

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

FAO-M No.217 of 2015 (O&M)

Date of decision: 05.10.2016

Mandeep Kaur

...Appellant

Versus

Dharam Lingam

...Respondent

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL
HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.S.S.Rana, Advocate and
Mr.S.K.Gupta, Advocate for the appellant

SNEH PRASHAR, J.

1. Assailing the judgment dated 17.03.2015 vide which HMA case No.22 of 11.03.2014 filed by appellant-wife Mandeep Kaur against respondent -husband Dharam Lingam under Section 13B-1(ia)(1b) of the Hindu Marriage Act, 1955 (for short 'the Act') for dissolution of their marriage was dismissed by learned Additional District Judge, Ludhiana, the appellant -wife preferred the instant appeal.

2. As indicated in the impugned judgment by learned Additional District Judge, Ludhiana, on notice of the petition, the respondent-husband had appeared through counsel but when the case was fixed for filing written statement, he absented from hearing and was proceeded against ex-parte.

3. During the instant appeal proceedings, notice of motion was issued to the respondent. At the first instance, notice issued was

received back unserved with the report “unclaimed”. Subsequently, the notice sent through registered cover was not received back served or otherwise. Since more than 30 days had passed after the registered notice was issued, it is assumed that the registered AD had reached its destination.

4. Otherwise also as already observed above, the respondent was ex-parte when the impugned judgment was passed by learned trial Court on 17.3.2015. The petition was dismissed on the short ground that the Act would not extend in the case of respondent-husband since he is a citizen of Canada.

5. We have heard learned counsel for the appellant and have scrutinized the impugned judgment passed by learned trial Court.

6. The operating paragraph in the judgment of learned trial Court leading to dismissal of the petition is reproduced hereunder:-

“It is the case of petitioner that respondent is citizen of Canada. As per Section -1 sub -section-2 of The Hindu Marriage Act, the Act extends to the whole of India except the State of Jammu and Kashmir and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories. As stated above, respondent is citizen of Canada. There is nothing on record which would show that respondent comes within meaning of Hindu domiciled in India, having place of abode in India, even if he resides outside India. Thus, Hindu Marriage Act would not extend in case of respondent.”

7. The contentious issues that necessitate examination are:

- (i) extent and applicability of the Act as per Section 1(2) of the Act;
- (ii) the court to which a petition under the Act can be presented.

8. Section 1(2) of the Act provides for extent of the Act and the same reads as follows:-

“1. Short title and extent.-

(1) xxx xxx xx

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciles in the territories to which this Act extends who are outside the said territories.”

9. From a plain reading of Section 1(2) of the Act, it is evident that the Act extends to the Hindus of the whole of India except the State of Jammu and Kashmir and also applies to Hindus domiciled in India, who are outside the said territories. In short, the Act, in our considered opinion, will apply to Hindus domiciled in India even if they reside outside India.

10. In **Shashi Leekha vs. Sheila Shashi Leekha AIR 2013 Bom 86**, a Division Bench of Bombay High Court held as under:-

“12. Section 1(2) predicates that the Act extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the

territories to which this Act extends, who are outside the said territories.”

11. In **Sondur Gopal vs. Sondur Rajini (2013)7 SCC 426**, the parties were originally citizens of India but acquired citizenship of Sweden and as citizens of Sweden claimed domicile in Australia. The plea of the appellant -husband that he was a Swedish citizen domiciled in Australia, hence, Australian Courts shall have jurisdiction, was rejected by Hon'ble the Supreme Court. Examining the extent and applicability of the Act, it was observed that a plain reading of Section 1(2) of the Act, which provides for 'extent of the Act', shows that it has extra-territorial operation and it was held as under:-

“21. Bearing in mind the principle aforesaid, when we consider Section 1(2) of the Act, it is evident that the Act extends to the Hindus of whole of India except the State of Jammu and Kashmir and also applies to Hindus domiciled in India who are outside the said territory. In short, the Act, in our opinion, will apply to Hindus domiciled in India even if they reside outside India. If the requirement of domicile in India is omitted altogether, the Act shall have no nexus with India which shall render the Act vulnerable on the ground that extra-territorial operation has no nexus with India. In our opinion, this extra-territorial operation of law is saved not because of nexus with

Hindus but Hindus domiciled in India.

22. to 26. x x x x

27. Section 2(1) provides for the application of the Act. The same reads as follows:

2. Application of Act.- (1) This Act applies –

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

This section contemplates application of the Act to Hindu by religion in any of its forms or Hindu within the extended meaning i.e. Buddhist, Jaina or Sikh and, in fact, applies to all such persons domiciled in the country who are not Muslims, Christians, Parsi or

Jew, unless it is proved that such persons are not governed by the Act under any custom or usage. Therefore, we are of the opinion that Section 2 will apply to Hindus when the Act extends to that area in terms of Section 1 of the Act. Therefore, in our considered opinion, the Act will apply to Hindu outside the territory of India only if such a Hindu is domiciled in the territory of India.”

12. In the case in hand, the respondent was stated to be citizen of Canada. On notice of the petition, he had appeared before learned trial Court but without filing written reply to the petition and raising any objection/ pleading relating to his status as domicile of India or jurisdiction of the Court, had walked out of the proceedings. In the absence of pleading on his part, it cannot be assumed that he was not a Hindu domiciled in India by origin and residing outside the territory of India. Issue No.(i) is answered accordingly.

13. Another important factum in the instant case is that the marriage of the appellant was solemnized with the respondent at Village Gorsian Makhan, Tehsil Jagraon, District Ludhiana. The appellant submitted that after the marriage, they lived and cohabited as husband and wife for about 1½ months, before the respondent returned to Canada on the pretext of completing formalities of immigration department to call her to Canada.

14. Section 19 of the Act deals with jurisdiction and procedure,

which reads as under:

“19. Court to which petition shall be presented.-

Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction-

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.”

15. Sub-clause (iii-a) was inserted by Act 50 of 2003. As it was found that the provision regarding jurisdiction caused serious prejudice to the cause of women and the jurisdiction clause as it stood originally,

was unfair to the women, necessary amendment was made in Section 19 of the Act for the purpose of incorporating a provision to enable the wife to file a petition before the District Court in whose jurisdiction she is actually residing. Accordingly, the wife is now entitled to file a matrimonial petition before the District Court in whose territorial jurisdiction she is residing.

16. In **R.Sridharan vs. The Presiding Officer Principal Family Court Chennai-600 106**, reported as **2010 (8) MLJ 438**, a Division Bench of Madras High Court held as under:-

“19. The Hindu Marriage Act applies to all Hindus domiciled in the territory to which the act extends. Section 19 gives a right to the wife to present the petition to the District Court within whose jurisdiction she is residing.

20. When the wife was given the right to initiate the proceedings before the local District Court where she is actually residing, such a provision cannot be defeated by taking a technical plea that no such proceeding would lie on account of Foreign Citizenship of the husband or his domicile in another country.”

17. It has already been observed above that the respondent did not opt to counter the plea of the appellant that the marriage between the parties was solemnized in accordance with the Hindu rites and customs

at Village Gorsian Makhan, Tehsil Jagraon, District Ludhiana and that they are governed by the provisions of the Act. When the marriage was solemnized under the Hindu law, the proceedings for divorce by the appellant had also to be preferred under the said Act. The respondent cannot take any exception to the proceedings in India under the provisions of the Act, merely on account of his citizenship of Canada, especially when the marriage was solemnized in India.

18. The provision of Section 19 (iii-a) of the Act gives a right to the wife to initiate the proceedings before the local District Court where she is actually residing and such a provision cannot be defeated on a technical plea that such proceeding would not lie on account of foreign citizenship of the husband. The objects and reasons which prompted the Parliament to incorporate such a provision have to be interpreted in letter and spirit.

19. In **Y. Narasimha Rao and others vs. Y. Venkata Lakshmi and another (1991) 3 SCC 451**, the issue before Hon'ble the Supreme Court was regarding recognition of foreign judgment on matrimonial dispute passed by a Foreign Court. In the said case, the marriage was as per the provisions of the Act, however, the decree of divorce was granted by the Court of Missouri. It was held by Hon'ble the Supreme Court that the Court at Missouri had no jurisdiction to entertain a petition under the Hindu Marriage Act. It was categorically stated that marriages performed under the Hindu Marriage Act can be dissolved only under the said Act.

With the above decision issue No.(ii) is set at rest.

20. By appearing before learned trial Court on notice and then raising no objection with regard to the jurisdiction of the said Court at Ludhiana before leaving the proceedings to proceed ex-parte against him, the respondent had submitted to the jurisdiction of the said Court, therefore, learned trial court wrongly dismissed the petition of the appellant on the ground that the provisions of the Act would not extend in the case of the respondent.

21. The genesis of the above discussion is that we set aside the judgment dated 17.03.2015 passed by learned Additional District Judge, Ludhiana. The matter is remitted back to the said Court with the direction to proceed as per law. It shall be open to learned trial Court to issue fresh notice to the respondent and also give fresh opportunity to both the parties to adduce evidence.

22. The appeal stands disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(SNEH PRASHAR)
JUDGE

05.10.2016

gsv

Whether speaking/ reasoned?

Yes / No

Whether Reportable?

Yes / No