* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ C.R.P.148/2011

% Date of Decision: April 22, 2013

PRITAM ASHOK SADAPHULE ..... Petitioner

Through: Mr.Rakesh Taneja, Advocate

versus

HIMA CHUGH .... Respondent

Through: Mr.Prashant Mendiratta, Adv.

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

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1. By this revision petition challenge has been made to order dated 22nd September, 2011 passed by the ld.Addl. District Judge-1, New Delhi District, Patiala House Courts, New Delhi in HMA No.15/2011 whereby the application of the petitioner/husband under section 13 of the CPC has been dismissed.

2. Briefly the facts relevant for the disposal of the present petition are as under:-

The parties met each other in England in the year 2004 and developed liking for each other. On 5th March, 2005, both got married at New Delhi. After about one week of marriage, they went back to England on 12th March, 2005. With the passage of time, disputes and differences arose between them as a result of which they could not live together. In September, 2009, respondent/wife had lodged a complaint of domestic violence, cruelty and assault against the petitioner/husband in Ilford Police Station, England. It is alleged that respondent/wife also invoked the jurisdiction of UK Family Court (Brentford County Court) for Non-Molestation and Occupation order

in September, 2009. Thereafter, she had come back to India in December, 2009. In March, 2010, respondent/wife lodged FIR against the petitioner/husband, his parents and family members being FIR no.46/2010 under Section 498-A/34 IPC, P.S. Tilak Nagar, Mumbai. Petitioner/husband has filed a petition for quashing of aforesaid FIR which is pending disposal before the Bombay High Court.

3. In December, 2010, petitioner/husband had filed a divorce petition before the Ilford County Court in UK for dissolution of marriage by a decree of divorce on the ground that the respondent had misbehaved with him and that he could not reasonably be expected to live with her. It is alleged that respondent was served with the divorce petition on 19th November, 2010.

4. On 21st December, 2010, respondent/wife had filed a suit being Civil Suit (OS) No.2610/2010 before this court praying for a grant of decree of permanent injunction against the petitioner for continuing with the divorce petition before the court in UK. During the pendency of aforesaid divorce petition, respondent had filed a complaint before learned MM, Dwarka, New Delhi under The Protection of Women from Domestic Violence Act, 2005. The same was dismissed on 24th December, 2010 by the concerned ld.MM, as not maintainable. Respondent filed an appeal against the said order which was dismissed vide order dated 28.3.2011.

5. The respondent/wife also filed a petition under section 13(1)(ia) of the Hindu Marriage Act i.e. HMA No.15/2011 in February, 2011 praying for dissolution of marriage with petitioner on the ground of cruelty which is pending disposal before learned Addl. District Judge, Delhi.

6. The ld. Ilford County Court in UK had passed a Decree Nisi on 9th May, 2011 stating therein that marriage between the parties has been broken

down irretrievably and ordered that the said marriage be dissolved unless sufficient cause be shown within six weeks as to why the same be not made "absolute". A copy of the said decree was placed by the petitioner before the ld.Addl. District Judge, New Delhi on 10th June, 2011 hearing HMA 15/2011. Respondent filed a detailed representation before the Ld. Ilford County Court in UK on 15th June, 2011 opposing making the divorce decree absolute. However, the decree passed by the Ilford County Court was made 'absolute' on 21st June, 2011. Thereafter, in July, 2011 an application under section 13 of CPC was filed by the petitioner for dropping the divorce proceedings against him on the ground that marriage between the parties has already been dissolved by a decree of divorce by Ilford County Court in U.K., as such divorce petition filed by respondent/wife has become infructuous. Reply was filed by the respondent to the aforesaid application contending therein that decree of divorce passed by the foreign court is not recognised in Indian Law. It was further stated that the ground on which the foreign court had dissolved the marriage i.e., irretrievable breakdown was no ground for dissolution of marriage under the Hindu Marriage Act, as such, the said decree cannot be recognised in India.

7. After considering the contentions of the parties, the learned trial court relying on the judgment in **Y Narashimha Rao & ors vs. Y.Venkata Lakshimi & another: (1991) 3 SCC 451**, has dismissed the said application.

8. Aggrieved with the same, present petition is filed.

9. Learned counsel for the petitioner has contended that respondent-wife has not obtained any declaration from a competent court declaring the foreign decree of divorce as null and void, as such, same cannot be treated

as a nullity by the ld.trial court. In support of his contention, learned counsel has relied upon the judgment of this court in Harbans Lal Malik vs. Payal Malik 171 (2010) DLT 67. It is further contended that respondent was served with summons issued by the Ilford County Court on 19th November, 2010 and she also made a representation there. In these circumstances, it cannot be said that she has not subjected herself to the jurisdiction of the said court. It is further contended that participating or not participating before the foreign court by the respondent is immaterial. The exceptions are given in Section 13 of CPC as to when a foreign judgment is not conclusive and binding. It is contended that in the present case none of the exceptions as stated therein exist.

10. On the other hand, learned counsel for the respondent has contended that present petition is liable to be dismissed inasmuch as the petitioner seeks to enforce a decree of divorce granted by a foreign court which is not recognised in India and it would be opposed to public policy if the said decree is afforded any recognition. It is contended that the sole ground of the petitioner hinges on averring that respondent should have obtained declaration from a competent court declaring the foreign decree as null and void. It is contended that petitioner is misleading the court inasmuch as petitioner himself made a voluntary statement before the ld.trial court that he would be filing an application under section 13 of the CPC and thereafter had moved the said application which was ultimately rejected and now the petitioner cannot turn around and contend that respondent should have approached the competent court seeking declaration of foreign divorce decree as null and void.

11. Learned counsel for the respondent has contended that judgment of

the Supreme Court in **Y Narsimha Rao and ors v Y.Venkata Lakshmi** (supra) is clearly applicable to the facts of the present case. It is contended that foreign divorce decree was an ex parte decree wherein respondent could not contest. The said decree is not recognised in India, as such, petitioner is not entitled for any relief.

12. The Supreme Court in **Y Narsimha Rao and ors v Y.Venkata Lakshmi** (supra) declined to give its imprimatur to foreign decree which did not take into consideration the provisions of Hindu Marriage Act under which the parties were married. The Supreme Court while interpreting Section 13 of CPC has held that unless the respondent voluntarily and effectively submitted to the jurisdiction of the foreign court and contested the claim which is based on the grounds available in the matrimonial law under which the parties were married, the judgment of the foreign court could not be relied upon. The relevant portion of the judgment of the Supreme Court is reproduced as under:-

> "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.
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> 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 acquiscence 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 Le as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled 01 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 pubic 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."

13. It is admitted position that both the parties are Indians and marriage between them was solemnised at New Delhi according to Hindu rites and ceremonies and both are governed by Hindu Marriage Act, 1955. Their marriage has been dissolved by Ilford County Court in UK on the ground of having been broken down irretrievably which is not a ground for divorce under the Hindu Marriage Act. The Supreme Court in **Y.Narasimha Rao and Ors vs. Y.Venkata Lakshmi and Anr** (supra) has already held that foreign decree of divorce granted on a ground which is not recognized in India.

14. The contention raised by the petitioner that there should be declaration from a competent court declaring the foreign decree null and void has no force as it is the petitioner who had moved an application under section 13 of CPC praying therein that the petitioner has already obtained a divorce decree from a foreign court thereby the marriage between the parties has been dissolved, as such, divorce petition pending before the ld.Addl. District Judge has become infructuous. Pursuant thereto reply was filed by respondent/office opposing the said application. While deciding the said application, the impugned order has been passed.

15. Further the divorce granted by the Ilford County Court in UK is an ex parte divorce decree. Respondent never submitted herself to the jurisdiction of the said court. Respondent lodged a representation dated 15.6.2011 before the Ilford County Court informing that she was in India when the

divorce petition was filed. She also informed that she was in acute financial difficulty to come to London to contest the divorce case. She wrote in detail about her financial condition and also informed that she had already filed a divorce petition in India. She requested the Ilford County Court not to make the divorce decree "absolute". Respondent also filed CS(OS)2610/2010 before this court praying for grant of a decree of permanent injunction against the petitioner from continuing with the divorce petition before the court in UK. In these circumstances, it cannot be said that she had submitted to the jurisdiction of the foreign court.

16. The reliance placed by learned counsel for the petitioner on the judgment of **Harbans Lal Malik vs. Payal Malik (supra)**, is of no help to him. The facts of the said case are entirely different. The learned trial court has also considered the judgment of this court in **Harmeeta Singh vs. Rajat Taneja** reported in **I(2003) DMC 443** and **Mrs.Veena Kalia vs. Dr.Jatinder Nath Kalia and anr** reported as **59(1995) Delhi Law times 635** in coming to the conclusion that decree of dissolution of marriage granted by the Ilford County Court, Essex, UK cannot be recognised as the facts of the case fall within the purview of the exceptions of Section 13 of CPC.

In view of the above discussion, no illegality is seen in the impugned order which calls for interference of this court. Petition is dismissed.

VEENA BIRBAL, J

APRIL 22, 2013
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