

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.7190 of 2016 (O&M)
Decided on: 03.11.2016**

Dinesh Singh Thakur

....Petitioner

Versus

Sonal Thakur

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Ms. Munisha Gandhi, Sr. Advocate
with Ms. Salina Chalana, Advocate
for the petitioner.

Mr. Sunil Chadha, Sr. Advocate
with Mr. Prateek Rath, Advocate
for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 18.10.2016 (Annexure P2) passed by the District Judge, Gurgaon (Family Court) whereby ad interim injunction granted vide order dated 26.09.2016 (Annexure P6) has been vacated.

A brief backdrop of the case is that there is marital discord between Sh. Dinesh S. Thakur and Smt. Sonal Thakur who were married on 20.02.1995 at Hyderabad and two children were born out of the wedlock on 17.09.2001 and 17.02.2006, respectively. The parties to the *lis* and their children were residing in USA. The petitioner is still working and residing in USA but the respondent – wife along with the children (minor) has been residing in Gurgaon for the past few years.

The petitioner filed a petition under Sections 13 and 26 of the Hindu Marriage Act, 1955 on 21.07.2016 and the same is pending in the Family Court at Gurgaon. The respondent was served in the case and a memo of appearance on her behalf by an Advocate was filed in the Court on 16.09.2016. In the meantime, the respondent – wife filed a petition dated 02.09.2016 (Petition No.2016-008918-FD, USA in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas Country, Florida, USA) and a notice of the said petition was received by the petitioner on 09.09.2016. The respondent – wife has initiated proceedings for divorce on the ground of irretrievable breakdown of marriage and other reliefs before the Court at Florida. Thereafter, the instant civil suit No.15/2016 under Section 7(d) of the Family Courts Act for injunction and declaration was filed before the Family Court, Gurgaon *inter alia* to restrain the respondent from pursuing the petition for divorce before the Court in USA. An *ex parte ad interim* injunction was granted by the Court vide order dated 26.09.2016.

The respondent filed an application for vacation and modification of injunction order. After filing of response to the application and having heard counsel for the parties, the Family Court accepted the application and vacated the ad interim injunction vide order impugned.

Counsel for the petitioner has submitted that as the petitioner had already filed a petition seeking dissolution of marriage of the parties in which the respondent was served on 04.08.2016 and had caused appearance on 16.09.2016, the proceedings initiated by the respondent – wife seeking a decree of divorce on the ground of

irretrievable breakdown of marriage (not a ground for divorce under the Hindu Marriage Act, 1955) are liable to be stayed. It is further submitted that as the respondent – wife along with the minor children is residing in India since the year 2003, filing of petition for divorce in the Court at USA after receipt of notice in the divorce petition filed by the husband is nothing but an abuse and misuse of process of law and amounts to multiplicity of proceedings. It is argued with vehemence that as the petitioner has filed a divorce petition in the Court at Gurgaon and the respondent – wife is admittedly a resident of Gurgaon, therefore, the Court at Gurgaon would be the forum convenient to the respondent. It is further argued that the trial Court has vacated the stay primarily by relying upon judgment of this Court **“Rakesh Kumar vs Ms. Ashima Kumar”**, 2007(2) RCR (Civil) 786 but in the said judgment, the Court has only considered the provisions of Section 41(b) of the Specific Relief Act, 1963 (in short 'the Act') but did not take into consideration the provisions of Section 41(a) of the Act, relevant in the present context. Another submission made by counsel is that Hon'ble the Supreme Court of India in **Modi Entertainment Network and another vs W.S.G. Cricket PTE. Ltd.**, 2003(4) SCC 341 in an anti-suit injunction has laid down the following principles:-

“1. In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity – respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained – must be borne in mind.”

Further submitted that even otherwise judgment passed by a Foreign Court for dissolution of marriage on the ground of irretrievable breakdown is not executable/enforceable in the Courts at India. For this purpose, reference has been made to a Division Bench judgment of this Court ***“Harpreet Singh Sekhon vs Rajwant Kaur”***, **FAO No.5742 of 2010** decided on 22.02.2013. In addition, it is argued that the respondent has submitted to the jurisdiction of the Court at Gurgaon.

Counsel for the respondent, on the contrary, has submitted that the controversy raised in the present petition is squarely covered by the judgment of this Court ***Rakesh Kumar's case (supra)***. It has further been argued that the respondent – wife has filed the petition before the Court at Florida not only for dissolution of marriage of the parties but claiming various other reliefs such as equitable distribution of marital assets, child support, alimony, partition and other reliefs, not available under the Indian law. It is further argued that an irreparable loss or injury shall be caused to the respondent and children of the parties in case the petition pending in the Court at Florida is ordered to be stayed.

Another submission made by counsel is that the petitioner is a citizen of U.S.A and he is presently working and residing there. The petition for divorce in the Court at Gurgaon has been filed by him through an attorney. He has already filed a detailed response dated 29.09.2016 before the Court at Florida. As the petitioner is a citizen of

U.S.A. and has been residing there, there is no question of the petitioner's suffering any inconvenience in case the petition pending before the Court at Florida is not stayed. He has refuted contention of the petitioner that the respondent – wife has submitted to jurisdiction of the Court at Gurgaon in the divorce proceedings with the plea that only a memo of appearance was filed on her behalf by a counsel.

In reply, counsel for the petitioner has disputed that the petitioner has submitted to the jurisdiction of the Court at Florida by contending that he has filed his response and prayed for rejection of the petition or in the alternative for stay of the proceedings as he has already invoked the jurisdiction of the Court in India for getting a decree of divorce.

I have heard counsel for the parties and perused the paperbook particularly the order impugned.

At the outset, it is pertinent to note that there are not many precedents available on the issue of anti-suit injunction. However, in ***Modi Entertainment Network and another's case (supra)*** though the appeal was dismissed but the Court laid down certain aspects to be satisfied in exercising discretion to grant an anti suit injunction, reproduced hereinbefore.

The petitioner has filed the suit for injunction by invoking Section 7(d) of the Family Courts Act, 1984 that provides for a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. The Family Courts Act, 1984 does not contain any provision or laid down any principles with regard to grant of injunction in a case arising out of a marital relationship. In absence of any such

provision in the statute providing for establishment of Family Courts to deal with variety of issues arising out of a marital relationship, the Court has to examine the provisions of the Specific Relief Act, 1963 (in short 'the Act') particularly Chapter VIII that deals with perpetual injunction. Section 38 of the Act provides for the contingencies or the conditions to be satisfied for grant of perpetual injunction. Section 41 thereof provides for situations where an injunction cannot be granted. An extract from Section 41, germane to the present controversy, reads as follows:-

“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.”***

In the case at hand, the petitioner has filed a suit for injunction to restrain the respondent from prosecuting proceedings pending in the Court at Florida that is certainly not subordinate to the Family Court at Gurgaon from which the injunction is sought. This Court in ***Rakesh Kumar's case (supra)*** on a detailed consideration of the judgments ***Modi Entertainment Network and another's case (supra)***, ***“Oil and Natural Gas Commission vs Western Company of North America”***, 1987(1) SCC 496, judgment of the Delhi High Court ***“Harmeet Singh vs Rajat Taneja”***, 2003(2) RCR (Civil) 197, judgments of Hon'ble the Supreme Court ***“Smt. Satya vs Shri Teja***

Singh", 1975(1) SCC 120, "*Y. Narasimha Rao and others vs T. Venkata Lakshmi and another*", 1991(3) SCC 451 and "*Vikas Aggarwal vs Anubha*", 2002(2) RCR (Civil) 602, "*Cotton Corporation of India vs United Industrial Bank*", 1983(4) SCC 625 has held in para 14, reads thus:-

"14. Still further, it considered that the expression 'Court' in Section 41(b) of the Specific Relief Act, 1963 is used in its widest amplitude comprehending every forum where relief can be obtained in accordance with law. The Court also considered that there is near unanimous view that the Courts had no jurisdiction to grant interim injunction restraining a person from instituting any proceeding in a Court not subordinate to that from which injunction is sought. In view of the above, the Foreign Court cannot be treated as a Court subordinate to the Panchkula Court. Therefore, in terms of Section 41(a) & (b) of the Specific Relief Act, 1963, injunction cannot be granted."

Counsel for the petitioner has tried to explain as to why the judgment in Rakesh Kumar's case (supra), basis of the order passed by the trial Court cannot be applied by contending that this Court has not taken into consideration the provisions of Section 41(a) of the Act. The plea of the petitioner in this regard is not only fallacious but misconceived. The concluding lines of para 14 from the judgment reproduced hereinbefore demolishes the plea. This apart, clause (a) of Section 41 itself prohibits grant of injunction against prosecution of judicial proceeding but an exception is carved out to prevent multiplicity of proceedings. However, clause (b) specifically creates a bar against grant of injunction qua instituting or prosecuting

proceedings in a Court which is not subordinate to the Court from which injunction is sought. I am afraid clause (a) cannot be read independent of what has been envisaged in clause (b). A conjoint reading of the two clauses is necessary for harmonious construction and to achieve the legislative intent. When the two clauses are read together, there is no reason much less justification to take a view different from what has been held in ***Rakesh Kumar's case (supra)***. The trial Court, therefore, has rightly relied upon the judgment in ***Rakesh Kumar's case (supra)*** to uphold plea of the respondent that *ex parte* injunction granted in favour of the petitioner is liable to be vacated. In view of the above, no fault much less illegality can be noticed in the impugned order.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed.

03.11.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No