

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO.15 OF 2017
ALONG WITH
CIVIL APPLICATION NO.331 OF 2016**

Ms. Dimple Ravindra Parmar : Appellant/Applicant.

Versus

**Mr. Ravindra Harshad Parmar
Through Power of Attorney Holder
Mr. Harshad Harjivan Parmar**

: Respondent.

Mr. A D Sarwate for the Appellant/Applicant.

**Mr. Y H Muchhala, Senior Advocate a/w Mr. Sharique Nachan i/by
Judicare Law Associates for the Respondent.**

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**

DATE : 13th JUNE 2017

P.C.

1 The above Family Court Appellant takes exception to the Judgment and Order dated 03/10/2016 passed by the learned Judge of the Family Court No.5, Pune by which order the Application (Exhibit 15) filed by the Appellant came to be rejected and the Appellant wife was directed to file her written statement on next date.

2 Considering the challenge raised in the above Family Court Appeal, the same is taken up for hearing forthwith by the consent of the learned counsel for the parties.

3 The parties i.e. the wife who is the Appellant herein would be referred to as the Appellant, and the husband who is the Respondent herein would be referred to as the Respondent.

4 Shorn of unnecessary details, a few facts can be stated thus :-

 The marriage between the Appellant and Respondent took place on 21/11/2002. Out of the said wedlock a son by name Reyansh was born who is about 9 years of age at present. A Petition for divorce bearing P.A. No.1265 of 2012 with relief of custody of child came to be filed by the Appellant. In the said Petition an application came to be made in respect of the custody of child. In the said application an ex-parte order came to be passed directing the Respondent not to remove the child from the custody of the Appellant.

 On 18/02/2013 the Respondent filed a Petition in the Superior Court of New Jersey, Chancery Division – Family Part, Monmouth County which was numbered as FM-13-1369-13. The said Petition was filed by the Respondent for divorce and for custody of son Reyansh.

 The Respondent appeared in the Petition filed by the Appellant being P.A. No.1265 of 2012 and questioned the jurisdiction of the Family Court at Pune to entertain the said Petition on the ground that the parties were

citizens of the United State of America. The said objection to the jurisdiction of the Family Court, Pune was rejected and the Family Court held that it had the jurisdiction to try and entertain the said Petition. The said order is dated 14/06/2013. The Respondent thereafter challenged the said order by way of Family Court Appeal No.72 of 2014 ("FCA" for short) which was filed in this Court. The said FCA came to be dismissed by a Division Bench of this Court by the order dated 11/12/2014 thereby upholding the order of the Family Court holding that it had the jurisdiction. The said order of the Division Bench of this Court dated 11/12/2014 thereafter came to be challenged by the Respondent before the Apex Court by way of SLP Civil No.857/2015. The said SLP came to be dismissed by the Apex Court and thereby the jurisdiction of the Family Court to entertain the Petition filed by the Appellant for divorce and custody of the child came to be confirmed.

It seems that since the Respondent was proceeding with the proceedings filed by him in the Superior Court of New Jersey, Chancery Division, the Appellant filed a Petition being No.PB. No.16/2013 for an anti-suit injunction. In the said Petition the Appellant filed an application for interim relief. In the context of the controversy in the present FCA, paragraph 14 of the said application for interim injunction assumes some relevance and the same is therefore reproduced herein under :-

“14 On the other hand Section 41(a) of the Specific Relief Act, states that the Petitioner may be entitled to restrain the Respondent from prosecuting the suit in U.S.A. to prevent multiplicity of the proceedings.”

Hence it was the case of the Appellant that with reference to Section 41(a) of the Specific Relief Act (for short “the said Act”), the Appellant who was the Petitioner was entitled to the relief to restrain the Respondent from prosecuting the suit in U.S.A. to prevent multiplicity of the proceedings.

The application for injunction came to be allowed by the Family Court by the order dated 27/12/2013 and resultantly the anti-suit injunction came to be granted thereby restraining the Respondent from prosecuting the proceedings filed in the Superior Court of New Jersey, Chancery Division. It is required to be noted that the said injunction was granted after hearing the parties. The Respondent, it seems, proceeded with the proceedings that he had filed before the Superior Court of New Jersey, Chancery Division for divorce and for the custody of child Reyansh. The said proceedings ultimately culminated in the order dated 14/01/2014 passed by the learned Judge of the Superior Court of New Jersey, Chancery Division whereby the divorce was granted to the Respondent as also it was directed that the custody of child Reyansh to be handed over to the Respondent.

Against the order dated 27/12/2013 granting anti-suit injunction,

the Respondent had filed Writ Petition No.1961 of 2014. The Appellant in view of the decree passed by the Superior Court of New Jersey, Chancery Division filed a Petition bearing No. PB 11/2014 for a declaration that the judgment passed by the Superior Court of New Jersey, Chancery Division is non-est, not binding and not as per Section 13 of the Code of Civil Procedure.

In view of the decree passed by the Superior Court of New Jersey, Chancery Division, the Petition filed for anti-suit injunction by the Appellant in the Family Court, Pune had become infructuous and therefore the Appellant withdrew the said Petition on 18/06/2014. In view of the withdrawal of the said Petition bearing No. PB 16/2013 by the Appellant, the Respondent withdrew Writ Petition No.1961 of 2014 as the same had also turned infructuous.

5 The Respondent has now filed the instant Petition No. PB 15/2015 which is in the nature of a suit filed under Section 13 of the Code of Civil Procedure for enforcement of the judgment and decree passed by the Superior Court of New Jersey, Chancery Division. The same has been filed on 17/07/2015. Suffice it would be to state that in the said Petition No.15/2015 an application (Exhibit-15) for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure has been filed by the Appellant. The said application is founded on the fact that the suit was not maintainable as the

decree has been passed by the Superior Court of New Jersey, Chancery Division when an injunction was in operation against the Respondent.

6 The said application under Order VII Rule 11 of the Code of Civil Procedure was considered by the Family Court and as indicated above by the impugned order dated 03/10/2016 has rejected the same. The rejection is on the ground that the Family Court being an inferior Court to the Court at New Jersey, Chancery Division, which according to the learned Judge of the Family Court, was the superior Court, could not have granted injunction having regard to Section 41(b) of the said Act. The learned Judge of the Family Court has also referred to the judgment reported in *AIR 1983 SC 1272* in the matter of *Cotton Corporation of India Limited v/s. United Industrial Bank Limited and others*, on which reliance was placed on behalf of the Respondent. The said judgment of the Apex Court can be said to be an exposition of the Apex Court in so far as anti-suit injunction referable to Section 41(b) of the said Act is concerned. The learned Judge of the Family Court has adverted to the fact that the Apex Court in the said judgment has held that Section 41(b) of the Specific Relief Act would be attracted only in a situation wherein an injunction is sought to restrain the party from instituting or prosecuting any proceeding in a Court inferior/subordinate to that Court from whom injunction is sought. The learned Judge of the Family Court observed that ultimately the Family Court is a subordinate Court to the Superior Court of New Jersey, Chancery

Division, and hence as per the ratio laid down by the Apex Court, the Family Court has no jurisdiction to grant injunction against the Petitioner i.e. the Respondent herein who had filed the Petitioner in the Superior Court of New Jersey, Chancery Division. Hence the application has been rejected principally on the ground that the learned Judge of the Family Court has found that the Superior Court of New Jersey, Chancery Division is a Court superior to the Family Court at Pune. The learned Judge of the Family Court has thereafter observed that it is only after the parties lead evidence that the issue as to whether the judgment and decree obtained by the Respondent in U.S.A. i.e. from the Superior Court of New Jersey, Chancery Division is an ex-parte decree and is not conclusive can be decided. As indicated above it is the said judgment and order dated 03/10/2016 which is taken exception to by way of the above Family Court Appeal.

7 The learned counsel appearing for the Appellant Shri Sarwate would contend that on what basis the learned Judge of Family Court has arrived at a conclusion that the Superior Court of New Jersey, Chancery Division is a superior Court to the Family Court at Pune is not spelt out in the impugned order. The learned counsel for the Appellant would draw this Court's attention to an application made on behalf of the Respondent in the Family Court in which application it was stated that it was never the case of the Respondent that the Family Court is inferior to the Superior Court of New

Jersey, Chancery Division and that the submission of the Respondent was that such an injunction could not be granted having regard to Section 41(b) of the said Act. Hence it was the submission that the said finding recorded by the learned Judge of the Family Court that the Superior Court of New Jersey, Chancery Division is a superior Court to the Family Court at Pune is without the parties making any such submission before it.

8 Per contra, the learned Senior Counsel appearing of the Respondent Shri Muchhala would submit that though the said submission as regards the Superior Court of New Jersey being superior to the Family Court at Pune was not the submission urged on behalf of the Respondent, however, the learned Senior Counsel would submit that the ultimate conclusion of the learned Judge of the Family Court of rejecting the application was correct. The learned Senior Counsel would contend that in so far as the application under Order VII Rule 11 of the Code of Civil Procedure is concerned, the averments made in the plaint are only to be looked into and not the defence taken by the Defendant. If that be so, the Petition filed by the Respondent in a nature of suit under Section 13 of the Code of Civil Procedure is maintainable for the enforcement of the decree passed by the Superior Court of New Jersey, Chancery Division. The learned Senior Counsel would again seek to place reliance on the judgment of the Apex Court in Cotton Corporation of India Limited's case (supra), and would contend that the injunction could not have

been granted thereby preventing the Respondent from prosecuting the proceedings in the Superior Court of New Jersey, Chancery Division.

9 Having heard the learned counsel for the parties, we have considered the rival contentions. In the context of the issue which arose before the learned Judge of the Family Court viz. Whether the suit as filed was barred by law whilst considering the application filed by the Appellant under Order VII Rule 11 of the Code of Civil Procedure was required to be considered. As indicated above, the learned Judge of the Family Court has rejected the said application principally on the ground that the Superior Court of New Jersey, Chancery Division was a superior Court to the Family Court at Pune and therefore the anti-suit injunction which was granted on 27/12/2013 could not have been granted. How the learned Judge of the Family Court has come to the conclusion that the Court of New Jersey, Chancery Division is a superior Court to the Family Court at Pune is not spelt out in the impugned order. In so far as the judgment of the Apex Court in ***Cotton Corporation of India Ltd's*** case (supra) is concerned, the Family Court relied upon the said judgment by holding that since it has already come to a conclusion that the Court of New Jersey, Chancery Division is a superior Court in terms of the said judgment in ***Cotton Corporation of India Ltd's*** case (supra), such an injunction could not be granted. However, the fact remains that the basis for the Family Court arriving at the said conclusion of the Superior Court of New Jersey, Chancery

Division being superior to the Family Court at Pune has not been spelt out. This is one of the aspects of the matter.

10 In so far as the anti-suit injunction is concerned and the application for interim injunction filed therein as indicated herein above in the application for injunction paragraph 15 it has been stated that the Petitioner i.e. the Appellant herein is entitled to an injunction having regard to Section 41(a) of the said Act so as to avoid multiplicity of proceedings. Hence the application for interim injunction in the said suit for anti-injunction filed by the Appellant was referable to Section 41(a) of the said Act. However, as indicated above, the learned Judge of the Family Court whilst adjudicating the application has referred to Section 41(b) of the said Act. It was also the contention of the learned Senior Counsel for the Respondent that the said application was referable to Section 41(b) of the said Act notwithstanding the fact that it was the case of the Appellant in the application filed before the Family Court that the application for interim injunction was referable to Section 41(a) of the said Act. It is required to be noted that though a Writ Petition came to be filed by the Respondent herein challenging the said anti-suit injunction granted on 27/12/2013 by the Family Court the modification of the said order was not sought so as to make clear that the said application filed by the Appellant was referable to Section 41(b) of the said Act. As indicated above the said Writ Petition was withdrawn by the Respondent. The question

that therefore begs an answer is whether it is now open to the Respondent to contend that the application for anti suit injunction filed by the Appellant was referable to Section 41(b) of the said Act. Be that as it may be, in so far as adjudication of the instant application filed by the Appellant under Order VII Rule 11 of the Code of Civil Procedure is concerned, we are not satisfied with the manner in which the said application has been adjudicated upon by the learned Judge of the Family Court. Assuming that the said application was to be taken as one filed under Section 41(b) of the said Act, it was to be adjudicated on the said basis and if the learned Judge of the Family Court was to arrive at a conclusion that the Court of New Jersey, Chancery Division was superior to the Family Court at Pune, the learned Judge was obligated to mention the basis for arriving at such a finding. That is however lacking in the impugned order passed by the learned Judge of the Family Court. If the application is referable to Section 41(a) of the said Act then the learned Judge of the Family Court was required to proceed on the said basis. However, before considering whether the application was referable to Section 41(a) or 41(b), the learned Judge of the Family Court is required to adjudicate whether it is now open to the Respondent to contend that the application was one referable to Section 41(b) of the said Act when the order dated 27/12/2013 granting the anti-suit injunction has remained in the field unenforced with.

11 In our view, therefore, considering that the dispute is between the

husband and wife is as regards divorce and custody of child Reyansh, it would be just and proper to set aside the impugned order and relegate the parties back to the Family Court at Pune for a denovo consideration of the application (Exhibit 15). Hence the impugned order dated 03/10/2016 is set aside and the application (Exhibit 15) is relegated back to the Family Court at Pune for a de-novo consideration by issuing the following directions :-

- 1] On the impugned order dated 03/10/2016 being set aside, the parties to appear before the Family Court at Pune on 12/07/2017.
- 2] The Respondent would be at liberty to file a further reply within the time that would be stipulated by the learned Judge of the Family Court at Pune.
- 3] The Family Court at Pune to hear and decide the application (Exhibit 15) latest by 31/07/2017. It is expected of the parties that they would cooperate in the disposal of the application (Exhibit 15) within the aforesaid time frame.
- 4] The above Family Court Appeal is accordingly allowed to the aforesaid extent and is disposed of.

- 5] In view of the disposal of the above Family Court Appeal, the Civil Application No.331 of 2016 does not survive and the same to accordingly stand disposed of as such.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]