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

+ CS(OS) 340/2016

MINAKSHI SAHLOT Plaintiff

Through: Mr. K.Datta, Adv. with
Mr. Kapil Gupta, Adv. &
Ms. Prachi Johri, Adv.

versus

GOURAV CHOUDHARY Defendant

Through: Mr. Kunal Sachdeva, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **27.10.2016**

1. This suit for declaration and anti-suit injunction was instituted in June, 2016 in this court, dispute essentially having arisen out of a matrimonial discord between the parties.

2. The plaintiff was married to the defendant according to Hindu rites and ceremonies on 19.01.2016 at New Delhi, they being citizens of India holding Indian passports. It appears that the defendant in order to pursue higher studies left for USA on a student visa and the plaintiff joined his society there. On account of dispute between the parties wherein the plaintiff alleges certain acts of misdemeanour having been indulged in by the defendant, treating her with cruelty and abuse relating to dowry, the plaintiff appears to have returned to India. The defendant appears to have filed proceedings seeking divorce in the Supreme Court of the New York, Country of Onondaga, which the plaintiff statedly has been contesting questioning the jurisdiction.

3. By the suit at hand, the plaintiff prayed for declaration to the effect that the divorce case thus initiated in the court in USA and the judgments, orders, decree or directions, etc. passed therein to be null and void with

prayer for permanent injunction against the defendant so as to restrain him from proceedings in the said divorce case in USA.

4. The relief(s) in the nature of declarations were valued at Rs.2 crores 1 lacs and Rs.200/- each besides Rs.130/- being the value of the suit for permanent injunction. In spite of change of pecuniary jurisdiction, ordinarily, on the valuation put to the relief(s) claimed herein, the suit is liable to be retained here, rather being transferred to the District Courts. But, on the preceding date 29.09.2016 question arose as to whether the jurisdiction to entertain this suit vests in this court or in the family court, this question required to be examined in the light of the decision rendered, upon reference, by a division bench of this Court, to which I was a party, vide order dated 19.07.2016 in *CS (OS) No.411/2010* titled as *Amina Bharatram vs. Sumant Bharatram & Ors.* The said decision had been given on questions of law referred by a learned Single Judge of this court to the effect as to whether the High Court, while exercising the original civil jurisdiction, is deemed to be a District Court within the meaning of Section 2(4) of the Code of Civil Procedure, 1908 (CPC) in the context of Section 7(1)(a) of the Family Courts Act, 1984 and, further, as to whether the original civil jurisdiction of the High Court is excluded in the context of any suit or petition by virtue of provision contained in Sections 7 and 8 of the Family Courts Act, 1984.

5. Submissions on both sides have been heard and the record has been perused.

6. The learned counsel appearing for the plaintiff submits that the above question would be covered by a decision of a learned Single Judge of this court reported as *Suraj Seth vs. Ruchika Abbi, 2015 (147) DRJ 302* which, as per the submissions, was upheld by a division bench of this Court in *FAO (OS) No.511/2014* by an order dated 12.12.2014. Reliance is also placed by the plaintiff on the decision of a learned Single Judge of the High Court of

Gujarat at Ahmedabad reported as *Darshanaben vs. Shantibhai Ratilal Parmar & Ors.*, AIR 2008 (Guj) 167.

7. In the submissions of the plaintiff, a case for anti-suit injunction cannot be said to be covered by explanation (d) appended below Section 7 of the Family Courts Act, 1984 as is the view taken by the learned Single Judge in *Suraj Seth (supra)* which was approved by the Division Bench in *FAO(OS) 511/2014*. Per contra, learned counsel for the defendant submitted that this court may pass appropriate orders in light of the decision of the division bench in *Amina Bharatram (supra)*.

8. The relevant portions of the provision contained in Section 7(1) read with explanation (d) and of Section 8 of the Family Courts Act, 1984 reads as under:-

“7. Jurisdiction

(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,-*

X X X X

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

X X X X”

“8. Exclusion of jurisdiction and pending proceedings.-Where a Family Court has been established for any area,-

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) XXXX

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.”

9. A bare perusal of the above-quoted provision would show that the decision would require the expression “*injunction in circumstances arising out of a marital relationship*” to be construed.

10. The learned Single Judge while taking a different opinion in the facts and circumstances of the case in *Suraj Seth (supra)*, though noting above-quoted provision of Section 7 of the Family Courts Act, proceeded to examine the question observing that what is referred to in explanation (d) is

“an injunction with regard to a marital relationship”. In the considered view of this court, this not being the language of the statute, the view taken in *Suraj Seth (supra)* cannot be followed. What is explained in clause (d) is that the suit of which the jurisdiction would now fall before the Family Court must be one, may be for injunction, in circumstances arising out of a marital relationship.

11. In the given facts and circumstances, there can be no dispute about the fact that the case for divorce filed by the defendant and the case seeking anti-suit injunction filed before this court arises in circumstances emanating from a marital relationship. It is noted that the question was not pressed in this light before the division bench in *FAO (OS) 511/2014* which was taken out against the order of the learned Single Judge in *Suraj Seth (supra)*. All that was pressed or considered by the division bench was the sustainability of the action or its maintainability in light of the prayers made in that case and not the issue as to whether the case would fall within the jurisdiction of the civil court or of the Family Court. The decision of the High Court of Gujarat in *Darshanaben (supra)* is also distinguishable for the simple reason that, in contrast to the case at hand, it involved various reliefs including the prime ones for partition of the properties of joint Hindu family of the original defendants and for rendition of accounts.

12. In the view of this court, the case is squarely covered by clause (d) of explanation appended below Section 7 of the Family Courts Act, 1984. Family courts having been established in Delhi for different districts, and consequent to the legislative command in Section 8 of the Family Courts Act, 1984 the case will have to be transferred to such forum, in terms of the decision of the division bench in *Amina Bharatram (supra)*, the operative part whereof reads as under:-

“41. In light of the aforesaid reasons, we hold that the term “District Court” in Sections 7 and 8 of the Act includes the High Court to the extent that it exercises ordinary original civil jurisdiction. Accordingly, its ordinary original civil jurisdiction in respect of matters enumerated in Explanation to sub-section (1) of Section 7 of the Act stands excluded.

42. Therefore, the reference is answered as follows:

Point No.1: It is held that the Delhi High Court is a “district court” under Section 8 in respect of all matters enumerated in Explanation to Section 7 (1) of the Act;

Point No.2: The Delhi High Court does not possess jurisdiction to entertain, try and decide cases and causes referred to in Sections 7 and 8 of the Family Courts Act.”

13. In above view, the case at hand is transferred from this court to the file of the Family Court constituted for the District of South-West Delhi located at Dwarka Courts Complex, New Delhi.

14. The parties are directed to appear before the transferee forum for further proceedings in accordance with law on 23.11.2016.

15. The registry shall take effective steps to ensure that the file reaches the transferee forum well within time.

OCTOBER 27, 2016
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R.K.GAUBA, J.