

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

(109)

CWP-5815-2017

Decided on: March 21, 2017.

Subhash Kumar

.... Petitioner

Versus

Sweety Bindal

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Sukhvinder Singh Nara, Advocate, for the petitioner.

M.M.S. BEDI, J (ORAL)

The petitioner, through instant petition under Articles 226 and 227 of the Constitution of India, has sought issuance of an appropriate writ for quashing of divorce order dated 15.11.2016 Annexure P-5 passed by Federal Circuit Court of Australia at Melbourne, terminating the marriage between respondent and the petitioner on the ground that the order is without jurisdiction; having been obtained by fraud and being violative of rules of natural justice and the provisions of the Hindu Marriage Act, 1955.

It has been urged that the said order deserves to be declared a nullity and inoperative on the rights of the petitioner as per the rules of private international law.

Learned counsel for the petitioner has submitted that the respondent is not permanent resident of Australia and as such she was not entitled to file a petition for dissolution of marriage in Australia.

I have heard learned counsel for the petitioner and I am of the opinion that the judgment and decree which is sought to be challenged before this Court falls within the definition of foreign judgment passed by

foreign Court under definition 2 (6) of the Code of Civil Procedure. The circumstances in which the foreign judgment is not conclusive, have been specifically mentioned in Section 13 of the Code of Civil Procedure which reads as follows:

“When foreign judgment not conclusive.- A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except, —

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in India”.

The grievance of the petitioner is that judgment of the foreign Court Annexure P-5, is not conclusive and that the petitioner still holds the status of husband of respondent. As per Section 9 of the Code of Civil Procedure, the Civil Court shall have jurisdiction to try all the suit of civil nature except suits of which their cognizance is either expressly or impliedly barred. The provisions of Section 34 of the Specific Relief Act enable the petitioner to seek declaration regarding the inconclusive decree of foreign Court or regarding his status being the husband of respondent besides seeking further relief. Any declaration granted by the Civil Court

would be binding on the rights of the parties as per Section 35 of the Specific Relief Act.

Since the adjudication of the rights of the petitioner and the validity of the foreign judgment Annexure P-5 would involve disputed question of facts as such the present writ petition is held to be not maintainable for enforcement of the legal rights of the petitioner against the private respondent.

The petitioner is relegated to avail the alternative remedy by approaching the competent Court for declaration as mentioned hereinabove. He may also enforce his legal rights if so advised under the provisions of the Hindu Marriage Act. In case the question of validity of decree arises in the said proceedings, it will be open to the Court of competent jurisdiction to adjudicate upon the validity of the foreign judgment in the light of provisions of Section 13 of the Code of Civil Procedure.

Disposed of with above observations.

Disposal of the writ petition will not in any manner prejudice the rights of the parties.

Anything mentioned in this judgment will not effect the adjudication of the controversy between the parties on merits.

(M.M.S. BEDI)
JUDGE

March 21, 2017
harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No