

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2334-2019 (O&M)
Date of decision : 11.4.2019

**Rachna Nazir through her Special Power of Attorney
holder Ms. Aishwarya** **Petitioner**

Versus

Vitasta Kaul and another **Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Ishma Randhawa, Advocate for the petitioner.

KULDIP SINGH, J.

Petitioner has impugned the order dated 28.1.2019 (Annexure P-7), passed by learned Additional Principal Judge, Family Courts, Gurugram in case bearing HMA No. 17 of 2016 dated 9.1.2016, titled as *Vitasta Kaul vs. Ms. Abhineet Manohar Kaul*, vide which an application filed by Ms. Vitasta Kaul-petitioner/respondent No. 2 for rejection of the divorce petition under Order VII Rule 11 (a) and (d) read with Order 14 Rule 2(2) and with Section 151 of the Code of Civil Procedure, 1908 was dismissed.

The facts of the case are that the husband of the petitioner has filed the divorce petition against the present petitioner. It was stated in the petition that marriage between the parties was solemnized on 1.2.2013 at Gurugram according to Hindu rites and ceremonies. After the marriage, parties lived together in Mumbai till 21.9.2013 and thereafter the petitioner-wife shifted to the joint marital house in Singapore. There are allegations of

demand of dowry and other expenses. The allegations have also been levelled regarding cruelty and various grounds have been taken for grant of divorce. It is claimed that petitioner is living separately since 11.3.2015. During the pendency of the petition, present petitioner/respondent No. 2 filed an application under Order VII Rule 11 (a) and (d) read with Order 14 Rule 2(2) and with Section 151 of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that both parties are domicile of Singapore. The said application was dismissed by learned Additional Principal Judge, Family Court, Gurugram, Haryana vide impugned order dated 28.1.2019.

Heard the learned counsel for the petitioner and have also gone through the case file.

Learned counsel for the petitioner has argued that the Family Court at Gurugram had no jurisdiction to try and decide the petition on the ground that both the parties are domicile of Singapore since 21.9.2013. Even the matter is being pursued through power of attorney. It is contended that under Section 1(2) of the Hindu Marriage Act, 1955 (for short 'the Act'), parties must be domiciled within India to which this Act applies. As the parties were not domicile of India, therefore, the said Act does not apply.

The jurisdiction of the Court as to where the divorce petition could be filed are laid down in Section 19 of the Act. The said Section 19 of the Act is reproduced below: -

“19. Court to which petition shall be presented- Every petition

under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:

- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.”

Since the marriage was solemnized at Gurugram, therefore, the petition could be presented at Gurugram.

Section 1 of the Act is reproduced below: -

“1. Short title and extent.- (1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.”

Perusal of sub Section 2 shows that its territorial jurisdiction is extended to whole of India except the State of Jammu and Kashmir. It is further added that this Act applies **also** to the Hindus domiciled in the territories to which this Act extends, who reside outside the said territories. The reading of Section shows that Act has got territorial jurisdiction to whole of India except the State of Jammu and Kashmir. Secondly, it also applies to the Hindus who are outside the said territories but are domiciled in territories to which this Act extends meaning thereby that who are domiciled in India but are outside the said territories. Section 1 of the Act is

regarding the territorial jurisdiction of the Act. Section 2 of the Act provide for application of the Act. Section 2(1) (a) of the Act lays down that it applies to the “*Hindu by religion*”.

Now taking up the facts of the present case, it is clear that the marriage between the parties was solemnized at Gurugram in India. Both the parties are still Indian National and hold Indian passports. It is stated that they are domiciled in Singapore and on that account the jurisdiction of Indian Court is excluded. Copy of the personalized employment pass of the petitioner shows that petitioner is a person who is personalized employment pass holder which means that she has got a right to work in Singapore. The personalized employment pass is issued on 22.11.2017. Application for personalized employment pass was filed on 31.8.2017. It was issued on 22.11.2017 and is due to expire on 22.11.2020. Petition for divorce was filed in the year 2016, even before that personalized employment pass was applied.

I am of the view that when an Indian national has got employment in a foreign country, the Indian Courts do not loose the jurisdiction over the said person under the Act. The employment pass from its very nature is temporary and can be withdrawn any time. Parties were married at Gurugram and stayed there for some time before shifting to Singapore for employment.

Learned counsel for the petitioner has relied upon authority of Supreme Court of India contained in **Sondur Gopal, vs. Sondur Rajini, 2013 AIR (SC) 2678.** The facts of the said case are different. In that case

parties had acquired the citizenship of Sweden but were domiciled in India. Therefore, while examining the said question, the domicile word was interpreted. Therefore, the said authority cannot be applied to the facts of the present case.

Similarly, the authority of the Calcutta High Court contained in **Gour Gopal Roy vs. Smt. Sipra Roy 1978 AIR (Calcutta) 163**, is also not attracted in the present case. The authority of Bombay High Court contained in **Kashmira Kale vs. Kishorekumar Mohan Kale 2010(3) RCR (Civil) 334**, is also distinguishable as in the said case parties were domiciled in US and has already obtained divorce from U.S. Court.

In view of the above discussion, I am of the view that there is no illegality or infirmity in the impugned order dated 28.1.2019 (Annexure P-7), passed by learned Additional Principal Judge, Family Courts, Gurugram.

Revision petition stands dismissed in limine.

(KULDIP SINGH)
JUDGE

11.4.2019
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Whether speaking / reasoned
Whether Reportable:

Yes/No
Yes/No