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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 493/2017 & CM No.16797/2017 (for stay)

DR. KAILASH PARASHAR & ORS

..... Petitioners

Through: Mr. Nishant Anand, Adv.

Versus

DR. KAVERI PARASHAR & ORS

..... Respondents

Through: Mr. Gaurav Gupta and Mr. Kamaljeet Singh, Advs. for R-1&2.
Mr. B.R. Sharma, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order (dated 18th April, 2017 in CS No.375/2016 of the Court of Additional District Judge (ADJ)-II (Central), Tis Hazari Courts, Delhi) on an application under Order XIV Rule 2(2)(a)(b) of the Code of Civil Procedure, 1908 (CPC).

2. The petition was entertained and notice thereof ordered to be issued.

3. The respondents No.1&2/plaintiffs filed an application seeking clarification that there was no stay of proceedings in the suit from which this petition arises. The said application came up before this Court on 9th May, 2017 when the same was disposed of observing that the order issuing notice was clear and did not require any clarification.

4. Thereafter the petitioners/defendants moved an application for stay of proceedings in the suit before the Trial Court and which application was dismissed on 4th July, 2017.
5. The counsel for the petitioners/defendants has been heard.
6. Though the challenge is to an order on an application seeking framing of a preliminary issue but the petitioners/defendants have not even bothered to file before this Court the pleadings in the suit. This Court cannot be expected to appreciate the impugned order without having the pleadings before it, on the basis whereof only, issues have to be framed.
7. The counsel for the petitioners/defendants is not even having a copy of the pleadings with him.
8. The counsel for the respondent No.3/defendant has handed over his file and from a perusal of the copy of the plaint wherein, it transpires (i) that the respondent No.1/plaintiff is the wife of the respondent No.3/defendant and the respondent No.2/plaintiff is the son of the respondent No.3/defendant; (ii) that the petitioners/defendants are the parents of the respondent No.3/defendant; (iii) that the respondent No.3/defendant is in United States of America; (iv) that the suit from which this petition arises seeks an injunction restraining the petitioners/defendants and the respondent No.3/defendant from pursuing the remedy of divorce and child custody under the law of State of Michigan, USA and for declaration that the said action initiated is null and void. Injunction is also claimed restraining the petitioners/defendants and the respondent No.3/defendant from taking away the respondent No.2/plaintiff forcibly without an order from the Indian Courts.

9. Though substantial arguments were heard and I had also started dictating the order but while going through the paper book, it has been discovered that the application under Order XIV Rule 2(2)(a)(b) of CPC, against the order of dismissal whereof this petition has been filed, was preferred by the respondent No.3/defendant and not by the petitioners/defendants. I have thus enquired from the counsel for the petitioners/defendants that when the petitioners/defendants had not even preferred the application, how can they have a grievance against the order of dismissal thereof.

10. Not only are the petitioners/defendants and the respondent No.3/defendant represented by different counsels before this Court but it transpires that they have filed separate written statements and before the Trial Court also are represented by different advocates.

11. In this view of the matter, the grievance if any against the dismissal of the application under Order XIV Rule 2(2)(a)(b) of CPC can be of the respondent No.3/defendant only and not of the petitioners/defendants. However, the respondent No.3/defendant has not challenged the order.

12. The counsel for the petitioners/defendants states that the petitioners/defendants are also prejudiced from the impugned order.

13. However, the pleas on which preliminary issue was sought to be framed has not been taken by the petitioners/defendants in their written statement. The petitioners/defendants cannot thus have any cause of action for impugning the order refusing to frame the preliminary issue.

14. This petition is thoroughly misconceived and is dismissed with costs of Rs.25,000/- payable by the petitioners/defendants to the respondent No.1/plaintiff by demand draft in favour of the respondent No.1/plaintiff, on the next date of hearing before the Trial Court.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

JULY 27, 2017

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