J. 395.*

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(vii) She also referred to the judgment of **Smt.Aditya Rastogi vs. Anubhav Varma** reported in **Neutral Citation No. - 2023AHC : 205480-DB of** Uttar Pradesh High Court.

(viii) She submitted that the Family Court at Bandra will have no jurisdiction and therefore the impugned order passed by the Family Court, Mumbai dismissing the application of the wife should be quashed and set aside and Exhibit - 16 challenging the jurisdiction of the Family Court, Bandra, Mumbai should be allowed.

12. Mr.Shah appeared for the respondent husband and made his submissions :-

(i) Mr.Shah submitted that the respondent husband though is residing in U.S.A. as of now for work purpose but his passport is an Indian passport. He submitted that even though the marriage took place at Jodhpur, Rajasthan, the reception was held in Mumbai. He submitted that after the reception, the couple stayed in Mumbai in the matrimonial house and after 15 days, both the husband and wife left for U.S.A. as they were

having work permit.

(ii) Mr.Shah submitted that the present case falls under Section 19 (iii) of the Hindu Marriage Act. He submitted that the last address of the husband and wife should be taken into consideration of India and not of U.S.A. He submitted that in present case, the husband and wife were residing in Mumbai and thereafter they were residing in U.S.A. till they separated, therefore, the Family Court at Mumbai would have jurisdiction.

(iii) Mr.Shah submitted that even though technically and physically the husband and wife last stayed at U.S.A. but in India they last resided in Mumbai.

(iv) To buttress his submissions, Mr.Shah referred to the judgment of Single Judge of this Court in case of Meena Anilkumar Walambe vs. *Anil Kumar Govind Walambe* reported in *(1992) 1 Mh.L.J. 458*.

(v) He also relied upon the judgment of Supreme Court in case of *MST Jagir Kaur & Another vs. Jaswant Singh*, reported in *(1964) 2 SCR 73*.

(vi) He submitted that even though earlier a mutual consent divorce application was signed by the parties. However, it was not implemented and not filed in the Jodhpur Family Court, therefore, it has not reference.

(vii) He therefore submits that the Family Court has passed a reasoning order and the same should not be disturbed by this Court in its writ jurisdiction and the writ should be dismissed.

ANALYSIS AND CONCLUSION :

13. The question for determination in the present proceedings is whether the Family Court at Mumbai has jurisdiction to try and entertain under section 19 (iii) of Hindu Marriage Act, the Divorce Petition filed by Husband under Section 13 (1)(ia) of Hindu Marriage Act ?

14. There is no dispute between the parties that all the rituals of the marriage took place on 7 June, 2015 at Jodhpur, Rajasthan. In Mumbai, there was only a wedding reception on 11 June, 2015. In my view, there can't be any doubt that a wedding

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reception can't be called as a part of marriage ritual.

15. Admittedly, for a period of less than 10 days, the husband and wife stayed in the home of the parents of husband at Mumbai and thereafter the husband left for U.S.A. on 15 June, 2015 and the wife left on 1 August, 2015 to U.S.A. there is no dispute that the husband and the wife started living separately from 15 October, 2019 therefore, approximately around four years they stayed together in U.S.A. and occasionally in these four years, visited India.

16. Admittedly the wife has filed the divorce petition in U.S.A. and the husband has filed a divorce petition in Family Court at Mumbai. The fact that the wife has filed a divorce petition at U.S.A. this itself shows that the wife is not admitting the jurisdiction of Family Court in Mumbai, Maharashtra.

17. It is also not disputed by the parties that earlier an application was signed by both the husband and the wife for mutual consent divorce proposed to be filed in the Family Court at Jodhpur, Rajasthan. However, the said document was never

tendered in Family Court at Jodhpur, Rajasthan.

18. Under the Hindu Marriage Act, 1956, Chapter V deals with “Jurisdiction and Procedure”. Section 19, defines where the petition could be filed. Section 19 of the Hindu Marriage Act, reads as under :

“19. Court to which petition shall be presented.-

Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

(i) the marriage was solemnised, 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

(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this 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.”

19. A petition for divorce could have been filed under **Section 19 (i)** in Jodhpur, Rajasthan. However, it has not been filed in Rajasthan.

20. The Respondent / Wife, at the time of the

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presentation of the Divorce Petition by husband, was admittedly residing in U.S.A. Therefore **Section 19 (ii)** is not attracted.

21. In the present proceedings, the husband was in U.S.A. at the time of presentation of Divorce Petition in Mumbai, which was notarized in U.S.A. so therefore, the Divorce Petition could not be filed in Mumbai, as **Section 19 (iv)** of the Hindu Marriage Act, contemplates that the Divorce Petition can be filed at the place where petitioner is residing, if the wife is residing outside India.

22. What remains to see is whether **sub-section (iii)** of 19 of Hindu Marriage Act, is attracted, for Petition to be filed in Mumbai. For which it has to be seen where did the couple last resided. Admittedly, the couple was staying in U.S.A. for around four years, and due to differences they started living separately in U.S.A. While in U.S.A., the husband notarised a Divorce Petition, and the same was lodged in Mumbai, through Power of Attorney holder. Admittedly the parties before separating were staying in U.S.A. The argument of behalf of husband, is that last residing

address as mentioned in sub-section (iii) of Sec.19, of Hindu Marriage Act, means the last residing address of couple together, in India.

23. The parties are Hindu by religion. The Hindu Marriage Act, 1955, was enacted by the Parliament on 18 May, 1955. The duly amended Section 1 of the Hindu Marriage Act, 1955 reads as under:

Sec.1 Short title and extent.-

(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

***(Objects and Reasons. -** The words "domiciled in India" have been changed to "domiciled in the territories to which this Act extends" to make the position clear, so that the law will be applicable to all Hindus with such domicile, who may, for the time being, be outside the said territories- whether they be in Jammu and Kashmir or outside India altogether.)*

24. In the present proceedings, the husband and wife are 'Hindu' by religion, who got married in Jodhpur, Rajasthan and were residing in U.S.A., at the time of their separation. The Hindu Marriage Act, 1955, is applicable to them.

By amendment to the Hindu Marriage Act in the year 2003, the Parliament Enacted in section 19, in sub-section (1) after clause (iii) the following clause:

“(iii-a) - in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or”

As per the Statement of Objects and Reasons of the Amended Act of 2003 of the marriage laws of 2003. Since, the provisions which already existed were not considered adequate or fair as far as women are concerned. Under the existing provisions a Petition would not have been filed by the aggrieved wife in the District Court within the local limits under whose ordinary jurisdiction she was residing, in view thereof the government decided to amend the provisions of the Act so that the aggrieved wife can also file the petition within local limits of whose jurisdiction she was residing, at the date of presentation of the Petition.

Therefore, the amended clause (iii-a) only allows

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aggrieved wife if she is petitioner to file petition where she is residing on the date of the presentation of the petition.

Sec.19(iii) of Hindu Marriage Act, no where mentions that “last residing together in India”. In my view such words “in India”, can’t be read in the sub-section (iii) of 19.

25. I now consider the judgments relied by Mr. Shah on behalf of Husband. The facts in the judgment of ***Meena Walambe*** (supra), were that after the marriage in Pune, the parties for brief stayed at Thane, Maharashtra and thereafter left for U.S.A. However, after some days it is alleged that the wife was sent back to India and she started residing at Nashik, Maharashtra. Thereafter, the husband came back to India and filed a petition for cruelty in Family Court, Thane, Maharashtra under Section 19 of the Hindu Marriage Act. The wife raised a question about jurisdiction contending that the Court at Thane has no jurisdiction under Section 19. Admittedly in the said case, the husband came in India and filed the divorce petition and the wife was already residing in India. The court in that case held that the

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Thane Court will have jurisdiction under Section 19. Therefore, the facts in ***Meena Walambe*** (supra) are quite different than the present proceedings. ***Meena Walambe*** (supra) judgment was pronounced in the year 1992. The Hindu Marriage Act was amended in the year 2003 by inserting clause (iii-a) in section 19 (1). Thereby allowing wife to file petition where she is residing. Further this amendment clarifies the position that in a given case if the husband and wife were last residing together as per clause (iii) out of India and afterwards the wife comes back to India and thereafter resides in India, she can as per newly inserted clause (iii-a) of section 19 can file a petition in the District Court where she is residing. In the present case both the husband and wife were residing at U.S.A., at the time of filing of the divorce petition. The husband stayed in U.S.A. and notarized the Divorce petition in U.S.A. to be filed at Family Court in Mumbai. The marriage had taken place in Jodhpur, Rajasthan. Therefore, the ratio of the said judgment will not be applicable to the present proceedings.

26. The judgment of **MST Jagir Kaur & Anr.** (supra) of Supreme Court is not applicable to the present proceedings because in the said proceedings, the earlier Code of Criminal Procedure, Section 488 (8) of 1882 was considered and it was regarding maintenance to be allotted to the wife. Wherein the word “reside” was explained. Section 488 (8) of Cr.P.C. reads as under ;

“Proceedings under this Section may be taken against any person in any District where he resides or is, or where he last resided with his wife, or as the case may be, the matter of the illegitimate child”.

Therefore, in **MST Jagir Kaur & Another** (supra) when the proceedings were filed the husband was residing in India. Therefore, considering the facts in that judgment, the ratio of the said judgment is also not applicable to the present proceedings.

27. Ms.Gokhale on behalf of Wife, relied upon two judgment. The judgment of **Kashmira Kale** (supra) Bombay High Court, held that parties stayed in Pune only for one day, and therefore, they resided in U.S., where they resided therefore, the

Court in Pune will not have jurisdiction. The paragraph No.31 reads as under :-

“31. The order of the learned Judge of the Family Court, Pune, concluding that the parties last resided together in Pune and even though their residence is for a single day it would give the Court jurisdiction based upon the judgments cited in the impugned order suffers from a material irregularity and is required to be interfered with, since it assumes territorial jurisdiction not vested in it and since the Act itself does not apply to the parties consequent upon their domicile in the U.S. and also because the rights between the parties have been settled by a judgment conclusive between them. The husband may be entitled to challenge the judgment in the Court in which it is pronounced following the due legal process required in that jurisdiction consequent upon his absence, if need be. However, the husband cannot confer jurisdiction on the Court in Pune in which the parties never resided together for any length of time in their own matrimonial home, they having had their matrimonial home in the U.S..”

The facts of this judgment is squarely applicable to the present proceedings. Since the facts in the said judgment are identical to the present proceedings.

28. The Division Bench of Allahabad High Court in **Aditya Rastogi** (Supra) was dealing with facts, where the wife was residing at Australia, the Division Bench held that as the term residing is not defined by Hindu Marriage Act, therefore, a causal visit to India by Appellant/wife, and initiating divorce

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proceedings at that time, by her, will not give jurisdiction to the Family Court at India. The paragraph No.4 of the said judgment reads as under :-

“The term ‘residing’ though not defined under the Act, it clearly denotes more than a casual visit to a place falling within the territorial jurisdiction of the Court where a divorce proceeding may be instituted. Once it is admitted to the appellant that she is continuing to reside in Australia though under force of circumstance, it has to be maintained in law that she is not residing within the territorial jurisdiction of the Family Court, Moradabad.”

The facts in the judgment of **Smt.Aditya Rastogi** (supra) of the Allahabad High Court, are identical to the present proceedings.

Division Bench of Delhi High Court, in the case of **Sanjana Sharma vs. Ashok Sharma**, reported in **2023 SCC OnLine Del.5560**, held that when the couple who were staying together in U.S.A. from 2006, separated in November 2012, after which the Wife stayed back in USA for work, while the Husband moved back to India, therefore, the place of last residence together was U.S.A. and not Delhi. Para No.17, reads as under :-

“17. Admittedly, the marriage of the parties

was solemnized at Udupi, Karnataka. They last resided together in U.S.A. The appellant had claimed that they last resided together in India at DDA Flat No.4427, Pocket No.5 & 6, Sector-B, Vasant Kunj, New Delhi and thereafter, the appellant moved to U.S.A. in the year 2000 and she was subsequently joined by the respondent. Even though it was argued on behalf of the appellant that they last resided together in DDA flat at Vasant Kunj, Delhi, but admittedly, from Vasant Kunj, Delhi they shifted to U.S.A. where they continued to reside together till 2012. Therefore, the place of last residence where they resided together was U.S.A. and not Vasant Kunj, Delhi as has been argued on behalf of the appellant.”

The findings in this judgment are squarely applicable to the present proceedings.

29. On earlier occasion a mutual consent divorce was signed but not tendered was meant to be tendered in Family Court at Jodhpur Rajasthan. In the present proceedings the Husband has notarized his petition in U.S.A. and filed it in Mumbai through Power of Attorney. In my opinion in the present proceedings, the last residing together of the couple would be U.S.A., and it can't be Mumbai, where the couple briefly stayed for less than 10 days immediately after marriage, in the home of

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parents of Husband, hence the Family Court in Mumbai will have no jurisdiction, under sub-section (iii) of 19 of Hindu Marriage Act, to entertain Divorce Petition in Mumbai.

30. Rule, is made absolute. The impugned judgment and order dated 21 April, 2022 is quashed and set aside and the application Exhibit - 16 filed by the wife is allowed.

31. In sequel, interim applications pending if any, are also disposed of accordingly.

(RAJESH S. PATIL, J.)