

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4878 of 2018 (O&M)
Date of Decision: 15.05.2019

Sarabjit Kaur Johal and another

.....Petitioners

versus

Gurmit Singh Johal

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Parveen K. Kataria, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners challenge the order passed by the learned Additional Civil Judge (Senior Division), Moga, dated 15.09.2015, as also the order passed by the learned Additional District Judge, Moga, dated 26.02.2018, by which the application filed by them under Order 39 Rules 1 and 2, has been dismissed.

2. The petition had been filed by two petitioners, i.e. petitioner no.1 Sarabjit Kaur Johal and her daughter, Tajinder Kaur Johal (petitioner no.2).

However, as recorded in the order dated 07.03.2019, Mr. Kataria, learned counsel appearing for the petitioners, had submitted that the suit in which the impugned orders have been passed, had been dismissed in default by the trial court, with only petitioner no.2, i.e. Tajinder Kaur Johal, having filed an application before that court seeking restoration of the suit.

He had further stated on that date that the mother of petitioner no.2 no longer wanted to pursue the suit.

That being so, obviously this petition qua the first petitioner, Sarabjit Kaur Johal, had been rendered infructuous, though it is not specifically observed to that effect in the said order.

Consequently, it is formally stated now to the effect that the suit in which the order impugned in this petition has been passed, not being pursued by petitioner no.1, this petition has been rendered infructuous qua her and is disposed of as such (qua her).

3. As regards the remaining petitioner, i.e. Tajinder Kaur Johal, the impugned orders have been passed in a petition before the learned trial Court, filed under the provisions of the Hindu Adoption and Maintenance Act, 1956, with the petitioner seeking maintenance from the respondent, who is stated to be her father and the husband of her mother.

Vide the application under Order 39 Rules 1 and 2, the respondent was sought to be restrained from selling any property belonging to him, during the pendency of the petition.

In the reply filed by the respondent herein to that petition, it was stated that the petitioners had concealed fundamental facts, including that a petition bearing no. F-14358 had been instituted by the present petitioners' mother, Sarabjit Kaur, against the respondent herein, in a court in British Columbia, Canada, with eventually a divorce granted to the parties to that petition by the Supreme Court of British Columbia.

While dissolving the marriage, it was held by that Court that the respondent herein would pay C\$ 300/- to Sarabjit Kaur as maintenance for the present petitioner, i.e. his daughter.

The respondent had further contended that it had also been kept concealed that the present petitioners' mother also owned a house in Surrey,

Canada, worth C\$ 8,79,000.

Hence, it was contended by the respondent herein (before the learned courts below), that the present petitioner and her mother were affluent people and had simply filed the application and the petition to extort money from him.

4. Having considered the aforesaid pleadings in the application, the learned trial Court (in the present *lis*), observed that though the applicant-petitioners were claiming to be in financial distress to the extent that they were unable to even affix the court fee, that contention made by them in an application filed under Order 33 of the CPC (seeking to be declared as indigent persons), was rejected, on the ground that in fact eventually the mother of the present petitioner had to concede that she did own the aforementioned house in Surrey. (That application was dismissed also on the ground that no enquiry as to the financial status of the petitioner and her mother could be conducted, they being residents of Canada).

She had however qualified that acknowledgment by stating that she had taken a huge loan in the year 2006 to purchase the house, which still stood mortgaged. However, on that contention in fact, the learned trial Court observed that it was simply an attempt of the applicants to 'wriggle out of an embarrassing situation'.

It was further recorded by the trial Court that even in terms of a Special Power of Attorney executed by the present petitioner and her mother on 04.01.2012, it was admitted that they had landed property in village Charik, Tehsil and District, Moga, as also in Village Saner, Tehsil Zira, District Ferozepur, with deposits made with finance companies at Zira, and in banks in Moga as also in Charik.

5. After recording the aforesaid, the learned trial Court, in the impugned order, has further recorded that even the decree of divorce passed on 12.02.1999 by the Supreme Court of British Columbia, Canada, had never been challenged by the mother of the present petitioner and therefore in any case she could not claim to be the wife of the respondent (so as to claim any maintenance from him).

It was again noticed that in any case C\$300 had earlier been ordered to be paid to the present petitioner, i.e. the daughter of the respondent, by the courts in British Columbia.

Hence, the application of the petitioner and her mother was dismissed.

6. The appellate court, after referring to the respective stands of the parties, enumerated the following facts which it recorded that the plaintiff-applicants had withheld from the court:-

- “(1) Applicant Sarabjit Kaur Johal had already been married to Jaspal Singh Dhillon but she divorced him on 17.03.1989 to solemnize her second marriage with the defendant but she concealed this essential fact;
- (2) Although, she pleaded as if she is not aware of divorce granted by the Canadian Court but it is a fact that their marriage was dissolved by a decree of divorce on 14.12.1996 by a competent court of British Columbia.
- (3) As admitted by the plaintiff/applicant no.1 in her cross examination she had not challenged the said decree till date which calls her bluff when she alleges that the said decree is illegal and not binding upon her rights especially when she admits that her marriage with Jaspal Singh Dhillon was dissolved through the Canadian Court as per Canadian law.
- (4) Her father Sadhu Singh Brar died in the year 2014. Upon his death she as well as her brother inherited Sadhu Singh

Brar and although she tried to conceal her bank accounts by replying that she maintains only one bank account with HDFC bank wherein she has deposited Rs.7000/- but on being subjected to a tactful cross examination she had to admit that her father Sadhu Singh Brar was operating an account maintained with Satluj Gramin Bank Langiana Nawan in which Sadhu Singh appointed her as his nominee and that from the said account she withdrew Rs.7 lacs to transfer the said money in his HDFC bank account maintained at Baghapurana.

- (5) Admittedly, when she brought the present petition though she was in India but in order to pursue her petition she attorned Shri Prem Sharma son of Nand Lal as her attorney. The copy of said special power of attorney is contained on the record which makes an interesting reading as it enlists not only immovable properties owned by her but also the liquid cash deposited with various finance companies. In her said special power of attorney she has mentioned that she has interest in landed property situated at Village Charik, Tehsil and District Moga, at Village Saner, Tehsil Zira, District Ferozepur and also in deposits with Finance Companies at Zira, she has deposits with Banks at Moga as well as at Village Charik.

In contrast when she brought petition she pleaded that except for wearing apparels and few articles none of the applicants own any **immovable or immovable** property and none of the applicants possess any article having value more than Rs.10,000/- each.

6. Not only the above enlisted properties which are situated in India, she also owns a palatial house at Canada. In her cross examination she disclosed that she is residing at 14189 72 Avenue, Surry, BC Canada which is owned by her. Respondent has estimated its worth to be 87,9000/- dollars which comes to Rs.52,74,000/- in Indian Rupees.
7. In her cross examination she also disclosed that she also

owns a convertible Mercedes car though she feigned ignorance regarding its value.

8. Every Canadian citizen is required to furnish an information of income and expenditure every year to the Canadian Revenue Agency. On being asked plaintiff Sarabjit Kaur disclosed that for the past 20 years she was submitting the said information but on being asked though she mentioned that her monthly income is 2000 dollars but she did not produce copy of the said information which could have been a clincher.”

7. Having recorded the above, the appellate court also found no reason to differ with the order passed by the learned trial court and consequently the appeal (in respect of the application filed under Order 39 Rules 1 and 2 CPC), was dismissed with costs throughout.

8. Before this court, learned counsel for the petitioner submits that as regards the C\$ 300 ordered to be paid by the Canadian courts, that was only till the time that the petitioner attained the age of 25 years, and consequently, thereafter, the said maintenance has stopped.

Upon query as to whether any petition/application has been filed by the petitioner before the Canadian courts to continue such maintenance on any ground (especially any “medical ground”), he submits that no such application/petition has been filed.

He however further submits that as a matter of fact the properties referred to by the learned trial Court (in Village Charik, District Moga, and Village Saner, District Ferozepur), are actually those that belong to the respondent, with the trial Court having wrongly assumed that they belong to the petitioner and her mother. (However, he has not been able to refute that even the appellate court found that she had mentioned those properties in the instrument appointing one Prem Chand as her attorney).

Having considered the matter, even if that statement of learned counsel is to be accepted at face value (as regards the aforesaid property), it is not in dispute at all that the petitioner and her mother are actually resident of Canada with, in all probability, them being Canadian citizens (which is a question that Mr. Kataria is not answering directly, though that was also one of the contentions of the respondent, as noticed by the learned appellate court).

In fact, even the contention that the properties in Districts Moga and Ferozepur actually belong to the respondent, would have to be seen to be a statement loaded with doubt, because, as already noticed, even the appellate court, in clause 5 of the 'number of concealments' it states that the plaintiffs made, recorded a finding that in the instrument of power of attorney executed by the present petitioners' mother in favour of Prem Sharma, liquid assets with various financial companies, as also her landed property, in the aforesaid two Districts, were described.

Hence, in view of the entire situation, including all the concealments found by the appellate court, to have been made by the present petitioner and her mother, and further, they definitely not being permanently resident in India (except perhaps during the pendency of the suit filed), and they having taken their remedy before Canadian courts, including on the issue of maintenance, I do not see any infirmity at all in the impugned order passed by the learned trial Court.

10. Of course, if the petitioner had been residing in India throughout and had been abandoned by her father, i.e. the respondent herein, who is a resident of Canada, the matter would have been entirely different; as then she would be entitled to even interim maintenance by him. That obviously is not the case,

because if it were so, she and her mother would not have knocked at the doors of the courts at British Columbia, Canada, seeking maintenance there. Hence, such maintenance having stopped upon the petitioner attaining 25 years of age, she, in the opinion of this court, cannot now seek interim maintenance from the respondent, during the pendency of her suit.

11. Consequently, without making any further comment on the merits of the case of the petitioner, as is still pending before the trial Court, this petition is dismissed.

Naturally, if the learned trial court, upon evidence led before it, comes to the conclusion that the petitioner is in fact entitled to maintenance on any ground on the basis of such evidence led, all that has been observed by this court hereinabove in relation to the relief claimed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, shall not be binding on that court to record a finding to the contrary.

May 15, 2019
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes