

\$~6

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

%

Date of Decision : August 24, 2016

+

MAT.APP.(F.C.) 64/2016

GUNJAN SALGIA NAHAR

..... Appellant

Represented by: Ms.Devyani Bhatt, Advocate for
Mr.Alok Bhachawat, Advocate

versus

AKASH NAHAR

..... Respondent

Represented by: Mr.Amit Gupta, Advocate with
Ms.Mansi Kukerja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.15553/2016 & CM No.30664/2016

1. The appellant has the benefit of stay in her favour passed on May 17, 2016. Vide CM No.30664/2016 its vacation is prayed for.
2. Since the appeal is being decided today itself both applications are disposed of as infructuous.

MAT.APP.(F.C.) No.64/2016

1. Vide impugned order dated July 07, 2016 appellant's application under Section 151 CPC in HMA No.1082/2015 has been dismissed by the learned Judge Family Court.
2. Prayer made by the appellant was to restrain the respondent from pursuing the petition for divorce filed by him before the superior Court at New Jersey, Chancery Division, Family Part, Camden County, USA.

3. The learned Judge has dismissed the application holding that on account of appellant's long stay in the United States she would be presumed to be conversant with the matrimonial laws in the United States extending their scope into Hindu Marriage Act; a phrase which we do not understand.
4. Since we are remanding the matter to the learned Family Court suffice it to state that as per the decision reported as (1991) 3 SCC 451 Y.Narasimha Rao & Ors. Vs. Y.Venkata Lakshmi & Anr. a judgment of a Foreign Court which is not founded on a law recognized in India concerning matrimonial issues is not recognized in India. This would simply translate to this : A petition for divorce filed in a foreign country if not seeking divorce on a ground recognized by the Hindu Marriage Act, 1955 would ex-facie be vexatious if the parties are Hindu.
5. All that the learned Judge Family Court had to see was the ground on which the husband was seeking divorce in the foreign shores.
6. It is not in dispute that marriage between parties was solemnized in India as per Hindu Rites and Ceremonies. Both parties are Hindu.
7. We have perused the petition seeking divorce filed by the respondent and prima-facie do not find the same to be premised on the grounds available for a divorce under the Hindu Marriage Act, 1955. This is our prima-facie opinion and we leave it to the learned Judge Family Court to look into this aspect of the matter properly. We simply note the law. The law is that if a party initiates proceedings on being domiciled in a foreign country for annulment of the marriage and the parties are Hindus, their matrimonial bond would be governed by the Hindu Marriage Act, 1955. The Court abroad cannot annul the marriage as per the matrimonial laws of that country. The annulment has to be as per the matrimonial laws of the country of nativity of the parties. A petition seeking annulment of marriage

or grounds other than the ones permissible under the Hindu Marriage Act, 1955 would be vexatious.

8. The appeal is allowed. Impugned order dated April 07, 2016 is set aside. Application filed by the appellant which has been dismissed by the learned Judge Family Court is restored. The application shall be decided after hearing both parties and noting the law on the subject. Till the application is decided the respondent is restrained from prosecuting the divorce petition filed by him in before the superior Court at New Jersey, Chancery Division, Family Part, Camden County, USA.

9. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 24, 2016

mamta