

PRINCIPLE OF COMITY & NON GRANT OF ANTI-SUIT INJUNCTION IN MATRIMONIAL MATTERS

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Abstract

*This article is in the nature of a case study albeit the decision rendered by the Hon'ble Supreme Court of India in the matter of: Dinesh Singh Thakur v. Sonal Thakur**, whereby the Apex Court in a matter concerning matrimonial discord refused to exercise its power of granting anti-suit injunction to stay the proceedings initiated by the respondent-wife (hereinafter referred to as 'W') in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida (USA) for grant of divorce on the ground of irretrievable breakdown of marriage and other reliefs, despite the fact that the appellant-husband (hereinafter referred to as 'H') had already filed a petition being HMA No. 601/2016 under Sections 13 and 26 of the Hindu Marriage Act, 1955 in the Family Court (Gurgaon, India).*

Keywords: Principle of comity, anti-suit injunction, matrimonial case

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Facts of the Case

The facts of the case lie in a narrow compass and can be summarised as under:

- i. H and W got married on 20.02.1995 as per Hindu rites and ceremonies and two children were born out of the wedlock.
- ii. At the time of marriage H was working in USA and post the marriage H took W to USA on dependent visa.
- iii. H and W got the citizenship of USA in May, 2003 and later in June, 2003, both H and W obtained the PIO (Persons of Indian Origin) status.
- iv. In July, 2006, H and W obtained the OCI (Overseas Citizens of India) status.
- v. In the year 2016, H filed a petition (being HMA No. 601/2016) before the Family Court (Gurgaon, India) for seeking divorce under Sections 13 and 26 of the Hindu Marriage Act, 1955 against W.
- vi. Pending adjudication of HMA No. 601/2016, W filed a petition (being Case No. 2016-008918-FD) before the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, USA for seeking divorce on the ground of irretrievable breakdown of marriage and other reliefs.
- vii. H preferred a civil suit (being Civil Suit No. 15/2016) under Section 7 of the Hindu Marriage Act, 1955 before the District Judge, Family Court (Gurgaon, India) for availing the relief of permanent injunction and declaration *inter alia* to restrain W from pursuing the petition for grant of divorce before the Court in USA.
- viii. The Hon'ble District Judge, Family Court (Gurgaon, India) vide its order dated: 26.09.2016, granted an *ex parte* ad interim injunction in favour of H as against W, thereby restraining W from pursuing the petition for grant of divorce filed by her in the Court in USA.
- ix. W filed an application for vacation and modification of order dated: 26.09.2016.
- x. The Hon'ble District Judge, Family Court (Gurgaon, India) vacated the *ex parte* ad interim injunction granted by it to H vide its order dated: 26.09.2016 by allowing the application filed by W for vacation of stay order on 18.10.2016.
- xi. Against the order dated: 18.10.2016 of the Hon'ble District Judge, Family Court (Gurgaon, India), H preferred a revision petition before the Hon'ble Punjab & Haryana High Court (being CR No. 7190/2016).
- xii. The Ld. Single Judge of the Punjab & Haryana High Court vide its order dated: 03.11.2016 dismissed the revision petition preferred by H.

- xiii. Against the order dated: 03.11.2016 of the Ld. Single Judge of the Punjab & Haryana High Court, H preferred a special leave petition (being Special Leave Petition (Civil) No. 10078/2018) to the Hon'ble Supreme Court of India.
- xiv. The Hon'ble Supreme Court of India was pleased to dismiss the appeal (Civil Appeal No. 3878/2018) preferred by H as against W, thereby upholding the decision rendered by the Ld. Single Judge of the Punjab & Haryana High Court.

Arguments preferred by H before the Hon'ble Supreme Court of India for grant of anti-suit injunction:

- i. That W preferred petition for divorce before the Court in USA after H had already preferred divorce petition under Sections 13 and 26 of the Hindu Marriage Act, 1955 before the Family Court in Gurgaon (India).
- ii. W was served with the copy of the divorce petition in the matter listed before the Family Court (Gurgaon, India) on 04.08.2016 and on 16.09.2016 W had entered her appearance in the matter, thus, W had acceded to the jurisdiction of the Family Court (Gurgaon, India).
- iii. Filing of the divorce petition in the Court in USA after receipt of notice in the divorce petition filed by H in India is an abuse of process of law and amounts to multiplicity of proceedings.
- iv. W along with minor children had been residing in India since 2003. W was residing at Gurgaon, thus, the Court at Gurgaon was the forum convenient to both the parties to the proceeding, namely, H and W.
- v. W had sought a decree of divorce from the Court in USA on the ground of irretrievable breakdown of marriage which in fact is not a ground for the granting of divorce under the Hindu Marriage Act, 1955.
- vi. As per Section 41(a) of the Specific Relief Act, 1963 anti-suit injunction can be granted to prevent multiplicity of proceedings.

Arguments preferred by W before the Hon'ble Supreme Court of India for the non-grant of anti-suit injunction:

- i. Divorce petition preferred by W in the Court of USA was not only for dissolution of marriage between H and W but was for claiming various other reliefs, namely, equitable distribution of marital assets, child support, alimony, partition and other reliefs which were otherwise not available under the Indian Law.
- ii. According to Section 41(b) of the Specific Relief Act, 1963, an injunction cannot be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought.

- iii. Before passing an order of anti-suit injunction, the court has to act very cautiously and such an order is not to be granted as a matter of routine as such orders involve a court impinging on the jurisdiction of another court. The court has to act more cautiously if an order of anti-suit injunction is sought to restrain parties from instituting or continuing a case in a foreign court.

Legal principles governing the grant of anti-suit injunction:

An anti-suit injunction is a judicial order restraining a party to a suit or proceeding from instituting or prosecuting a case in another court, including a foreign court. The legal principles which govern the grant of 'injunction simpliciter' and 'anti-suit injunction' are the same, namely, (i) good prima facie case being made out in favour of the plaintiff as against the defendant, (ii) balance of convenience being in favour of the plaintiff as against the defendant, and (iii) irreparable loss likely to be caused to the plaintiff in case the order of injunction is not granted in favour of the plaintiff as against the defendant.

The Hon'ble Supreme Court of India in the matter of: ***Modi Entertainment Network & Anr Vs. WSG Cricket PTE Ltd.***¹ laid down the following principles which govern the grant of anti-suit injunction in a given case:

- a. If the defendant against whom injunction is sought is amenable to the personal jurisdiction of the court from which the order of injunction is sought, then, anti-suit injunction can be granted, however, this factor is not the sole criteria.
- b. If the grant of anti-suit injunction is declined then the ends of justice will be defeated and injustice will be perpetuated.
- c. The principle of comity, that is, respect for the court in which the commencement or continuation of action or proceeding is sought to be restrained, must be borne in mind.

Dictum in the matter of: *Y. Narasimha Rao & Ors v. Y. Venkata Lakshmi & Anr.*²:

In the matter of *Y. Narasimha Rao* (Supra) the Hon'ble Supreme Court of India held as follows:

- i. For recognising foreign matrimonial judgment in India the following considerations must weigh: **(a)** the jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted by it must be in accordance with the matrimonial law under which the parties (the husband and the wife) had got married; **(b)** the matrimonial action can be filed in the

¹ 2003 (4) SCC 341

² (1991) 3 SCC 451

forum where the respondent-spouse is domiciled or habitually (and permanently) resides, however, the relief is to be granted on a ground available in the matrimonial law under which the parties (the husband and the wife) had got married; (c) if matrimonial action has been instituted in a foreign court and the respondent-spouse voluntarily and effectively submits to the jurisdiction of the foreign court and contests the claim which is based on a ground available under the matrimonial law under which the parties (the husband and the wife) had got married, then, no fault can be found with the relief granted by the foreign court; and (d) no fault can be found with the exercise of jurisdiction by a foreign court if the respondent-spouse consents to the grant of relief by the foreign court even if the jurisdiction of the foreign court is not in accordance with the provisions of the matrimonial law governing the parties (the husband and the wife) to the dispute.

- ii. It is legally incorrect to state that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction of the court and judges the merits of the case in a matrimonial dispute.

Dictum of the Hon'ble Supreme Court of India:

The Hon'ble Court after taking stock of the facts and circumstances of the case declined to issue an order of anti-suit injunction in favour of H as against W and held as follows-

- i. W is amenable to the personal jurisdiction of the Family Court (Gurgaon, India) owing to the fact that she (along with her minor children) had been ordinarily residing in India. However, the fact that cannot be ignored is that, H placed nothing on record to hold that H would suffer grave injustice if the injunction is not granted.
- ii. Both H and W are permanent citizens of USA, thus, undisputedly, the Circuit Court (Florida, USA) also has concurrent jurisdiction in this case.
- iii. H has been residing in USA since 2007 and the proceedings for grant of anti-suit injunction had been initiated by H in India (Family Court, Gurgaon) through another person by empowering that person to file, institute and pursue the litigation on his behalf vide a power of attorney.
- iv. The mere fact that W has filed a petition for grant of divorce in the Circuit Court (Florida, USA) on the ground of irretrievable breakdown of marriage, which in fact is not a ground available to her under the Hindu Marriage Act, 1955, does not mean that there is likelihood of her being succeeding in getting a decree for divorce. H had already raised this contention before the Circuit Court (Florida, USA) and both H and W were granted liberty to lead evidence with regard to the question whether their marriage is governed by the Hindu Marriage Act, 1955 or any other law.

- v. Foreign Court cannot be presumed to be exercising its jurisdiction wrongly even if H is able to prove that both H and W continue to be governed by the law applicable to the Hindus as prevailing in India.

Courts in India like the Courts of England are Courts of law and equity. Courts in India have the power to issue anti-suit injunction to a party over whom it has personal jurisdiction in an appropriate case, this is because Courts of equity exercise jurisdiction in *personam*. The power to issue anti-suit injunction has to be exercised sparingly and cautiously. The injunction is directed at the respondent and not at the judge in the foreign court.