Madras High Court
R.Sridharan vs The Presiding Officer on 9 July, 2010
DATED: 09.07.2010

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

and

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1181 OF 2009

& M.P.No.1 of 2009

R.Sridharan ..Appellant

Vs.

1. The Presiding Officer

Principal Family Court

Chennai-600 106.

2. R.Sukanya ..Respondents

Prayer: Writ appeal against the order dated 18.8.2008 passed by this court in W.P.No.34838 of 2004.

For Appellant : Mr.K.Chandra Mouli

Senior Counsel

for Ms. K.M.Nalinishree

For Second Respondent : Mrs.Geetha Ramaseshan

JUDGMENT

K.K.SASIDHARAN, J

INTRODUCTORY:-

The legality of a matrimonial proceeding initiated by the wife before a family court in India invoking the provisions of the Hindu Marriage Act against her Hindu husband having his domicile in New Jersey in the United States of America is the substantial issue raised in this writ appeal.

2. The appeal is directed against the order dated 18 August, 2008 in W.P.No.34838 of 2004 whereby and whereunder the request of the appellant to issue a writ of prohibition to prohibit the first respondent from

proceeding with the trial in O.P.No.569 of 2004 was rejected.

THE FACTS:-

3. The appellant was an Indian Citizen and on his migration to the United States of America, he was granted US Citizenship. The second respondent was residing adjacent to the residence of the appellant at Madras. Their marriage was solemnized on 17 April, 2002. The marriage was conducted in accordance with the Hindu Rites and custom in the Balaji Temple at New Jersey. The parties were living happily as husband and wife. Subsequently, during the second week of January, 2003 the second respondent came to India for a short visit promising to return after completing her dance program. However all of a sudden, she changed her mind and contrary to the promise made, began to act in films with no idea of returning to States. She also filed divorce petition in O.P.No.569 of 2004 before the Principal Family Court, Chennai on the ground of cruelty.

4. Since the petitioner was residing in United States, he was not aware of the proceedings initiated by the second respondent. Summons was not served on him. However, an ex parte order of divorce was granted on 19 July, 2004. When the appellant came to knowthe said order, he took necessary steps for setting aside the ex parte order. The learned Family Court Judge was pleased to set aside the ex parte order of divorce on 23 September, 2004. The appellant on his appearance filed his counter opposing the plea of divorce.

5. While the matters stood thus, the appellant filed a writ petition in W.P.No.34838 of 2004 for issuance of a writ of prohibition. According to the appellant, the Family Court at Chennai has no jurisdiction to entertain the divorce proceedings, as he is a citizen of United States of America and a permanent resident in the said Country. The Court in India had no jurisdiction to take up the matter involving American citizens, having his domicile in United States of America. Therefore, the Family Court proceedings at Chennai was one without jurisdiction and as such, he prayed for a writ to direct the first respondent to abstain from taking up the matrimonial proceedings.

COUNTER STATEMENT:-

6. The second respondent filed a counter opposing the plea made by the appellant. According to the second respondent, the marriage was solemnized in Balaji Temple at Bridge Water, New Jersey in United States of America as per the Hindu Rites and Customs. Therefore the rights and obligations of the parties runs from the provisions of the Hindu Marriage Act. As per Section 19(iii-a) of the Hindu Marriage Act, 1955, she was competent to institute proceedings for dissolution ofarriage at the place where she is residing on the date of presentation of the divorce proceedings. Therefore the first respondent has got jurisdiction to decide the lis between the parties. It was her further contention that it was not open to the appellant to raise the question of jurisdiction after submitting to the jurisdiction of the Family Court by filing counter. Accordingly, she prayed for dismissal of the writ petition.

THE JUDGES REASONING:-

7. The learned Single Judge opined that the appellant had his domicile of India by origin and the marriage was solemnised as per Hindu vedic rights and customs and as such the parties are governed by their personal law. Therefore the Court in India exercising jurisdiction under Hindu Marriage Act had jurisdiction to entertain the divorce petition irrespective of the present residence of the opposite party. Accordingly, the writ petition was dismissed. THE ARGUMENTS ON APPEAL

8. The learned Senior Counsel for the appellant contended that the Court in India has absolutely no jurisdiction to take up the matter involving a Foreign Citizen. According to the learned Senior Counsel, the domicile of the appellant is United States of America and so long as he has no domicile in India and continue to be a Foreign Citizen, the question of invoking the jurisdiction by a party before the Courts in India does not arise. The learned Senior Counsel would further contend that the remedy of the second respondent is to

initiate proceedings under the Foreign Marriages Act before the competent court in America. It was his further contention that the Family Court at Chennai has absolutely no jurisdiction to deal with the issue and any further proceeding on the basis of the divorce petition filed by the second respondent is a futile exercise. Learned Senior Counsel also made submissions with respect to the reasoning given by the learned Judge, as according to him those reasonings with respect to domicile has absolutely no bearing on the issue on hand. Accordingly, he prayed for allowing the appeal.

9. The learned counsel for the second respondent would submit that though the marriage was conduced in United States of America, it was only in accordance with the Hindu Custom. Therefore the proceeding initiated by the second respondent to dissolve the marriage by invoking the provisions of the Hindu Marriage Act, 1955 before the first respondent was clearly maintainable. The learned counsel would further submit that the intention of the appellant is only to drag on the proceedings without allowing the second respondent to lead a peaceful life in India by dissolving the marriage.

THE ISSUE ON THIS APPEAL:-

10. The moot question to be decided is as to whether the Indian Courts have jurisdiction to take up matrimonial proceedings involving two Hindus governed by the Hindu Marriage Act even in cases where the opposite party is a foreign national having his domicile outside India.

ANALYSIS:-

11. There are certain admitted facts in this case. Both the parties are Hindus. The marriage of the appellant with the second respondent was solemnized as per Hindu Custom and Rites. The marriage was in accordance with the provisions of the Hindu Marriage Act. The marriage was registered before the competent authority. The second respondent was residing with the appellant in United States of America. It was only subsequently she came to India and filed an application for divorce. Though several grounds were alleged in the application for divorce as well as in the counter affidavit filed by the appellant, we are not inclined to consider those issues as the scope of this writ appeal is very limited as to the legality of the proceedings now pending on the file of the Family Court.

12. The Hindu Marriage Act, as it originally stood besides its coverage to the whole of India, also applied to all Hindus domiciled in India. The Act was subsequently amended and it was given an extended application. Accordingly "domicile in India" was substituted by a new clause "domiciled in the territories to which this Act extends". This amendment was made with a specific purpose to extent the provisions of the Act to all Hindus with such domicile, even though for the time being, they are outside the said territories. Because of this amendment, it was not open to a person governed by Hindu Law to contest the matter on the sole ground that he is residing outside India and as such the Act has no application to him.

13. Section 19 of the Hindu Marriage Act deals with jurisdiction and procedures. Before the amendment made to Section 19 as per Act 50 of 2003, the provision was 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 solemnized, or

(ii) the respondent, at the time of presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

[(iii-a) 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."

14. It was found that the provision regarding jurisdiction caused serious prejudice to the cause of women. It was not possible for a women to initiate proceedings before the Court in whose jurisdiction she was residing. Because of this rigid provision, women were compelled to approach the Courts in whose jurisdiction the marriage was solemnized or the husband resides or the parties to the marriage last resided together. They have to approach Courts in distant places to resolve their matrimonial disputes. Courts were flooded with transfer petitions to transfer those proceedings on various grounds so as to enable the wife to contest the proceedings before the nearest court without any kind of difficulties. The jurisdiction clause as it stood originally, was really unfair to the women. Accordingly it was decided to amend Section 19 for the purpose of incorporating a provision to enable the wife to file a petition before the District Court in whose jurisdiction she is actually residing. This provision was inserted by Act 50 of 2003 with effect from 23 December, 2003. Therefore the wife is now entitled to file a matrimonial petition before the District Court in whose territorial jurisdiction she is residing.

15. The provision regarding jurisdiction as per Sub clause (iv) of Section 19 permits initiation of matrimonial proceedings before the Court in whose local jurisdiction the petitioner is residing at the time of presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which the Hindu Marriage Act extends. Therefore the fact that the other party to the proceeding is residing outside the territory to which the Hindu Marriage Act extents does not disentitle the petitioner wife from applying before the local designated Court to redress her grievances.

16. The question raised by the appellant before the writ court was as to whether the Family Court in India has got jurisdiction to try the matter involving a foreign citizen whose domicile is outside the territory to which the Hindu Marriage Act extends.

17. There is no dispute that the appellant and the second respondent are governed by the provisions of the Hindu Marriage Act. The appellant was originally an Indian citizen and on his migration to United States of America, he acquired citizenship in the said country. The appellant has no case in his counter or in his affidavit filed in the writ petition that the marriage was not conducted in accordance with the Hindu custom or that he was not one governed by the provisions of the Hindu Marriage Act. When the marriage was solemnized under the Hindu law, the proceedings for divorce has also to be made under the said Act. The appellant cannot take any exception to the proceedings in India under the provisions of the Hindu Marriage Act, merely on account of his US citizenship or domicile.

18. The marriage was an arranged one. The appellant ought to have known his respective rights and obligations when he has taken a decision to contract the marriage with the second respondent under the Hindu Marriage Act. The Hindu Marriage Act has to be given an extended coverage even outside the territory to which the Act extends. When the parties are governed by the Hindu Marriage Act, the jurisdiction as well as grounds for annulling the marriage should be as provided under the said Act.

19. The Hindu Marriage Act applies to all Hindus domiciled in the territory to which the act extends. Section 19 gives a right to the wife to present the petition to the District Court within whose jurisdiction she is residing.

20. When the wife was given the right to initiate the proceedings before the local District Court where she is actually residing, such a provision cannot be defeated by taking a technical plea that no such proceeding would lie on account of Foreign Citizenship of the husband or his domicile in another country.

21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.

23. In Y. NARASIMHARAO v. Y. VENKATALAKSHMI (1991(3) S.C.C.451) the issue before the Supreme Court was regarding recognition of foreign judgment on matrimonial disputes granted by a Foreign Court. In the said case, the marriage was as per the provisions of the Hindu Marriage Act. However the decree of divorce was granted by the Court at Missouri. The Supreme Court held that the Court at Missouri has no jurisdiction to entertain a petition under the Hindu Marriage Act. The relevant observation for the purpose of the present proceedings reads thus:-

" 7. 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 of 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 Country, Missouri had, therefore, no jurisdiction to entertain the petition according to the Act under which admittedly the parties were married. .....

17. ..... 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 one under which the parties are married, and no other law. When, therefore, a foreign judgment is founded on a jurisdiction or on 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. .....

21. ..... 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.

24. In Narasimha Rao's case the Supreme Court categorically stated that marriages performed under the Hindu Marriage Act can be dissolved only under the said Act. Naturally, the provisions of the Hindu Marriage Act with regard to jurisdiction would also come into play. Section 19 clearly gives jurisdiction to the Court to deal with matrimonial proceedings initiated by the wife, if she is residing within the jurisdiction of the said Court. There is no question of the second respondent initiating divorce proceedings before the Court at United States of America invoking the provisions of the Hindu Marriage Act. The moment the appellant has married the second respondent, he has subjected himself to the jurisdiction of the Court designated to deal with matrimonial disputes under Section 19 of the Hindu Marriage Act.

25. The marriage between the appellant and the second respondent could be resolved only on the grounds set out under Section `13 of the Hindu Marriage Act. The appellant has no case that the application for divorce could be made before the Court at New Jersey on the grounds found mentioned in the Hindu Marriage Act. None of those grounds as stated in Section 13 are stated to be available in New Jersey to dissolve a marriage. In such circumstances, it would be impossible for the second respondent to initiate divorce proceedings before the Court at New Jersey on the basis of the averments found in the application for divorce filed before the first respondent.

26. Though the appellant has taken U.S. Citizenship, it was not his case that he has no residence in India. Even as per the learned Senior Counsel for the appellant, the appellant had his residence at Chennai and very frequently he visits India to see his family members. Moreover the appellant has already submitted to the jurisdiction of the Family Court. He has filed his counter opposing the plea of divorce by denying the allegations and averments as found in the divorce petition. Therefore there is no question of putting an embargo on the Family Court from proceeding further with the divorce proceedings.

27. Therefore on a true construction of Section 19 read with Sections 1 and 2 of the Hindu Marriage Act, we are of the considered view that the Family court at Chennai has got jurisdiction to try the matrimonial litigation initiated by the second respondent not withstanding the fact that the appellant is a citizen of United States of America and not an ordinary resident of India.

28. we do not find any merit in the said contention raised on behalf of the appellant. Accordingly, the writ appeal is dismissed.

29. The divorce petition is pending before the Family Court from 2004 onwards. Therefore the Family Court is requested to decide the original petition as expeditiously as possible and in any case within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected MP is closed.

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1. The Presiding Officer

Principal Family Court

Chennai 600 106