

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10569 OF 2015

Mrs. Dipti Rishikesh Kardile.

.. Petitioner

Vs

The Principal Judge,
Family Court, Thane and Others.

.. Respondents

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Shri Darmaan Jamshid Dalal along with Ms. Kalyani Tulankar for the
Petitioner.

Shri S.R. Nargolkar for the Respondent Nos.1 and 2.

Shri A.B. Vagyani, Government Pleader and M.P. Thakur, AGP for the
Respondent Nos.3 and 4.

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CORAM : A.S. OKA & C.V. BHADANG, JJ

DATED : 13TH JANUARY 2016

PC.

1. On the earlier occasion, the parties were put to notice that this Petition will be disposed of finally at the stage of admission. The facts of the case are brief but peculiar. The Petitioner filed a Petition in the Family Court at Thane under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short “the said Act”) seeking a decree of divorce against her husband Hrishikesh. Accordingly, the learned Judge of the Family Court, Thane passed a decree of divorce dated 5th August 2015 by which the marriage between the Petitioner and her husband was dissolved under the said Act. Certain directions were also issued regarding the payment of maintenance and custody of a minor child. The case of the Petitioner is that as of today, the said decree is not

challenged and the same is operative. It is the contention of the Petitioner that the minor child in respect of whose custody the decree has been passed is a British citizen. It is also the case made out that the husband of the Petitioner is a British national. The contention is that for enforcement of the said judgment and decree, the Petitioner will have to approach the appropriate Court in the United Kingdom.

2. The learned counsel appearing for the Petitioner invited our attention to the laws of United Kingdom and in particular the Reciprocal Enforcement of the Judgment (India) Order of 1958 (the said order of 1958”) which has been issued by the Queen's Most Excellent Majesty in Council in exercise of the powers under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (for short “the said Act of 1933”). The said order of 1958 has been issued in exercise of powers conferred by Sub-section (1) of Section 1 of the said Act of 1933. It is pointed out that the said Act of 1933 was amended by the schedule 10 of the Civil and Judgments Act,1982. He urged that from the relevant website of the Government of United Kingdom, it appears that there is no further order issued under Sub-section (1) of Section 1 of the said Act of 1933 dealing with the Judgments of the Courts in India and, therefore, even as of today, the said order of 1958 continues to operate. He invited our attention to the relevant provisions of the said order of 1958 and in particular

Clause 4(d) thereof. He submitted that unless on the aforesaid decree of the Family Court, a seal of the Family Court is affixed showing that the jurisdiction of the said Court is subject to no pecuniary limit, the Petitioner will not be in a position to enforce the said judgment and decree of the Family Court in United Kingdom. He urged that in view of the Sub-section (5) of Section 1 of the said Act of 1933 as amended, the Courts mentioned in Clause 4 of the said order of 1958 will be for all purposes recognized as the Superior Courts within the meaning of amended Sub-section (1) of Section 1 of the said Act of 1933. He submitted that for giving effect to the impugned judgment and decree, a writ of mandamus be issued for affixing the seal in the manner required by Clause 4(d) of the said order of 1958.

3. We have heard the learned counsel appearing for the High Court Administration who has assisted the Court. He pointed out that in the Family Courts Act, 1984 (for short “the Family Court Act”), there is no specific provision which provides for affixing the seal as required by the Clause 4(d) of the said order of 1958. He also invited our attention to the provisions of the Bombay Public Authorities Seals Act, 1883 and in particular Section 3 thereof. He urged that considering the provisions of the Family Court Act and the said Act of 1883, the Court should pass an appropriate order. On the earlier date, a communication issued by the In charge Secretary and RLA Department of the State

Government to the Registrar General of this Court was placed on record wherein a suggestion was made to amend the Family Court Rules, 1988 framed by this Court in exercise of the powers under Section 21 of the Family Court Act by incorporating Rule 10A as suggested in the said letter.

4. We have considered the submissions. It will be necessary to make a reference to the provisions of the said Act of 1933 before its amendment. Section 1 of the said Act reads thus:

1.--(1) His Majesty, if he is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts of the United Kingdom, may by Order in Council direct-

- (a) that this Part of this Act shall extend to that foreign country; and**
- (b) that such courts of that foreign country as are specified in the Order shall be deemed superior courts of that country for the purposes of this Part of this Act.**

(2) Any judgment of a superior court of a foreign country to which this Part of this Act extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part of this Act applies, if -

- (a) it is final and conclusive as between the parties thereto ; and

- (b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty ; and
- (c) it is given after the coming into operation of the Order in Council directing that this Part of this Act shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.”

(emphasis added)

5. The said order of 1958 relied upon by the Petitioner was issued in exercise of powers under Sub-section (1) of Section 1 of the said Act of 1933 (Unamended). By the said order of 1958, certain Courts in India were conferred status of superior Courts for the purposes of Part-I of the said Act of 1933. Clause 4 of the said order of 1958 reads thus:

4. The following Courts of the said territories shall be deemed Superior Courts of the said territories for the purposes of Part I of the said Act, that is to say:—

- (a) The Supreme Court.

(b) All High Courts and Judicial Commissioners' Courts.

(c) All District Courts.

(d) All other Courts whose civil jurisdiction is subject to no pecuniary limit provided that the Judgment sought to be registered under the said Act is sealed with a seal showing that the jurisdiction of the Courts is subject to no pecuniary limit.”

(emphasis supplied)

6. Subsequently, the said Act of 1933 underwent amendment and in particular to Section 1 thereof by virtue of the Civil Jurisdiction and Judgments Act, 1982. The amended Section 1 of the said Act of 1933 reads thus:

“1. Power to extend Part I of Act to foreign countries giving reciprocal treatment.

[F1(1) If, in the case of any foreign country, Her Majesty is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to, or to any particular class of, judgments given in the courts of that country or in any particular class of those courts, substantial reciprocity of treatment will be assured as regards the enforcement in that country of similar judgments given in similar courts of the United Kingdom, She may by order in Council direct—

(a) that this Part of this Act shall extend to that country;

(b) that such courts of that country as are specified in the Order shall be recognised courts of that country for the purposes of this Part of this Act; and

(c) that judgments of any such recognised court, or such judgments of any class so specified, shall, if within subsection (2) of this section, be judgments to which this Part of this Act applies.

(2) Subject to subsection (2A) of this section, a judgment of a recognised court is within this subsection if it satisfies the following conditions, namely—

- (a) it is either final and conclusive as between the judgment debtor and the judgment creditor or requires the former to make an interim payment to the latter; and
- (b) there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
- (c) it is given after the coming into force of the Order in Council which made that court a recognised court.

(2A) The following judgments of a recognised court are not within subsection (2) of this section—

- (a) a judgment given by that court on appeal from a court which is not a recognised court;
- (b) a judgment or other instrument which is regarded for the purposes of its enforcement as a judgment of that court but which was given or made in another country;
- (c) a judgment given by that court in proceedings founded on a judgment of a court in another country and having as their object the enforcement of that judgment.]

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive

notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) His Majesty may by a subsequent Order in Council vary or revoke any Order previously made under this section.

[F2(5) Any Order in Council made under this section before its amendment by the Civil Jurisdiction and Judgments Act 1982 which deems any court of a foreign country to be a superior court of that country for the purposes of this Part of this Act shall (without prejudice to subsection (4) of this section) have effect from the time of that amendment as if it provided for that court to be a recognised court of that country for those purposes, and for any final and conclusive judgment of that court, if within sub-section (2) of this section, to be a judgment to which this Part of this Act applies.]”

7. Thus, the concept of recognized Court was introduced by the said amendment to Section 1 of the said Act of 1933. Under the unamended Sub-section (1) of Section 1 of the said Act of 1933, the concept was of a superior Court. After having perused the amended Sub-section (5) of Section 1 of the said Act of 1933, the order of 1958 will continue to remain in force unless the same is modified. We are not in a position to record a clear finding that there is no further modification of the said order of 1958. However, we are considering the submissions made across the bar on the assumption that the said order of 1958 continues to operate. If the said order of 1958 continues to operate, the Superior Courts specified under Clause 4 thereof will be recognized Courts within the meaning of clause (b) of Sub-section (1)

of Section 1 of the said Act of 1933. We have already quoted Clause 4 of the said order of 1958. As per Sub-Clause (d) of Clause 4, the Family Court under the Family Courts Act will become a superior Court or a recognized Court provided the civil jurisdiction of the Family Court is subject to no pecuniary limit and the judgment sought to be registered under the said said Act of 1933 is sealed with a seal showing that the jurisdiction of the said Court is subject to no pecuniary limit.

8. We must, however, note here that the contention of the learned counsel representing the High Court Administration relying upon Section 11 of the said Act of 1933 was that the judgment and decree of the Family Court in the present case will not be covered by the definition of the “Judgment” in Section 11 of the said Act of 1933. The submission of the learned counsel appearing for the Petitioner is to the contrary.

9. As far as the issue whether the judgment of the Family Court in India will attract the provisions of the said Act of 1933 is concerned, it is for the appropriate Court in United Kingdom to decide the said issue as and when the decree of the Family Court is sought to be executed or enforced by the by the Petitioner in United Kingdom. As far as the relief sought of issuing a direction against the Respondents to

affix a particular seal on the judgment of the Family Court is concerned, we cannot issue such a writ of mandamus only because a particular foreign law requires a particular seal in a particular manner and especially when there is no provision to affix such seals under the Family Court Act and the Rules framed thereunder. It is ultimately for the Respondents to decide what steps should be taken in the light of the provisions of the said Act of 1933. Suffice it to state that the Respondents will have to take steps to ensure that the Judgments of the family Court can be enforced by filing proceedings before the appropriate Court in United Kingdom.

10. At highest, what we can clarify is the nature of the jurisdiction exercised by the Family Court. Section 7 of the Family Court Appeal reads thus:

“(1) Subject to the other provisions of this Act, a Family Court shall- -(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

- (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
- (b) such other jurisdiction as may be conferred on it by any other enactment.”

11. Clause (a) of Sub-section (1) of Section 7 of the Family Courts Act provides that in respect of the civil suits and proceedings of the nature referred in the explanation, a Family Court exercises all jurisdiction exercisable by any District Court. Clause (b) of Sub-section (1) of Section 7 provides that a Family Court shall be deemed, for the purposes of exercising such jurisdiction under such law, to be a District Court or as the case may be, a sub-ordinate Civil Court for the area to which the jurisdiction of the Family Court extends. Thus, as far as the suits covered by various clauses of explanation to Sub-section (1) of Section 7 of the Family Courts Act are concerned, the Family Court exercises the jurisdiction of a District Court or a Sub-ordinate Civil Court, as the case may be. Therefore, for the purposes of the suits and proceedings of the nature specified in the above explanation to Section 7, which are otherwise cognizable by a District Court, a Family Court shall be deemed to be a District Court. Moreover, we find from Section 7 of the Family Courts Act that no limit has been imposed on the pecuniary jurisdiction of the Family Court for entertaining suits or proceedings covered by Clauses (a) to (g) of the explanation to Sub-section (1) of Section 7 of the Family Courts Act. Therefore, the Jurisdiction of a Family Court is subject to no pecuniary limit.

12. Subject to what is held and observed above, no other relief can be granted to the Petitioner. It is for the Respondents to examine whether any provision needs to be made for the purposes of affixing a seal on the judgments and decrees of the Family Court as provided in Clause 4(d) of the said order of 1958.

13. Subject to what is observed above, the Petition is disposed of.

(C.V. BHADANG, J)

(A.S. OKA, J)