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

Date of Decision: 30th March, 2016

+ MAT.APP.(F.C.) 129/2015
VIJAY SINGH

Through Dr.K.P.S.Dalal, Advocate with
Mr.Ranjit Singh, Advocate

..... Appellant

versus

CHANCHAL CHAUDHARY

Through None

..... Respondent

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J. (ORAL)

1. Notice in the petition which was issued vide order dated 16th October, 2015 was duly served upon the respondent, who entered appearance through counsel on 03rd December, 2015. The respondent has also filed reply in the matter, to which the appellant has filed rejoinder.
2. None appears for the respondent despite the matter having been passed over once.
3. A very narrow issue has been raised in the present appeal. We have gone through the record, which includes the reply of the respondent as well as the record of the lower court, which has been placed by the appellant before us and the impugned order. We have also considered the submissions made by learned counsel for the appellant.
4. A petition for dissolution of marriage dated 27th April, 2000

solemnized at Kavi Nagar, Ghaziabad, U.P was filed by the appellant on or around 28th March, 2009, which was registered as HMA No.463/2009 (re-numbered as HMA No.688/2011). This petition was filed under Section 13(1)(ia) and 13(1A)(ii) of the Hindu Marriage Act, 1955 (hereinafter referred to as ‘HMA Act, 1955’) (25 of 1955) as amended by Marriage Laws (Amendment) Act, 1976.

5. The respondent wife entered appearance in the matter and filed her written statement on 06th July, 2009 repudiating the allegations, to which the petition was premised. The respondent also filed an application seeking interim maintenance under Section 24 of HMA Act, 1955.

6. When the matter was listed before Principal Judge (South-East), Family Courts, Saket, New Delhi, on 15th July, 2015, the Family Court *suo moto* raised an issue as to whether the Court had territorial jurisdiction to adjudicate upon the subject matter of the petition. Arguments were heard on this issue and the judgment was reserved by the Court on that date. Finally vide order dated 04th September, 2015, the Court after observing the jurisdiction clause in Section 19 of the HMA Act, 1955 was of the view that the marriage had been solemnized at Kavi Nagar, Ghaziabad, U.P, which was outside its territorial jurisdiction and that the petitioner had nowhere stated that he and respondent had last resided together within the jurisdiction of this Court. Based thereon it was concluded that the Court had no territorial jurisdiction. Consequently the petition along with all the annexures were returned to the petitioner, to be filed before appropriate court having territorial jurisdiction over the matter.

7. Aggrieved by the order dated 04th September, 2015, the present appeal has been filed submitting that the appellant had unequivocally stated in the

petition that though the marriage was solemnized in the State of U.P, the parties had last resided together as husband and wife at New Delhi, which was within the jurisdiction of the Saket Family Courts. His submission is that this position was admitted by the respondent in her written statement and the findings of the learned Family Judge are completely baseless and misconceived.

8. Before adjudicating upon the matter, we may set down the provisions of Section 19 of Hindu Marriage Act, 1955, which prescribes the court to which a petition under the enactment is required to be presented and the same 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.]”

9. In order to decide the issue whether the Court had territorial jurisdiction, it would be expedient to extract the relevant portion of the

petition filed by the appellant. We extract as under Paras 1, 3 & 8, wherein the place of marriage and cohabitation of the parties is described:-

“1. That the marriage was solemnized between the petitioner and respondent according to Hindu Rites, customs and ceremonies on 27.04.2000 at Kavi Nagar, Ghaziabad, U.P.

XXX XXX XXX

3. That after the marriage both the parties had been residing at the resident of the petitioner i.e. B-134, Chittaranjan Park, New Delhi-110 019, peacefully. Both the parties enjoyed their family life till 26th November, 2005.

XXX XXX XXX

8. That ultimately respondent has left the matrimonial home with the baby on 26.11.2005 without informing the petitioner along with her dowry articles and valuable gold and silver articles. The respondent had left the matrimonial home without any reasonable reason and excuse and since then she is residing at her parental home at Ghaziabad. The respondent has always obeyed the direction of her mother and father. The mother and father of the respondent want to spoil the matrimonial life of the parties. They want to settle their daughter some other place”

10. In para No.18 of the divorce petition, the appellant has averred that the petitioner is residing in Delhi at the abovementioned address and that the Court had, therefore, jurisdiction to adjudicate and try the petition. However, this averment by itself cannot be determinative of consideration of the

jurisdiction of the Court inasmuch as the other averments in the petition were required to be scrutinized by the Court.

11. We find that the appellant has erroneously referred to his place of residence as a sole fact for conferring jurisdiction on the Saket Courts, whereas sub clause (iii) of Section 19 of HMA Act, 1955 clearly declares that the petition under the HMA Act, 1955 shall be presented to a District Court within the local limits of whose ordinary original civil jurisdiction the parties to the marriage last resided together.

12. In para No.3 of the divorce petition, the appellant has clearly stated that the parties were residing at B-134, Chittranjan Park, New Delhi-110019, where they enjoyed their married life till 26th November, 2005.

13. In reply to these averments, the respondent has filed the written statement, wherein the reply on merits in para Nos.1 to 3 she has stated as under:-

“1-3. That the contents of para 1 of the petition are matter of record, but it is pertinent to mention here that the petitioner and his family started torturing the respondent just after the marriage.”

14. The fact that the parties having lastly resided together as husband and wife at the Chittranjan Park, New Delhi residence is clearly admitted by the respondent, who has only disputed the reasons for their separation and the conduct of the appellant during their marriage. It cannot be disputed that Chittranjan Park is within the territorial jurisdiction of the District Courts at Saket. The finding of the Family Court in the impugned order that the appellant had nowhere stated that he and the respondent had last resided

together within the jurisdiction of this court is thus contrary to record. The jurisdiction to adjudicate upon the petition filed by the petitioner under Section 13 of the enactment is squarely covered under clause (iii) of Section 19 of HMA Act, 1955 and lay with the District Court at Saket. The order dated 04th September, 2015 passed by the Family Judge is, therefore, erroneous and not sustainable in law. The same is hereby set aside and quashed. HMA No.688/2011 is remanded for consideration afresh by the concerned Family Court, Saket from the stage at which the matter was placed on 15th July, 2015, when the arguments on territorial jurisdiction aspect were heard and reserved by the court. Inasmuch as the respondent is not present or represented today, the Family Court shall issue notice afresh to the respondent for appearance in the matter.

15. The matter shall be listed before the Family Judge for appropriate orders on 21st April, 2016.

16. This appeal is allowed in the above terms.

Copy of this order shall be sent by the Registry to the respondent as well her counsel by registered A.D. post.

**GITA MITTAL
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

MARCH 30, 2016/km