

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.161 of 2021

- Kanwaljeet Singh Hura, S/o Shri Madan Singh Hura, Aged About 41 Years R/o. Gurudwara Road, Takhatpur, Tehsil Takhatpur, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

- Smt. Neeraj Kaur, W/o Shri Kanwaljeet Singh Hura, Aged About 39 Years R/o. 583A, Aadarsh Nagar, Nayagaon, Mohali, Tehsil And District Mohali - 160103 Panjab

At Present R/o. 5039, Hamilton Wolf Road, Apartment No. 1103, San Antonio Texas - 78229 U.S.A.

---- Respondent

For Petitioner : Mr. Manoj Paranjpe with Mr. Amit Soni,
Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

12/03/2021

1. This petition has been brought seeking indulgence of this Court under Article 227 Constitution of India against the order dated 02.02.2021 passed by the learned Family Court, Bilaspur, C.G.
2. It is submitted by the learned counsel for the petitioner, that the petitioner and the respondent both are married to each other and both of them earlier used to reside in Texas, USA. The petitioner has come back to India, while the respondent is continuing to reside in USA, however, her Visa is going to expire in July 2021. Due to the differences between the applicant and the respondent, the respondent filed a divorce petition in the Court of USA in Bexar County, Texas, against this petitioner under the law prevailing in Texas in USA. The petitioner, on coming to know

about this proceeding, filed the Civil Suit before the learned Family Court praying for relief of declaration and permanent injunction, in which ad-interim injunction was sought against the respondent for not proceeding against the applicant in the foreign Court.

3. Relying on the judgment of Supreme Court in **Y. Narasimha Rao and ors Vs. Y. Venkata Lakshmi and anr.** reported in (1991) 3 SCC 451 and in the case of **Madhavendra L. Bhatnagar Vs. Bhavna Lall** reported in 2021 SCC OnLine SC 41, it is submitted that the Family Court in India has jurisdiction to grant temporary injunction as prayed for.
4. It is further submitted that the learned Family Court has refused to entertain the Civil Suit filed by the petitioner and passed impugned order holding that the Family Court has no jurisdiction to hear on this Civil Suit.
5. It is again submitted that in view of the case cited hereinabove. The learned Family Court has the jurisdiction and power to grant relief to the petitioner, hence, this petition may be admitted for hearing and interim relief be granted to the petitioner.
6. Considered on the submissions and the facts in the present case. The petitioner and the respondent both are Indian citizens. Their marriage was performed on 28.03.2010 in Gurudwara, according to Hindu Customary rights, therefore, the law that is applicable with respect to the dispute regarding this marriage is the Hindu Marriage Act, 1955. Any foreign Court does not recognise Indian laws and for the reason that the parties are governed by the Indian law, there appears to be a case in favour of this petitioner.
7. It has been observed by the Supreme Court in Paragraph 8 of **Y. Narasimha Rao and ors Vs. Y. Venkata Lakshmi and anr.** (Supra):-

“8. Under Section 13 of the Code of Civil Procedure 1908 (hereinafter referred to as the “Code”), a foreign judgment is not conclusive as to any matter thereby directly adjudicated upon between the parties if (a) it has not been pronounced by a Court of competent jurisdiction; (b) it has not been given on the merits of the case; (c) it is founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable; (d) the proceedings are opposed to natural justice, (e) it is obtained by fraud, (f) it sustains a claim founded on a breach of any law in force in India.”

8. Further, in the case of ***Madhavendra L. Bhatnagar Vs. Bhavna Lal*** (Supra), the Supreme Court has held that the Family Courts in India have the jurisdiction to grant interim anti-suit injunction against the respondent and it has been held in paragraph 10 and 11 as follows:-

10. In our opinion, both the Trial Court and the High Court misapplied the legal position and committed manifest error, in rejecting the ad-interim relief claimed by the appellant against the respondent during the pendency of the proceedings between the parties before the Court at Bhopal.

11. Accordingly, we have no hesitation in setting aside the impugned decisions and to grant interim relief as prayed in the application filed before the Court at Bhopal as reproduced above, including to restrain the respondent from proceeding with the pending suit instituted by her in the Superior Court of Arizona or to file any other proceedings, including interim application(s) in any proceedings hereafter (except in the proceedings pending in Court at Bhopal) until further orders to be passed by the Court at Bhopal.

9. Similar was the view of Supreme Court in ***Modi Entertainment Network and Anr. Vs. W.S.G. Cricket PTE. Ltd.*** Reported in (2003) 4 SCC 341 and it was held in paragraph 24, which is reproduced as under:-

“**24.** From the above discussion the following principles emerge :

- (1) In exercising discretion to grant an anti-suit injunction the

court must be satisfied of the following aspects : -

- (a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;
 - (b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and
 - (c) the principle of comity - respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained - must be borne in mind;
- (2) in a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens;
- (3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or non-exclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case.
- (4) a court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a *vis major* or force majeure and the like.

(5) where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just an alternative forum.

(6) a party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or non-exclusive jurisdiction is created, the proceedings in that court cannot *per se* be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens.

(7) The burden of establishing that the forum of choice is a forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.”

10. Hence, on the basis of these observations made hereinabove before and the law settled by the Apex Court, the learned Family Court has the jurisdiction to entertain the suit and also to consider on the application for grant of ad-interim anti-suit injunction. Therefore, the petition is disposed off at the motion stage and the impugned order is set aside. The learned Family Court, Bilaspur is directed to entertain the Civil Suit and consider on the application filed for grant of interim relief and decide the same within a time frame of one month.

11. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge