

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

**% CS(OS) 820/2012 & I.A.Nos.5783/2012 & 6736/2012**

**+ Date of Decision: 6<sup>th</sup> January, 2014**

**# PONTY SINGH .....Plaintiff**

**! Through: Ms. Geeta Luthra, Senior Advocate  
with Mr. Sanjeev Sahay**

**versus**

**\$ ANU SINGH BHATIA ....Defendant**

**Through: Mr. A.S. Chandhiok, Senior Advocate  
with Mr. P. Banerjee, Ms. Harleen  
Kaur and Ms. Princy Ponnann, Advs.**

**CORAM:**

**\* HON'BLE MR. JUSTICE P.K.BHASIN**

**ORDER**

**P.K. BHASIN, J.**

The plaintiff and the defendant in this suit for anti-suit injunction were married on 20<sup>th</sup> December, 1999 at New Delhi as per the Sikh rites and rituals. They left India and acquired British citizenship sometime in the year 2005. From the wedlock two daughters were born and they also acquired British citizenship. After staying in the United Kingdom for some years the entire family moved to Hong Kong and after a brief stay there they

came to Singapore sometime in the year 2008 and thereafter they have been staying in Singapore only.

2. The plaintiff-husband claims in this suit filed on 27<sup>th</sup> March, 2012 that his wife had perpetuated extreme cruelty on him, physical as well as mental. He claims that his wife is an alcoholic and consumes more than half a bottle of alcohol everyday starting from morning hours and after getting drunk she screams, shouts and creates an unpleasant atmosphere in the house and also becomes volatile and obnoxious. That behaviour of the defendant affected his personal life and business also and led to the filing of a Divorce Petition under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 in the Family Court in Saket District Courts, Delhi (registered as HMA No. 252/2012).

3. The plaintiff had further alleged in the plaint that he was apprehending that his wife would initiate legal proceedings for the dissolution of their marriage in Singapore and, therefore, he was filing the present suit for getting the relief of 'anti-suit injunction' against the defendant restraining her from initiating any legal proceedings against him in Singapore or any other country for the dissolution of their marriage. The relevant portions from different paras of the plaint in which

apprehension regarding initiation of legal proceedings by the defendant in Singapore against the plaintiff has been expressed and the justification has been given for the grant of the relief of anti-suit injunction to the plaintiff are being re-produced below:-

*“22. ....The plaintiff apprehends that the Defendant will initiate proceedings for dissolution of marriage in Singapore. The Defendant has threatened to initiate proceedings in Singapore on 25.03.2012. In view of these threats, plaintiff is constrained to file the present suit inter-alia praying that defendant be restrained from initiating any proceedings in Singapore in relation to their marriage.....*

*24. If any proceedings are initiated by the defendant in Singapore or elsewhere the same will not be conclusive and binding on Indian Courts and the Indian Legal System.....*

*25. ....Hence the plaintiff is entitled for the relief of anti-suit injunction as India is the forum of convenience.....*

*26. In case, the defendant files any proceedings in Singapore then liberty be given to the plaintiff to amend this suit to bring a specific prayer seeking injunction against the defendant and in favour of the plaintiff restraining the defendant from proceeding with such proceedings.....”*

4. The prayer para in the plaint reads as under:-

*“restrain the defendant, her assignees, agents, relatives etc. for initiating any proceedings against the plaintiff and his family members in any country and in particular in Singapore.”*

5. Along with the plaint the plaintiff had also filed an application under Order 39 Rules 1 and 2 read with Section 151

of the Code of Civil Procedure, 1908 (being I.A. No. 5783/2012), which is now being disposed of by this order and the prayer made in the said stay application are as under:-

*“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to: -*

*restrain the defendant, her assignees, agents, relatives etc. for initiating any proceedings against the plaintiff and his family members in any country and in particular in Singapore;”*

6. The suit and the application for stay were taken up by the Court for the first time on 27<sup>th</sup> March, 2012 and this Court had ordered issuance of summons and notice of the stay application to the defendant for 17<sup>th</sup> July, 2012.

7. However before the date fixed for the appearance of the defendant the plaintiff moved another application in April, 2012 under Order 39 Rules 1 and 2 CPC (being I.A. No. 6736/2012), which is also being disposed of by the present order. In that application the plaintiff pleaded that subsequent to the filing of the divorce petition by him in the Family Court at New Delhi the defendant had filed a divorce petition in the Subordinate Court of Republic of Singapore. As a result of that development coming to his knowledge he claimed the following reliefs in the said second stay application:-

*“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:-*

a) *restrain the defendant, her successors, assignees, her agents and any other who is acting on her behalf from proceeding in the Divorce Suit No.1364 of 2012/V titled as Anu Singh Bhatia Vs. Ponty Singh;*

b) *The Defendant be prohibited from forum shopping as the Hon'ble Court is the most convenient forum for proceeding.*

c) *Pass such other and further order/orders as this Hon'ble Court may deem fit and proper in the interest of justice;"*

8. The said second stay application filed by the plaintiff was taken up for hearing by the Court on 3<sup>rd</sup> May, 2012 after reply to the same stood filed on behalf of the defendant and the following order was passed:-

**"I.A. No. 6736/2012**

*Counsel appearing for both the parties submit that they themselves shall make all efforts to explore the possibility of bringing an amicable settlement between the parties and, therefore, they pray for adjournment of this matter till 17th July, 2012. Counsel also submit that without prejudice to the rights and contentions of the respective parties they will not move ahead in the pending proceedings at Delhi as well as at Singapore till the next date.*

*List this matter on 17th July, 2012.*

*Dasti."*

9. Then on 17<sup>th</sup> July, 2012 the following order was passed:-

**"IA No. 6736/2012 (O. 39 R 1 and 2 CPC)**

*Counsel for the parties state that despite efforts made by the parties they could not agree to settle their disputes.*

*List this matter on 26th September, 2012 for consideration of the stay application.*

*In the meanwhile, the parties shall remain bound by their statement in terms of order dated 3rd May, 2012."*

10. Before 26<sup>th</sup> September,2012 two applications under Order 39 Rule 2-A CPC were filed by the plaintiff for taking action against the defendant for violating the order of this Court directing her not to proceed with her case in Singapore.

11. Arguments were thereafter heard on the plaintiff's two stay applications as well as the two applications under Order 39 Rule 2-A CPC. The plaintiff wanted his stay applications to be allowed and also permission to be granted to him to proceed ahead with the divorce case filed by him in India which he could not do since this Court had restrained him also from proceeding ahead with that case. Vide order dated 15<sup>th</sup> July,2013 I held the defendant guilty of having committed contempt of Court and listed the matter for 26<sup>th</sup> July,2013 for hearing her on the point of punishment to be awarded to her. By the same order a show cause notice was issued to the plaintiff also requiring him to show cause as to why he be also not proceeded against for having committed contempt of Court by concealing from this Court the fact that before filing second stay application in this suit for restraining the defendant from proceeding ahead with the proceedings initiated by her against him in Singapore he had already approached the Singapore Court with an application

seeking stay of those proceedings and also for vacation of the Mareva injunction issued against him vide order dated 30<sup>th</sup> March,2012 freezing all his bank accounts and without disclosing that fact he had attempted to get a stay order from this Court.

12. As far as the orders on the two stay applications are concerned I had observed in the order dated 15<sup>th</sup> July,2013 that in view of the fact that the defendant had been held guilty of contempt of Court and contempt notice had been issued to the plaintiff also orders on the two stay applications of the plaintiff shall be passed only after the contempt proceedings were over.

13. The defendant, however, without waiting for the order on punishment challenged my order dated 15<sup>th</sup> July,2013 holding her guilty of contempt of Court before the Division Bench by filing FAO(OS) 328/2013. The Division Bench vide its order dated 24<sup>th</sup> July,2013 stayed the operation of the order dated 15<sup>th</sup> July,2013 holding the defendant guilty of contempt of Court and proposing to impose sentence upon her. At the same time the Division Bench also requested the Single Judge Bench to conclude the hearing on the stay applications, disposal of which I had kept in abeyance vide order dated 15<sup>th</sup> July,2013. That is how these two stay applications are now being disposed of by this order.

14. The defendant has opposed the suit claim as well as the plaintiff's prayer for restraining her from proceeding with the legal proceedings initiated by her against him for divorce and maintenance etc. on many grounds. One of the objections taken by her is that the principle of *forum conveniens/forum non conveniens* invoked by the plaintiff, in fact, applies in favour of the continuation of proceedings initiated by the defendant in Singapore Court and not in favour of continuation of the divorce case filed by the plaintiff in Delhi. To convince the Singapore Court that Indian Court is the *forum conveniens* the plaintiff has already approached the Singapore Court which is seized of the divorce and maintenance cases filed by the defendant there and also for stay of those proceedings invoking the principle of *forum non conveniens* and also for vacation of the Mareva injunction issued against him issued by that Court. Mr.A.S.Chandhiok, learned senior counsel for the defendant had contended that the plaintiff now should await the decision of the Singapore Court on his objections raised before that Court. It was also submitted that this case had in any case become infructuous immediately upon the plaintiff coming to know that the defendant had before the filing of the present suit for anti-suit injunction the defendant had initiated legal proceedings in Singapore. It was also contended that the plaintiff had concealed

that very material fact from this Court while making an attempt to get a stay order from this Court restraining the defendant from continuing with her cases in Singapore Court by filing IA No.6736/2012 and that fact itself was sufficient to deny him any interim relief and in fact his suit is also liable to be straightaway rejected. It was also argued that even though the plaintiff had pleaded in the plaint that in case the defendant initiates any proceedings in any foreign Court he would seek amendment of the plaint for seeking appropriate relief but he has not sought any amendment in the plaint and instead has approached the Singapore Court for staying the proceedings there initiated by the defendant and vacation of the Mareva injunction which fact also shows that the plaintiff was no more interested in the present infructuous suit. It was also submitted that the plaintiff still has all his assets, movable and immovable in Singapore and has come to India to file the divorce case while he has no intentions of settling in India and there is in any event no case made out for invocation of the principle of forum convenience in favour of Indian Court.

15. Ms. Geeta Luthra, learned senior counsel for the plaintiff submitted that even though the plaintiff had initially claimed the relief of injunction restraining the defendant from initiating any

legal proceedings against the plaintiff in Singapore Court which the plaintiff came to know subsequently to have been initiated already by the defendant in Singapore before the filing of the present suit this Court can still give the interim relief sought for by the plaintiff in his second stay application and final relief also to that effect in exercise of the discretion vested in the Court under Order VII Rule 7 CPC and that too without the plaintiff seeking any amendment of the plaint. On the merits of the case, Ms. Luthra made elaborate submissions to convince this Court that the Court in Delhi is the *forum conveniens* for the dissolution of the marriage of the parties and in fact is the only Court which can dissolve their marriage in accordance with the provisions of the Hindu Marriage Act since the marriage was performed at Delhi.

16. After giving my thoughtful consideration to the entire submissions made from both the sides I have come to the conclusion that not only the plaintiff is not entitled to any interim relief but even his suit itself is liable to be dismissed as being infructuous. As noticed already, when the suit was filed the plaintiff had claimed only the relief that the defendant should be restrained from initiating any legal proceedings against him in Singapore or any other foreign country for the

dissolution of their marriage. However, after the institution of the suit the plaintiff claimed to have come to know that the defendant had already initiated proceedings against him in a Singapore Court for the dissolution of their marriage and also for maintenance and the Singapore Court had also issued a Mareva injunction freezing all his bank accounts. Though, in the plaint the plaintiff had pleaded that in case any legal proceedings are instituted by the defendant against him he would seek amendment in the plaint and claim appropriate relief in respect of those proceedings but the plaintiff did not seek any amendment of the plaint. Undisputedly, after having come to know about the initiation of divorce proceedings in Singapore by the defendant he had approached that Court for vacation of the Mareva injunction as also for stay of the divorce proceedings by taking shelter under the principle of *forum non-conveniens*. That step taken by the plaintiff shows that he was no more interested in getting relief from this Court in respect of the proceedings initiated by his wife in Singapore. It was rightly contended by the learned senior counsel for the defendant that after having approached the Singapore Court before the filing of the second stay application in the present suit he should now await the decision of the Singapore Court on his prayer for stay of those proceedings on the principle of *forum non-conveniens*. The

plaintiff in these circumstances has disentitled himself to get any relief in the present suit in respect of the proceedings initiated against him by his wife in Singapore Court. This suit is certainly now an infructuous suit and considering the fact that the plaintiff himself has chosen not to seek even amendment in the plaint for claiming the relief of injunction against the defendant restraining her from continuing with the proceedings in the Singapore Court the suit cannot be continued by this Court even in view of the provisions of Order VII Rule 7 CPC relied upon by the learned senior counsel for the plaintiff.

17. I am also of the view that learned senior counsel for the defendant was right in placing reliance on a judgment of the Hon'ble Supreme Court in ***"Shipping Corporation of India Ltd. Vs. Machado Brothers and Others"* (2004) 11 SCC 168** wherein the Supreme Court held that Courts should not continue to deal with infructuous litigation.

18. I, therefore, dismiss the suit itself as having become infructuous and the two stay applications also stand dismissed. With the dismissal of this suit and the stay applications the interim order passed in the matter stand vacated. However, the proceedings already initiated against the plaintiff for contempt of Court would continue and only in respect of those

proceedings the matter shall be placed before the Court on 16<sup>th</sup>  
January, 2014.

**P.K. BHASIN, J**

**JANUARY 6, 2014**