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

**Civil Revision No.1148 of 2018 (O&M)
Date of Decision: 05.09.2018**

Amritpal Kaur

.....Petitioner

Vs

Rajinder Singh Gill and Anr.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Chouhan Satvinder Singh Sisodia, Advocate
for the petitioner.

Mr. Dinesh Nagar, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 30.10.2017 passed by the District Judge-cum-Family Court, District Shaheed Bhagat Singh Nagar, whereby the suit under Section 18 of Hindu Adoption and Maintenance Act (hereinafter to be referred to as 'the Act') for grant of maintenance to the plaintiff and for declaring the charge on the land/residential house was dismissed.

[2]. Perusal of the impugned order shows that the same was passed on the premise that under Section 18 of the Act, a Hindu wife can claim maintenance from her husband during

subsistence of marriage. The basic spirit of the Section is sustaining and preserving the matrimonial status. If marriage is subsisting, then wife is entitled to claim maintenance from her husband under Section 18 of the Act. In case of divorce, the relief can only be claimed under the provisions of Hindu Marriage Act, 1955 as permanent alimony. The factum of divorce by the foreign Court was noticed and it was held that in the event of status of the petitioner being a divorcee, her remedy to seek maintenance under Section 18 of the Act is not maintainable and she can have recourse to the provision under the Hindu Marriage Act, 1955.

[3]. In the present case, marriage was solemnized between the parties on 10.03.2012 according to Anand Karaj at Gurdwara Shaheedan Village Dansiwal, Tehsil Garshankar District Hoshiarpur. The marriage was registered with the Registrar of Marriages at Nawanshahr on 19.03.2012. Thereafter marriage was consummated and both husband and wife lived together and performed marital obligations towards each other in village Majara-Nau-Abad, Tehsil Banga, District Shaheed Bhagat Singh Nagar. No issue was born to the couple out of this marriage.

[4]. Thereafter, respondent returned to America on 25.03.2012 and the petitioner started living at her in-law's house

with her mother-in-law. On being harassed, she left the matrimonial house. There are allegations of harassment at the instance of parents-in-law of the petitioner. After some time, parents-in-law also returned to USA and came back in August 2012 and the petitioner again started residing with them. Petitioner was again given ill-treatment

[5]. Thereafter respondent filed divorce petition in Superior Court at California. Petitioner had to appoint her relative Baljit Kaur as her Attorney to pursue the matter in the foreign Court. Ultimately divorce was granted in favour of the respondent according to the US Laws.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. The sole point involved in the present case is whether decree granted by the US Court will nullify the effect of marriage under the Hindu Marriage Act for the purposes of grant of relief under Section 18 of the Act. In **Y. Narasimha Rao and others vs. Y. Venkata Lakshmi and another, (1991) 3 Supreme Court Cases 451**, the effect of foreign judgment of matrimonial dispute was adjudged by the Hon'ble Apex Court, wherein it was held that where a judgment of the foreign Court is founded on refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognized by

the courts in this country. The marriages which took place in this country can only be under either the customary or the statutory law in force in this country. Hence, the only law that can be applicable to the matrimonial disputes is the one under which the parties are married, and no other law. When, a foreign judgment is founded on jurisdiction or on a ground not recognized by such law, it is a judgment which is in defiance of the law. Hence, it is not conclusive of the matters adjudicated therein and, therefore, unenforceable in this country. Such a judgment would be in breach of the matrimonial law in force in this country. It was also held that mere filing of reply to the claim under foreign law and without submitting to the jurisdiction of that Court, or an appearance in the court either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision on the merits of the case. The general rules of the acquiescence to the jurisdiction of the Court may be valid in other cases and such concept has to be ignored in the matrimonial cases.

[8]. Similar view was taken in **Smt. Satya vs. Teja Singh, 1975 AIR (SC) 105** wherein it was held that the divorce decree granted by the foreign courts is not binding and conclusive in Indian Courts in civil and matrimonial proceedings. The validity of foreign judgment rendered in civil proceedings must be

determined in India on the terms of Section 13 CPC. Foreign decree of divorce obtained by the husband in absentum of wife without her submitting to its jurisdiction voluntarily will not be valid and binding on the Court in India.

[9]. Mere filing of reply to the claim under protest in the foreign Court cannot be construed to be voluntary and unconditionally submitting to the jurisdiction of the Court, therefore, the decree passed by the foreign Court cannot be recognized in India for the purposes of debarring the petitioner from claiming maintenance under Section 18 of the Act on the alleged status of being a divorcee.

[10]. In **Smt. Satya's** case (supra), the Hon'ble Apex Court has also held that the judgment passed by the foreign Court cannot debar the wife from claiming maintenance under Section 125 Cr.P.C.

[11]. Learned counsel for respondent No.2 argued that the judgment passed by the foreign Court, even if taken to be a nullity, the same has to be challenged in accordance with law within limitation and further in view of presence of a foreign judgment, a declaration has to be sought by the petitioner that the same is not binding upon her in India. I do not subscribe the aforesaid argument for the reason that the foreign judgment cannot be enforced in India in the matrimonial cases of such like

nature, wherein the petitioner never submitted herself voluntary to the jurisdiction of the foreign Court. Mere filing of reply to the claim made by husband does not amount to submitting herself to the jurisdiction of the foreign Court in view of ratio laid down in **Y. Narasimha Rao and others's** case (supra). The judgment passed by the foreign Court cannot create any such embargo or impediment in claiming right under Section 18 of the Act against the respondent.

[12]. In view of aforesaid, this revision petition is allowed. The impugned order dated 30.10.2017 passed by the District Judge-cum-Family Court, District Shaheed Bhagat Singh Nagar is set aside. Normal consequences to follow.

September 05, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No