

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

**FAMILY COURT APPEAL STAMP NO.23089 OF 2017
ALONG WITH
CIVIL APPLICATION NO.242 OF 2017**

Ms. Dimple Ravindra Parmar : Appellant.
Versus
Ravindra Harshad Parmar
Through Power of Attorney Holder
Harshad Harjivan Parmar : Respondent.

Mr. A D Sarwate for the Appellant.
Mr. Y P Narvankar for the Respondent.

**CORAM :R. M. SAVANT, &
SANDEEP K. SHINDE, JJ**
DATE : 18th JANUARY, 2018

P.C.

1 The above Family Court Appeal has been filed challenging the order dated 24/07/2017 passed by the Judge of the Family Court, Pune, by which order the Application (Exhibit 15) filed by the Appellant under Order VII Rule 11 of the CPC came to be rejected.

2 The Appellant herein is the Respondent in the proceedings being PB No.15/2015 filed by the husband i.e. Ravindra Parmar in the Family Court, Pune. The said proceedings have been filed for a declaration under Section 13 of the Code of Civil Procedure ("CPC" for short). In the said proceedings i.e. in PB No.15/2015 the Appellant/wife has filed the instant Application (Exhibit 15) for rejection of plaint under Order VII Rule 11 of the CPC. The said

Application is founded on the fact that the factum of the decree being passed by the Foreign Court i.e. the Superior Court of New Jersey, Chancery Division, Family Part, Manmouth Country and Docket No.FM 13-1369-13 during currency of the injunction obtained by the Appellant/wife against the Respondent/husband for proceeding with the said proceedings has not been disclosed in the said PB No.15/2015. The provisions of Order VII Rule 11 of the CPC have been invoked on the ground that the suit being barred by law in view of the fact that the said decree has been obtained during currency of the injunction against the Respondent/husband for proceeding with the said divorce proceedings and that the said proceedings being PB No.15/2015 are also founded on a incomplete cause of action on account of non-disclosure of the anti-suit injunction obtained by the Appellant/wife.

3 The instant Family Appeal is the second round of litigation in this court. In the first round the order passed by the learned Judge of the Family Court dated 03/10/2016 was set aside by this Court on the grounds mentioned in the said order dated 13/06/2017 passed by this Court and the matter was relegated back to the Family Court for a de-novo consideration of the Application (Exhibit 15) in terms of the directions as contained in the said order. It is on remand that the instant impugned order dated 24/07/2017 has been passed by the Family Court.

4 In the light of the grounds on which the Application under Order VII Rule 11 of the CPC was founded, the Trial Court i.e. the Family Court framed the issue as to whether the Respondent has made out a case to reject the Plaint under Order VII Rule 11 of CPC. The learned Judge of the Family Court after given an opportunity to the parties has passed the impugned order dated 24/07/2017 by which order, as indicated herein above, the Application filed under Order VII Rule 11 of the CPC has been rejected.

5 The learned Judge of the Family Court has adverted to the judgments of the Apex Court in paragraph 12 of the impugned order as regards the parameters for the inquiry whilst deciding the Application under Order VII Rule 11 of the CPC. The learned Judge of the Family Court by referring to the said judgments of the Apex Court has concluded that in so far as Order VII Rule 11 of the CPC is concerned, the averments in the plaint are only required to be seen, having regard to the same that the submission which was urged on behalf of the Appellant/wife i.e. the Respondent in the said proceedings that the husband has obtained the order from the USA Court by committing a breach of injunction order, could not be considered at the stage of deciding the Application under Order VII Rule 11 of the CPC. The learned Judge of the Family Court was of the view that the judgments relied upon on behalf of the Appellant/wife i.e. the Respondent in the said proceedings and which have been adverted to in paragraph 15 of the impugned order would not aid the

Appellant/wife in her endeavour to get the suit dismissed by taking recourse to Order VII Rule 11 of the CPC.

6 At this stage, it is required to be noted that the Appellant/wife had withdrawn the suit which she had filed for anti-suit injunction after the Foreign Court had passed a decree for divorce and thereafter has filed a fresh proceeding assailing the said decree and seeking a declaration that the said decree is nonest and void. Admittedly, the said proceeding being PB No.11 of 2014 is pending. As indicated herein above, the proceeding filed by the Respondent – husband being PB No.15/2015 is also pending. A learned Single Judge of this Court had an occasion to pass an order in respect of the said two proceedings in Writ Petition No.4366 of 2017. By order dated 06/11/2017 the learned Single Judge has directed that the both the proceedings to be tried and heard together. Hence as on date the proceeding filed by the Appellant wife for declaration that the decree of divorce obtained by the Respondent husband is nonest and void, is pending.

7 The learned counsel appearing on behalf of the Appellant/wife Shri A D Sarwate would seek to reiterate the submissions which were urged before the Trial Court viz. that there is a suppression of fact, thereby there is incomplete cause of action and that the proceedings filed by the Respondent/husband being PB No.15 of 2015 is barred by law in view of the

fact that the decree has been obtained during the currency of the anti-suit injunction. The learned counsel sought to place reliance on the judgment of the Apex Court in the matter of **Popat and Kotecha Property v/s. State Bank of India Staff Association** reported in **LEX (SC) 8 88** . In the said case the rejection of the plaint was sought on the ground that the suit was barred by limitation. The Apex Court in the course of considering the said issue observed that in terms of the rule of pleadings the material facts have to be stated. The Apex Court further observed that the omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. Reliance is also placed on the judgment of the Apex Court in the matter of Jehal Tanti and ors. v/s. Nageshwar Singh (D) thr. LRs. Reported in AIR 2013 SC 2235 in which judgment it has been held that the sale deed executed during its subsistence and in contravention of injunction is unlawful. In our view, in the light of the facts which have been stated in the earlier part of this Order, the said judgments would not further the case of the Appellant/wife for rejection of the plaint. This is not a case where on a demurrer i.e. having regard to the averments in the plaint, the suit can be said to be barred by any law, especially having regard to the fact that the proceeding filed by the Appellant wife being PB No.11 of 2014 is pending. As rightly observed by the learned Judge of the Family Court, the plaint could not be rejected at the stage of Order VII Rule 11 of the CPC. The cause of action for the husband to file the proceeding being PB. No.15/2015 is the decree in his favour of the foreign

Court, in respect of which he has sought a declaration under Section 13 of the CPC in the said proceeding. In our view therefore, the said proceeding cannot be said to have been filed on an incomplete cause of action.

8 In that view of the matter, we do not deem it appropriate to interfere with the impugned order in our appellate jurisdiction. The above Family Court Appeal is accordingly dismissed. In view of the dismissal of the above Family Court Appeal, Civil Application No.242 of 2017 filed by the Appellant/wife for stay of the proceedings being PB No.15/2015 does not survive and the same to accordingly stand disposed of as such.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]