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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 70/2017**

MRS. J K

..... Plaintiff

Through: Ms. Geeta Luthra, Sr. Advocate along
 with Mr. Jayant Bhatt, Mr. Prateek
 Yadav and Ms. Jyoti, Advocates.

versus

MR. N S

..... Defendant

Through: None.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **22.02.2017**

I.A. 2069/2017 (exemption)

Allowed subject to just exception.

CS(OS) 70/2017 & I.A. 2068/2017 (O 39 R 1 & 2)

On furnishing process fee within a week, issue summons in the suit and notice of the application to the defendants by all modes, including registered post and approved courier, returnable 29.03.2017 before Joint Registrar where the matter be listed for completion of service, pleadings and admission/denial.

The process be also served through e-mail as per High Court rules for the date fixed.

Written statement/Reply by defendants be filed within 30 days from the date of service. Replication/Rejoinder thereto, if any, be filed within four week thereafter.

Learned counsel for the plaintiff has urged that this Court has

the jurisdiction to issue ex-parte anti-suit injunctions and has placed reliance on the judgments in Minakshi Sahlot vs. Gaurav Choudhary in FAO(OS) 329/2016, Suraj Seth vs. Ruchika Abbi in CS (OS) 2902/2014; 2015 (147) DRJ 302, Harmeeta Singh vs. Rajat Taneja, 102 (2003) DLT 822, Sheenam Raheja vs. Amit Wadhwa, CS (OS) 990/2010, Sonal Suthra vs. Rajan Luthra, CS (OS) 1556/2013, Ravinder Singh Mahindra vs. Param Singh & Ors, CS (OS) 1237/2009. It is submitted that the plaintiff and the defendant got their marriage registered in USA in 2006 and the marriage was consummated on 23.12.2007 and the marriage registration in the USA was done with the sole purpose of obtaining travel documents. Both the parties are natural citizens of India by birth. The defendant is a US citizen and the plaintiff also subsequently became a citizen of that country. She returned to India in January 2016 to participate in her brother's marriage scheduled for February 2016. In January 2016, after reaching in India, she came to know that she was pregnant. She was having a joint dental practice with the defendant. Due to the trauma, she had suffered, by the misdemeanor of the defendant; she decided to continue staying in India for the delivery and gave birth to a son in September 2016. A daughter was also born out of this wedlock when they were staying together in U.S. It is submitted that since the children are residing with her in Delhi, as per Section 9 of Guardian and Wards Act, they are ordinary resident of this place and therefore they are residing within the territorial jurisdiction of this Court. It is further submitted that since while deciding the custody issue of minor children, the welfare of the child is the paramount

consideration and since the plaintiff is domiciled in India with her children, she filed a suit for the custody of children in Delhi, however, her petition was dismissed on 26.12.2016 under Order 7 Rule 11 of CPC. The said order was challenged before this Court. Vide order dated 12.01.2017, this Court awarded the interim custody of the minor children to the plaintiff while the defendant was awarded the visitation rights at the residence of the plaintiff in Delhi. It is submitted that the defendant is pursuing his remedies under the laws of USA for the custody of children in the US Courts and the US Court has passed certain orders which are detrimental to the welfare of the children. It is submitted that the defendant is still pursuing its remedies at Superior Court at Stamford, Connecticut in USA. It is submitted that those proceedings be declared null and void and not binding on the plaintiff. It is prayed that till such time, the defendant be restrained by way of *ex-parte ad interim injunction* from pursuing the custody proceedings either himself or through any other person before the Superior Court at Stamford, Connecticut in USA titled as **N S vs. J K** in Docket No. FST-FA16- 4029923-5. Reliance is placed on **Dhanwati Joshi vs. Madhav Uncle , (1998) 1 SCC 112, Sarita Sharma vs. Sushil Sharma, (2000) 3 SCC 14, Ruchi Majoo vs. Sanjeev Majoo, (2011) 6 SCC 479, Surya Vadanam vs. State of Tamil Nadu, (2015) 5 SCC 479, Modi Entertainment Network & Anr. vs. WSG Cricket PTE Ltd, (2003) 4 SCC 341 and Sondur Gopal vs. Sondur Rajini, (2013) 7SCC 426.**

Heard at length.

The present application has been filed under Order 39 Rule 1 &

2 CPC read with Section 151 of the CPC. Order 39 Rule 3 is noted as under:-

3. Before granting injunction, court to direct notice to opposite party.- *The court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an Injunction, direct notice of the application for the same to be given to the opposite party:*

Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant—

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the Order granting the injunction has been made, a copy of the application for injunction together with—

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the plaint; and

(iii) copies of documents on which the applicant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or Sent.”

This rule casts a duty upon the Court to grant an ex-parte ad interim injunction only in the cases and for the reasons to be recorded in writing where the object of granting the injunction would be defeated by the delay. In the absence of any such urgency, the rule requires that the Court shall before granting an injunction, issue notice of the application to the opposite party. The only criteria to ascertain

the necessity of issuing ex-parte injunction is that *the object of granting injunction would be defeated by the delay*. In this case, the plaintiff has come before this Court for declaration that the legal proceedings pursued by the defendant relating to the custody of his two minor children and the orders passed by the Superior Court at Stamford, Connecticut or any other foreign Court in the case title as *N S vs. J S* be declared as null and void. Admittedly, she had filed a custody suit for his two minor children and the Division Bench of this Court had passed following orders in her appeal titled as MAT App. (F.C) 3/2017 & CM Nos. 896-899/2017 on 10.01.2017 and 12.01.2017. The orders are reproduced as under:-

Order dated 10.01.2017

“This matter has been received on transfer from another Bench of this Court.

Renotify on 12.01.2017.

In the meanwhile, the learned counsel for the respondent shall instruct the respondent in USA as also his attorneys, to ensure that no precipitative action is taken in the hearing before the US Court tomorrow.

Dasti under the signature of the Court Master.”

And

Order dated 12.01.2017

CM No.898/2017

Exemption is allowed subject to all just exceptions.

MAT.APP.(F.C.) 3/2017 &CM Nos.896/2017. 897/2017 & 899/2017

1. Notice. Counsel as above accepts notice for the respondent.

2. *Having perused the impugned order we prima facie find that the principle of law laid down by the Supreme Court in the decision reported as AIR 2011 SC 1952 Ruchi Majoo v. Sanjeev Majoo have not been kept in mind by the learned Judge, Family Court. We find that various authorities cited by the appellant as well as the respondent, though noted have not been considered by the learned Judge, Family Court. We note that the two children whose custody is a matter, in issue are aged four years and three months.*
3. *Keeping in view the aforesaid parameters we direct that the custody of the two minor children, one of whom is an infant, would remain with the appellant. Should the respondent desire to meet the children the appellant would facilitate the meeting at her residence.*
4. *TCR be requisitioned.*
5. *Reply to CM No.899/2017 may be filed within four weeks.*
6. *The application would be decided along with the main appeal.*
7. *Renotify for April 18, 2017.*
8. *Dasti."*

In view of these orders of the Division Bench, I am of the opinion that there is no urgency of issuance of *ex-parte injunction* as the plaintiff has failed to show that the object of granting injunction would be defeated by issuance of notice of the suit as well as of application to the defendant. The request for issuing *ex-parte ad interim* injunction is rejected.

Order *Dasti*.

DEEPA SHARMA, J

FEBRUARY 22, 2017

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