

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Appeal against Order No.16 of 2014

(Rakesh Aggarwal s/o Sh. Inderjeet Aggarwal v. Smt. Rupal Aggarwal w/o
Rakesh Aggarwal)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Smt. Neelam A. Biala, Advocate for Appellant.

Coram : R.K. Deshpande, J.

Date : 1st February, 2016

1. The learned 7th Joint Civil Judge, Senior Division, Nagpur, has passed an order on 13-9-2013 in Hindu Marriage Petition No.138 of 2011 returning the plaint to the appellant/petitioner for presentation before the Court having jurisdiction to entertain the same. This is the subject-matter of challenge in this appeal.

2. The Trial Court has held that the case of the appellant-husband is not covered by any of the clauses under Section 19 of the Hindu Marriage Act, 1955 and, therefore, the Court has no territorial jurisdiction to entertain, try and decide the petition for divorce on the grounds under Sections 13(1)(i-a)

(i-b) and 13(1-A)(i)(ii) of the said Act for a decree of dissolution of marriage.

3. The point for determination is as under :

Whether the Trial Court has committed an error in holding that it has no territorial jurisdiction to entertain, try and decide the petition?

4. In the decision of this Court in the case of *Hariram Dhalumal Karamchandani v. Jasoti w/o Hariram*, reported in *AIR 1963 Bombay 176*, this Court has held in para 7 as under :

“7. ... It is in this context that the provisions of Section 21, which make applicable the provisions of the Code of Civil Procedure to the proceedings under the Hindu Marriage Act, have to be interpreted. It is undoubtedly true that the provisions of the Civil Procedure Code have been made applicable subject to the provisions of the Act contained therein. Therefore, the proper way of reconciling the provisions of Section 19 of the Hindu Marriage Act with the provision as to the right of suing to be found in the relevant provisions of the Code of Civil Procedure, and in particular, Section 20 of the Code would be first to see whether the jurisdiction can be

invoked by satisfaction of any of the conditions of Section 19 of the Act. If the provisions of Section 19 of the Act had been called into play, then in that case it is those provisions which must be satisfied if they are capable of being satisfied in a particular case. On the other hand, if on the facts and circumstances like the present one it is established that none of the requirements of Section 19 of the Hindu Marriage Act regarding the jurisdiction of the Court can be satisfied, then, in my opinion, it is not the intention of the law that in such a case the party will be without a remedy, namely, that it cannot sue for the relief at any place whatsoever. ...”

5. In view of the aforesaid law laid down by this Court, it has to be first-of-all seen as to whether the jurisdiction can be invoked by satisfaction of any of the conditions of Section 19 of the Hindu Marriage Act. If such provision is satisfied or if it is capable of being satisfied, then the question of having recourse to the provision of Section 20 of the Code of Civil Procedure to find out as to whether the cause of action wholly or in part arises within the territorial jurisdiction of the Court trying the suit or petition, shall have to be considered. If the provision of Section 19 of the said Act is satisfied, then there is no question of having recourse to the provision of Section 20 of the Code of

Civil Procedure.

6. In the light of the aforesaid decision of this Court, the findings recorded by the Trial Court in the present case need to be seen. The Trial Court has held that the marriage between the parties was solemnized at Iddar in the State of Gujarat where the parties lastly resided together. At the time of filing of the petition in question, the respondent-wife was residing at Himmat Nagar, District Sabarkantha, in the State of Gujarat. The Trial Court has, therefore, recorded the finding that clauses (i), (ii) and (iii) under Section 19 of the Hindu Marriage Act are not helpful to the appellant-husband to invoke the territorial jurisdiction of the Court. It has further been held that the petition has been filed by the appellant-husband, and hence clause (iii-a) under Section 19 of the said Act is also not available to him. It is thus apparent that the provisions contained in clauses (i), (ii), (iii) and (iii-a) under Section 19 of the said Act are capable of being complied with or satisfied, but in fact have not been satisfied in the present case. The Trial Court has, therefore, held that it has no territorial jurisdiction to entertain the petition in question and hence directed return of plaint to the appellant-husband for presentation before the Court having jurisdiction to entertain the same.

7. Smt. Biala, the learned counsel appearing for the

appellant-husband, has invited my attention to a decree passed by the Court of 3rd Joint Civil Judge, Senior Division, Nagpur, in Hindu Marriage Petition No.96 of 2010 for conjugal rights on 30-4-2011, in which the appellant-husband is the petitioner, and the respondent-wife is the respondent. It was a decree directing the respondent-wife to reside and cohabit with her husband, viz. the appellant herein, on or before 15-6-2011. She submits that there is a breach of the said decree, as the respondent-wife has failed to cohabit with the appellant-husband and to comply with the decree. The cohabitation in terms of the said decree was accepted at Nagpur. She has relied upon the decision of the Division Bench of Mysore High Court in the case of *Omprakash Dhawan v. Santosh Kumar*, reported in *1965 Mysore 110*. It was a case where a decree passed for judicial separation in favour of the respondent-wife was sought to be challenged on the ground that it should be treated as nullity, because the Court passed it has no territorial jurisdiction. It has been held that such an objection is of a technical nature being to the territorial jurisdiction, could not have been raised in an appeal against a decree for judicial separation. The said decision is not applicable to the facts of the present case, for the reason that the order of the Trial Court impugned in this appeal holding that it has no territorial jurisdiction to entertain, try and decide the petition in question cannot be faulted with.

8. In view of above, there is no substance in this appeal.
The same is dismissed. No order as to costs.

Judge.

Lanjewar