

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

M.P. No.2193/2020

Mr. Madhavendra L Bhatnagar

Versus

Bhavna Lall

Jabalpur, dated 11.11.2020

Mr. Priyank Upadhyay, Advocate for the petitioner/plaintiff.

Heard on the question of admission.

This petition under Article 227 of the Constitution of India has been filed by the petitioner/plaintiff questioning the validity, propriety and legality of order dated 02.07.2020 (Annexure-P/4) whereby the Court below has rejected the plaintiff's application filed under Order 39 Rule 3 read with Section 151 of the Code of Civil Procedure asking *ex parte* injunction against the respondent/defendant.

2. A suit has been filed by the petitioner/plaintiff being a husband against the respondent/defendant-wife for declaration that any proceeding or order is passed in the Superior Court of Arizona in Maricopa County, the same be declared null and void and also asking a decree of anti-suit injunction on the ground that the proceeding bearing case No.FC2019-090049 filed by the defendant/respondent herein before the Superior Court of Arizona in Maricopa County would not be recognized in India, therefore, the same be declared null and void. However, a decree of declaration was also sought for by the plaintiff that during pendency of the suit, if any order passed by the Superior Court of Arizona in Maricopa County in the aforesaid case, it be declared null and void as the same is not recognizable in India. Further an anti-suit injunction was also sought for against the defendant

restraining her from initiating any proceeding against the plaintiff/petitioner.

3. As per the averments made in the plaint as also in the petition, the petitioner/husband and respondent/wife got married on 31.05.2005 at New Panvel, Mumbai (India) before the Registrar of Marriages, Panvel as per Hindu rites and out of the said wedlock, they are blessed with a child namely Siddhartha. The petitioner finally settled at Bhopal with his parents but the respondent/wife was not ready to reside with her in-laws and also compelling the petitioner to live separately from them and as such, dispute arose between them. As alleged in the plaint and also in the petition that the respondent absconded and carried the child Siddhartha and thereafter, the petitioner made a complaint at Hyderabad Police Station about kidnapping of his child but lateron, as per the advice of Hyderabad Police, a missing person report was lodged with the Mumbai Police as the defendant/respondent was living with her brother at Mumbai. Moreover, the petitioner has also filed a Habeas Corpus petition before the High Court of Bombay on 07.03.2019 and the said petition was admitted on 03.04.2019 and notice was sent to the defendant's brother and mother, thereafter they fled to United States (State of Arizona) where the defendant was residing with her child Siddhartha and subsequently, on 17.04.2019, the petitioner received an email which is a notice of divorce proceeding filed by the respondent/defendant at Superior Court of Arizona.

4. As per the petitioner/plaintiff, the Superior Court of Arizona has no jurisdiction to entertain any litigation in respect of their marriage, therefore, he filed a suit before the District Judge, Bhopal asking a decree of declaration in which he has also moved an application under Order 39 Rule 3 read with Section 151 of CPC. The Court below vide impugned order dated 02.07.2020 (Annexure-P/4) rejected the application

on the ground that the Court where proceeding has been initiated by the respondent/defendant, is out of India and as the same is out of its jurisdiction, therefore, the Court has no competence to grant any injunction in respect of the proceeding pending thereof and, therefore, rejected the application saying as per Section 41 of the Specific Relief Act, 1963, such type of injunction cannot be granted.

5. Being aggrieved with the said order, the instant petition has been filed by the petitioner relying upon various judgments reported in **AIR 2003 SC 1177 [Modi Entertainment Network and another v. W.S.G. Cricket Pte. Ltd.]**; a decision of the High Court of Delhi passed in **CS (OS) No.2916/2014 [Padmini Hindupur Vs. Abhijit S. Bellur]**; another decision of the High Court of Delhi passed in **Suit No.108/2003 and I.A. No.576/2003 [Harmeeta Singh Vs. Rajat Taneja]** and a judgment reported in **1991 (3) SCC 451 [Y. Narsimha Rao and ors. Vs. Y. Venkata Lakshmi and ors.]**.

6. I have heard the arguments advanced by learned counsel for the petitioner and also perused the record.

7. As per the relief claimed by the plaintiff in the suit filed by him, it *prima facie* appears to be premature and declaration which is being sought for cannot be claimed unless the Superior Court of Arizona passes an order. Even otherwise, if the said decree is not recognized in India then that will have no effect nor can it be implemented. Accordingly, the ingredients required for granting injunction, no *prima facie* case in favour of the plaintiff/petitioner is made out and even otherwise, in such a circumstance, no irreparable injury would cause to the petitioner as the order, if any, is passed against the petitioner that would have no adverse impact over him. Section 41 of the Specific Relief Act, 1963 contains the nature of injunction and situations as to when the same can be granted or

refused. In assessing the merits of the submissions and the fact as to whether relief claimed can be granted or not, it would be necessary to advert the provisions of Section 41 of the Specific Relief Act, 1963:-

41. Injunction when refused.- An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

The aforesaid provisions make this Court firm that the injunction as has been claimed by the petitioner cannot be granted in his favour.

8. So far as the case of **Modi Entertainment Network** (supra), on which the petitioner has placed reliance is concerned, the facts of the said case are altogether different from the present one for the reason that in the said case, there was an agreement between the parties containing a clause conferring jurisdiction to the Courts and the Supreme Court has observed that the parties to the agreement cannot confer jurisdiction to the Court where CPC does not apply and having no jurisdiction to deal with the subject matter of the case. In the

present case, there is no such agreement between the parties conferring jurisdiction to any of the Courts having no jurisdiction to entertain the issue relating to the subject matter and as such, the said case is not applicable in the present case. Likewise, in a case of **Y. Narasimha Rao** (supra), the Supreme Court has dealt with the issue regarding validity of the decree passed by a foreign Court but here in this case, there is no such situation and the Superior Court of Arizona is yet to pass a decree or order and if that is done then it will be seen what would the impact of such a decree or order. Therefore, the facts of that case are also not similar and applicable in the present case. In a case of **Harmeeta Singh** (supra), the same issue is dealt with by the Delhi High Court as to whether the decree passed by a foreign Court and what would be impact of a marriage solemnized in India. Since the husband made his appearance through his counsel in a Court in India where wife initiated proceedings and the defendant was restrained not to proceed further in a proceeding filed by him in a Court of America. In the present case, the respondent/wife is yet to be noticed and nobody representing her and further the Court has not considered the respective provisions i.e. Section 41 of the Specific Relief Act, 1963 that such injunction can not be granted. In a case of **Padmini Hindupur** (supra), any proceeding initiated in India, the counsel of the defendant appeared and informed that the Court of Maryland, USA having no jurisdiction to entertain the dispute and was asked to inform the parties not to prosecute the matter in the said Court. However, I am not convinced with the law laid down by the Delhi High Court for the reason that the Court has not considered the nature of injunction granted and it can be refused as per Section 41 of the Specific Relief Act, 1963.

9. Recently, the Supreme Court in the case of **Dinesh Singh Thakur Vs. Sonal Thakur** reported in (2018) 17 SCC

12 has also considered the similar issue as to when anti-suit injunction can be granted restraining the party from prosecuting the case in another Court outside its jurisdiction, including the foreign Court and has observed that when no grave injustice is caused to the party seeking injunction, the same cannot be granted and it can be refused. It is also observed that the power for grant of anti-suit injunction should be exercised by the Court cautiously, carefully, sparingly and not in a routine manner. The Supreme Court in the aforesaid case has also considered almost all the cases on which the petitioner has placed reliance and observed that as per the material produced on record, it does not appear that if injunction is refused then the party will suffer grave injustice, such power should not be exercised.

10. In view of the discussion made hereinabove, I am fully convinced with the view taken by the Supreme Court in the case of **Dinesh Singh Thakur** (supra) and also is of the opinion that this is not a case in which anti-suit injunction has to be granted in favour of the plaintiff/petitioner. As has been said by the petitioner/plaintiff himself that the Superior Court of Arizona has no jurisdiction to entertain any such dispute and as has been observed by the Supreme Court in the case of **Vivek Rai Gupta Vs. Niyati Gupta** reported in **(2018) 17 SCC 21**, if the decree passed by the Court having no jurisdiction is put in execution, the husband can resist the said execution saying that the said decree is not executable. The Supreme Court in the case of **Dinesh Singh Thakur** (supra) in para-23 has observed as under:-

“**23.** Foreign court cannot be presumed to be exercising its jurisdiction wrongly even after the appellant being able to prove that the parties in the present case continue to be governed by the law governing Hundus in India in the matter of dispute between them.”

11. Resultantly, in my opinion, the Court below has not committed any error in rejecting the plaintiff's injunction

application because the injunction as has been claimed by the plaintiff, cannot be granted in his favour in view of the provisions of Section 41 (b and d) of the Specific Relief Act, 1963.

12. Thus, in view of the above discussion and after having regard to the nature of case and other peculiar facts, I do not deem it appropriate to interfere with the order passed by the Court below. I am also of the opinion that the proceedings in the foreign Court cannot be said to be oppressive or vexatious. Hence the petition filed by the petitioner fails and is hereby **dismissed.**

(SANJAY DWIVEDI)
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