



WEB COPY



C.S.No.362 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2022

PRONOUNCED ON : 22.02.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.S.No.362 of 2011

1.Dr.Maheswari

2.Dr.A.Navaneethan

...

Plaintiffs

VS.

1.Ramesh Ramiah

2.Kalpana Ramiah

3.Senthilkumar Ramiah

4.Muthu Vijayan Ramiah

5.Sakunthala Ramiah

...

Defendants

Prayer: This Civil Suit is filed under Order IV Rule 1 of the O.S.Rules r/w Order VII Rule 1 of Code of Civil Procedure, for a decree and judgment against the defendants as follows: (i) directing the defendants herein to pay to the plaintiffs, jointly and severally a sum of Rs.2,00,00,000/- by way of damages for having caused loss of reputation of the plaintiffs' family and traditional, professional and social status and also for having made defamatory statements against the plaintiffs and their family members and for causing huge mental stress, agony and annoyance to the plaintiffs and their family members; (ii) for a declaration declaring the exparte final decree of divorce obtained by the first defendant against the first plaintiff herein on 6th March, 2006 before the Circuit Court for the City of Alexandria,



C.S.No.362 of 2011

Virginia, United States in Chancery No.CH05003002 as ab initio void and tainted with illegality and not binding on the first plaintiff herein; (iii) Mandatory direction directing the defendants herein to return to the plaintiffs all the jewellery and other silver articles and valuables, within a time to be stipulated by this Court; (iv) Directing the defendants to pay the costs of this Suit.

For Plaintiffs : Mr.M.Bala Subramanian
For Defendants : M/s.P.Meghana Nair

J U D G M E N T

This suit is filed for a decree and judgment against the defendants as follows:

(i) directing the defendants herein to pay to the plaintiffs, jointly and severally a sum of Rs.2,00,00,000/- by way of damages for having caused loss of reputation of the plaintiffs' family and traditional, professional and social status and also for having made defamatory statements against the plaintiffs and their family members and for causing huge mental stress, agony and annoyance to the plaintiffs and their family members;

(ii) for a declaration declaring the exparte final decree of divorce obtained by the first defendant against the first plaintiff herein on 6th March, 2006 before the Circuit Court for the City of Alexandria, Virginia, United



C.S.No.362 of 2011

States in Chancery No.CH05003002 as ab initio void and tainted with illegality and not binding on the first plaintiff herein;

(iii) Mandatory direction directing the defendants herein to return to the plaintiffs all the jewellery and other silver articles and valuables, within a time to be stipulated by this Court;

(iv) Directing the defendants to pay the costs of this Suit.

2.The first plaintiff is a Doctor and the second plaintiff, father of the first plaintiff is an M.S.(Ortho.) and retired professor and Head of the Department of Orthopaedics. He served as the Vice Principal and Dean in-charge of Thanjavur Medical College and Hospital at Thanjavur. The first plaintiff's mother Mrs.Abirami is also a graduate. Plaintiffs' relatives held high position in Government and other sectors. Plaintiffs' family was commanding a high status. Defendants were searching for a Doctor bride to get married to the first defendant. The negotiation for the marriage proposal between the plaintiffs' family and the defendants family was mediated by Dr.Panneerselvam and C.Ramasamy. Originally negotiation took place at the first plaintiff's grandfather's residence at plot no.1608, “J” Block, Anna



C.S.No.362 of 2011

Nagar West, Chennai. Defendants 4 & 5, the parents of Defendants 1 to 3, who are the permanent residents of Neelangarai near Chennai, came for negotiation. At the time of negotiation, first and fourth defendants demanded 300 sovereigns of gold jewellery, silver articles worth Rs.1,00,000/- and a Honda City Car. They imposed a further condition that the entire marriage expenses have to be borne by the first plaintiff's parents and that marriage should be celebrated in a grand manner.

3.In March 2004, the fourth and fifth defendants visited plaintiffs' residence at Thanjavur for further discussion. After a long drawn negotiation, it was agreed to provide 200 sovereigns of gold jewellery, silver articles worth Rs.1,00,000/- and Honda City Car, besides agreeing to bear the entire marriage expenses. When betrothal function was held on 22.03.2004, the third and fourth defendants and their relatives insisted for dowry stating that the first defendant is employed in the World Bank – United States. The marriage was celebrated on 21.06.2004 at the Oriental Towers Marriage Hall at Thanjavur Town. As per the directions of the second and third defendants, second plaintiff booked 25 rooms in a luxurious hotel at Thanjavur. At the time of marriage, plaintiffs' family could manage only 110 sovereigns and presented silver vessels worth



C.S.No.362 of 2011

Rs.75,000/- only. The second plaintiff could not present the Honda City Car.

4.Later, on the marriage date, the first defendant left the Hotel in an angry mood. The second plaintiff and the other relatives tried to pacify the defendants, but they shouted at the second plaintiff and his wife to disclose as to the quantity of the jewellery presented and asked why the Car was not presented. The second plaintiff promised to provide the balance jewellery and Car in the near future. The defendants refused to agree for the nuptials to be performed until the remaining jewellery was given. The first plaintiff was brutally attacked by the first defendant at Neelangarai, Chennai on few occasions. The defendants 1 to 5 forced the first plaintiff to do cooking. The first defendant did not allow the first plaintiff to even touch him. Defendants did not allow the first plaintiff to speak with her parents over phone. The first plaintiff's parents met her at Meenambakkam International Airport at about 11 p.m. on 03.07.2004 and paid her Rs.50,000/- in cash. The first defendant snatched the currency from the first plaintiff and threw the same on the floor. The first plaintiff was treated as maid servant in the United States by the defendants 1 to 3 and they harassed the first plaintiff. In a drunken state, the first defendant attempted to have forceful sex with the first plaintiff. The first plaintiff was forced to sleep separately every day



C.S.No.362 of 2011

while the first and second defendants shared the bed. Without any basis, they blamed the first plaintiff as having Asthma complaint. The first plaintiff is an Athlete and individual champion in sports events. The defendants 1 to 3 took the first plaintiff to hospital and forced her to undergo medical check up. The first defendant insisted the first plaintiff to sign the property settlement agreement at United States as a pre-arrangement to get divorce. Because of the constant ill treatment and harassment, the first plaintiff inflicted a cut injury on her arm with a knife. The defendants 1 to 3 forcibly admitted the first plaintiff at Virginia Hospital Centre on 23.02.2005. The first defendant represented to the Doctors that the first plaintiff is a psychopath. However, the Doctors discharged her stating that she has no such disorder. The first plaintiff took shelter with Civil Service Agency “Apna Ghar, Inc.” and that agency helped her to return to India on 10.04.2005.

5. On coming to India, the first plaintiff lodged a complaint before the Thanjavur Police Station and that was registered in Crime No.7 of 2005 under Section 498-A IPC r/w Sections 3 & 4 of Dowry Prohibition Act and Sections 406 and 506 (ii) IPC r/w Sections 4 & 6 of Dowry Prohibition Act. The first plaintiff had also filed Crl.O.P.(MD) No.6791/2007. It appears



C.S.No.362 of 2011

that the first defendant obtained an ex-parte decree of divorce in the Circuit Court for the City of Alexandria behind the back of the first plaintiff. This divorce is not valid. The Court of Virginia has no jurisdiction to grant divorce to the first plaintiff and first defendant, whose marriage had been celebrated in India according to the Indian customs. Because of the actions of the defendants, first plaintiff and her family members have to suffer enormous mental strain and face gossiping. The defendants 1 to 3 filed Crl.O.P.No.2535 of 2008, before the Madurai Bench of Madras High Court, for quashing the complaint in Crime No.7 of 2005. That petition was allowed and against this order, Special Leave Petition in S.L.P.(Crl.)No.4853/2010 is pending.

6.The valuables, jewellery and silver articles are still available with the defendants. The first plaintiff sent a notice to the defendants on 07.06.2010 claiming them to pay a sum of Rs.5,00,00,000/- towards damages for the loss of property, family, professional and social reputation and for causing physical and mental agony, for return of jewels and other articles. The defendants received the notice. In the said circumstances, this suit is filed for following reliefs: (i) claiming damages of Rs.2,00,00,000/- (ii) for declaring the ex-parte final decree of divorce obtained by the first



C.S.No.362 of 2011

defendant against the first plaintiff on 06.03.2006, before the Circuit Court for the City of Alexandria, Virginia, United States as ab initio void (iii) for a mandatory injunction to return the plaintiffs all the jewellery and other silver articles and valuables and for costs.

7.The case of the defendants is that this suit is not maintainable. The second plaintiff is not a necessary party. The right to relief for plaintiffs must have arisen out of the same transaction. The second plaintiff has no right to claim any damages. He has been spoiling the matrimonial life of the first plaintiff by misguiding and ill advising her from the very inception of the marriage. The defendants 2 to 5 are unnecessary parties. If at all there is any relief, that can be only against the first defendant. Though the plaintiffs are living in Thanjavur, this case is instituted in this Court by giving a relative's address at Chennai. Previous legal proceedings were initiated only by the first plaintiff at Thanjavur and Madurai. Therefore, this Court has no jurisdiction. Plaintiffs had taken inconsistent and contradictory pleas and the averments made in the pleadings are improbable and unbelievable. The agnatic & cognatic relationship mentioned in the plaint is a self booster for concealing the fact of desertion and elopement of the first plaintiff from the matrimonial home with an intention to join her



C.S.No.362 of 2011

lover Anand. Because of her act, the status and dignity of the defendants got spoiled.

8. Betrothal function was held on 22.03.2004, in the presence of more than 100 relatives and the marriage was held on 21.06.2004. The allegations with regard to demand of dowry is inconsistent for the reason that the Yahoo chat between the first plaintiff and the first defendant before marriage would reveal that the first defendant was not even willing to receive the bracelet offered by the plaintiffs. The allegations with regard to the demand of jewellery and dowry is contrary to the allegations made in the FIR registered against the defendants. The story of the plaintiffs that she had taken 110 sovereigns of gold jewellery and Rs.50,000/- when she was going to USA are not correct for the reason that no such entry is available in the passport of the first plaintiff. The first plaintiff inflicted a cut injury on her arm with a knife and took shelter in the house of Mr. Siddharthan. She created an injury to desert and run away voluntarily from the matrimonial home to join her lover Anand. The allegations that the defendants 1 to 3 were residing together in USA is not correct. The first plaintiff and the first defendant were living in one place and the second and third defendants were living in another place.



C.S.No.362 of 2011

WEB COPY

9.The discharge summary dated 26.02.2005 shows that there was no cohabitation between the first defendant and the first plaintiff and therefore, the allegations that the first defendant had forcible sex with the first plaintiff is not true. The first plaintiff was not accepting consummation with an intention to join her lover Anand. She refused to go for honeymoon with the first defendant to Jamaica. The first plaintiff took treatment at Virginia Hospital Centre for cut injury on her forearm inflicted by herself and also for psychopath problem in psychiatric ward. Then she voluntarily deserted and ran away with one Siddharthan from her matrimonial home and she was given treatment and she was prescribed Lorazepam 2 mg tablet and this tablet is given to psychiatric patients. She underwent individual and group psychotherapy during the treatment. Before leaving with Siddharthan, she took all her personal belongings.

10.A criminal complaint had been given falsely to trouble the defendants. Despite having knowledge about the Alexandria Court proceedings, she did not participate in the proceedings. Because of her actions, the defendants had to suffer humiliations, shame and disrepute. After leaving the matrimonial home, the first plaintiff cleared several



C.S.No.362 of 2011

examinations and her father was working in SRM Medical college, Trichy.

Therefore, the claim that they suffered untold misery is not true. The fourth defendant had to undergo an open heart surgery at USA, the fifth defendant suffered arthritis & diabetes issue and the marriage proposals of the second and third defendants is getting spoiled. The first plaintiff never entrusted any of her jewellery with the defendants. She visited USA with the first defendant with her essentials and minimum personal belongings.

11.They gave false news in Tamil daily News papers against the defendants. The defendants came to India only a week before the marriage on 21.06.2004 and the third defendant came only three weeks before the marriage. Therefore, the negotiations alleged to have been held is not true. Only to bring the case within the jurisdiction of this Court, it is concocted that negotiations was held in Chennai. The first plaintiff's parents were not accompanying the couple when the couple arrived at Chennai on 02.07.2004 from Thanjavur. They came directly to the airport on 03.07.2004. The allegations that the defendants 1, 2, 4 & 5 insulted, humiliated the first plaintiff's father in the Airport and the first plaintiff's parents were refused permission when they visited Neelangarai, Chennai are not true. The third defendant was not in India on 03.07.2004. The allegations that the



C.S.No.362 of 2011

defendants demanded jewellery, silver articles, Car are all false. The allegations that the first plaintiff was brutally attacked by the first defendant is not true.

12.The defendants 1 to 3 were living together and harassed the first plaintiff in USA is not true. If there were any harassment as alleged by the first plaintiff in USA, she ought to have sought the help of the authorities and organizations available in and around her matrimonial home. When the first plaintiff was staying in USA, she had made more than 180 calls to the following numbers: (a) 914362273177 (b) 914362238828 (c) 919443138828. She had also made calls to other relatives and friends. Cell phone no.919443138828 belongs to her father.

13.When she was doing her medicine in Thanjavur Medical College, she was in love with her classmate Anand. Her father did not agree to get her married to Anand. Anand came to Airport on 03.07.2004 to send off the first plaintiff to USA with her favourite roasted peanuts. The plaintiffs have made inflated and exaggerated allegations against the defendants with a view to extract money from the defendants. The first defendant is highly educated and employed in the World Bank. He was put to great stress and



C.S.No.362 of 2011

strain by false accusation and criminal proceedings. The fourth and fifth defendants also had undergone huge stress and suffered health issues.

Therefore, the plaintiffs are liable to compensate the defendants for their sufferings and thus, a counter claim of Rs.1,00,00,000/- is claimed as damages from the plaintiffs.

14. On the basis of the aforesaid pleadings, the following issues are framed:

1. *Whether the exparte foreign judgment is enforceable and binding on the 1st plaintiff in India?*
2. *Whether the plaintiffs are entitled to claim damages to the tune of Rs.2crore from the defendants as prayed for in the suit?*
3. *Whether the defendants are liable to return all the jewellery, silver articles and other valuables to the plaintiffs as prayed for in the suit?*
4. *Whether the counter claim filed by the Power Agent of the defendants against the plaintiffs is maintainable in law and that too in a suit for damages filed by the plaintiffs?*



C.S.No.362 of 2011

5. *Whether the defendants are entitled for claim of damages for sum of Rs.1,00,00,000/- (Rupees one crore only) from the plaintiffs?*

6. *To what reliefs, the parties are entitled to?*

15.PW1 was examined on the side of the plaintiffs and Exs.P1 to P12 were marked. DW1 was examined on the side of the defendants and Exs.D1 to D12 were marked.

Issue Nos.1 and 2:

16.The learned counsel for the plaintiffs submitted that this suit is filed claiming damages for causing physical and mental harassment to the 1st plaintiff and making defamatory allegations against the plaintiffs and their family members, resulting in loss of reputation, mental stress, agony and annoyance to the plaintiffs and their family members. After the marriage between 1st plaintiff and 1st defendant, the 1st plaintiff was subjected to physical violence and mental cruelty. The physical violence and mental cruelty started immediately after the marriage in Tamil Nadu and continued when the 1st plaintiff and 1st defendant resided in USA. The reason is that defendants demanded 300 sovereigns of gold jewellerys, silver articles worth Rs.1,00,000/- and a Honda City Car. Plaintiffs were not



C.S.No.362 of 2011

able to provide as demanded by the defendants. Keeping that in mind, defendants harassed the plaintiffs and their family members. Due to the harassment, the 1st plaintiff cut her wrist while she was in USA. 1st plaintiff was branded as a Psychiatric and Asthma patient.

17.He further submitted that there were serious allegation questioning her fidelity, alleging that she has an affair with her classmate one Dr.Anand and in order to join Anand, she left the matrimonial home. The defendants have not produced any documents in support of these allegations. The 1st plaintiff is a Doctor and now she is a Senior Anesthetic professor and involved in many serious surgeries. Therefore, the claim made by the defendants that 1st plaintiff is a psychiatric patient is absolutely false and without any basis. Despite all the differences, 1st plaintiff wanted to continue the marital life. However, due to unbearable harassment, she had to come back to India with the help of her relative. After she came back to India, 1st defendant initiated divorce proceedings against the 1st plaintiff in Circuit Court for the City of Alexandria, Virginia, United States of America. When the 1st defendant sent proposal for property settlement, 1st plaintiff did not respond to that for the reason that her marriage had taken place in India and only an Indian Court has the Jurisdiction to entertain any



C.S.No.362 of 2011

dispute with regard to the Indian marriage, especially under the personal laws of parties. Therefore, she had not subjected herself to the Jurisdiction of Circuit Court for the City of Alexandria. Ex. P5 Judgment shows that, there was no participation by the 1st plaintiff and it has not gone to the merits of the dispute. Divorce was granted only on the ground that the parties to the marriage are living separately for more than a year and there was no cohabitation between them. However, the 1st defendant managed to get an *ex-parte* decree of divorce. *Ex-parte* decree of divorce obtained by the 1st defendant against the 1st plaintiff is not legally enforceable and that would not bind the 1st plaintiff.

18.He continued his submission that the 1st plaintiff waited for the 1st defendant to join with her. Despite the request made by her, 1st defendant was totally indifferent. Therefore, she gave a criminal complaint against the defendants on 06.08.2005 and criminal case was registered. The defendants have not appeared before the Court for facing the trial. Only after consistent efforts taken by the 1st plaintiff and to cancel the passport given to the defendants, they came forward to enter appearance in the Criminal case. The counter claim made by the defendants has no basis and the counter claim is made as a counter blast to the relief asked in the plaint. Thus, the



C.S.No.362 of 2011

learned counsel for the plaintiffs prayed for decreeing the suit and for dismissing the counter claim. In support of his submission, the learned counsel for the plaintiffs relied on the following Judgments for the proposition, as to the non-binding nature of the foreign Judgment especially in marital dispute.

(i) In the case of ***Bhashyam Ramesh @ Rajagopalan Vs. R.Saroja @ K.K.Saroja*** reported in **2012 (4) CTC 337**, the relevant portion reads as follows:

“6.1. In order to appreciate the contentions raised on both sides, it is appropriate to consider the decision reported in Ruchi Majoo Vs. Sanjeev Majoo reported in (2011) 6 SCC 479 wherein the Hon'ble Supreme Court has pointed out, (though in the context of the case of child custody) that as no system of private international law exists that can claim universal recognition on this issue, Indian Courts have to decide the issue regarding the validity of the decree passed by foreign court in accordance with Indian law. The relevant portion of the observation of the Hon'ble Supreme Court is extracted hereunder:

"Recognition of decrees and orders passed by foreign courts remains an eternal dilemma inasmuch as whenever called upon to do so, courts in this country are bound to determine the validity of such decrees and orders keeping in view the



C.S.No.362 of 2011

provisions of Section 13 CPC as amended by the [Amendment Acts](#) of 1999 and 2002."

"Simply because a foreign court has taken a particular view on any aspect concerning the welfare of the minor is not enough for the courts in this country to shut out an independent consideration of the matter. Objectivity and not abject surrender is the mantra in such cases. Judicial pronouncements on the subject are not on virgin ground. Since no system of private international law exists that can claim universal recognition on this issue, Indian Courts have to decide the issue regarding the validity of the decree in accordance with Indian law. Comity of courts simply demands consideration of any such order issued by foreign courts and not necessarily their enforcement."

6.2. The learned counsel for the respondent has relied upon the following rulings in order to support the contention that the Foreign Court has no jurisdiction to pass a decree for divorce when the marriage has taken place in India under the provision of [Hindu Marriage Act](#).

a) 2010 (4) CTC 822 (R.Sridharan Vs.The presiding Officer, Principal Family Court, Chennai-600 106 and another) In Narasimha Rao's case, the Supreme Court categorically stated that marriages performed under the [Hindu Marriage](#)



Act can be dissolved only under the said Act. Naturally, the provisions of the [Hindu Marriage Act](#) with regard to jurisdiction would also come into play. [Section 19](#) clearly gives jurisdiction to the Court to deal with Matrimonial proceedings initiated by the wife, if she is residing within the jurisdiction of the said Court. There is no question of the Second Respondent initiating Divorce proceedings before the Court at United States of America invoking the provisions of the [Hindu Marriage Act](#). The moment the Appellant has married the Second Respondent, he has subjected himself to the jurisdiction of the Court designated to deal with matrimonial disputes under [Section 19](#) of the Hindu Marriage Act.

Applying the ratio to the facts of this case, it is clear that the moment the appellant/husband herein has married the respondent wife, he has subjected himself to the jurisdiction of the Courts designated (Family Courts), to deal with matrimonial disputes under [Section 19](#) of the Hindu Marriage Act. There is no question of the husband/appellant initiating divorce proceedings before the Superior Court of California as the husband could not have initiated the proceedings, invoking the provisions of [Hindu Marriage Act](#). The marriage between the appellant and respondent herein could be resolved only on the grounds set out under [Section 13](#) of the Hindu Marriage Act. It is not the case of the



appellant/husband that application for divorce could be made before the Superior Court of California on the grounds mentioned in the [Hindu Marriage Act](#). Therefore, as contended by the learned counsel for the respondent, the Foreign Court i.e. The Superior Court of California which is not a Court of competent jurisdiction and only the Family Court at Chennai which has complete competency and jurisdiction.

b) In 2010 (5) CTC 858 (Deepalakshmi Vs.K.Murugesh) a Single Judge of this Court has held as under:-

"Thus, it is clear that only that Court will be a Court of competent jurisdiction which the Act or the law under which the parties are married recognises as a Court of competent jurisdiction to entertain the matrimonial dispute. Any other Court should be held to be a Court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that Court. The marriages which take 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 dispute is the one under which the parties are married, and no other law...."

Therefore, the decisions quoted above would clearly go to show that the Superior Court of California is not a court of



competent jurisdiction to decide the matrimonial dispute of the appellant/husband as they have married under the [Hindu Marriage Act](#) and the marriage having been taken place in India. Therefore, the finding of the Family Court that order passed by the Foreign Court is not binding upon the wife is correct.

(ii) In the case of **Raj Rajendra Sardar Moloji Nar singh Roa Shitole Vs. Shankar Saran and others** reported in AIR 1962 AII 775, the relevant portion reads as follows:-

“10. Under [the Indian Code](#) the judgment obtained by the appellant in Gwalior court would be governed by [s. 13](#) of that Code and its conclusiveness is governed by cl. (a) to cl. (f) of that section. The rules laid down in that section are rules of substantive law and not merely of procedure. It is to be noted that in the present case the respondents did not submit to the jurisdiction of the Gwalior Court. In Halsbury's Laws of England Vol. VII p. 144, paragraph 257 (3rd Ed.) conditions necessary for giving jurisdiction to a foreign court are set out and at least one of them is required to be satisfied before a foreign judgment is regarded as having extra-territorial validity. None of them was satisfied in the present case. Firstly the respondents were not the subjects of Gwalior; they did not owe any allegiance to the Ruler of Gwalior and therefore they were under no obligation to accept the judgments of the courts of that State. Secondly they were not residents in that State when the suit was instituted. Thirdly they were not temporarily



present in that State when the process was served on them. Fourthly they did not in their character as plaintiffs in the foreign action themselves selected the forum where the judgment was given against them. Fifthly they did not voluntarily appear in that court. Sixthly they had not contracted to submit to the jurisdiction of the foreign court. The Gwalior Court therefore was not a court of competent jurisdiction. The judgment of Gwalior Court was therefore a nullity outside the United State (Madhya Bharat). See Gurdyal Singh v. Raja of Faridkot (1). Lord Selborne there observed as follows:

"Under these circumstances there was, in their Lordships' opinion, nothing to take this case out of the general rule, that the plaintiff must sue in the court to- which the Defendant is subject at the time of suit ("Actor sequitor forum rai"); which is rightly stated by Sir Robert Phillimore (International Law, Vol. 4, s. 891 to "lie at the root of all international, and of most domestic, jurisprudence on this matter". All jurisdiction is properly territorial and "extra territorium jus dicenti, imprime non paretur".

Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are within it; but it does not follow them after they are living in another independent country. It exists always as to land within the territory and it may be exercised over moveables within the territory; and, in questions of status or succession governed by domicil, it may exist as to persons



C.S.No.362 of 2011

domiciled, or who when living were domiciled, within the territory. As between different provinces under one sovereignty (e.g., under the Roman Empire) the legislation of the sovereign may distribute and regulate jurisdiction; but no territorial legislation can give jurisdiction which any foreign Court ought to recognise against foreigners, who owe allegiance or obedience to the power which so legislates".

But it was submitted by the appellant that the Court at Gwalior ceased to be a foreign court because firstly as a consequence of the constitutional documents executed by the Rulers of Indian States the 'United State (Madhya Bharat) (1) (1894) 1. R. 21 LA. 171, become a part of the Dominion of India and therefore a decree passed by a court of the State could not be the decree of a foreign court; secondly as a result of the coming into force of the Constitution of India what was United State (of Madhya Bharat) became a Part B State of the Union of India and therefore a decree passed by the Gwalior Court even though a nullity in the erstwhile province of U. P. ceased to be so and took Indian nationality and thus became executable in the State of U. Thirdly it was submitted that the decree passed by the Gwalior Court was a valid decree in the United State (Madhya Bharat) and therefore was not an absolute nullity but there was in impediment to its executability which was removed as soon as the United State (Madhya Bharat) became a part of the Union of India and fourthly it was submitted that subsequent changes in [the Indian Code](#) consequent upon the promulgation of the



Adaptation Order of January 26, 1950 under Art. 372 of that Constitution and subsequent amendment of the Order of June 5, 1950, which became retrospectively operative from January 26, 1950 and by a subsequent Act [Civil Procedure Amendment Act (Act II of 1951)] the Gwalior Court became competent to transfer its decrees for execution to the Court at Allahabad; and under the provisions of the Indian Code relating to execution amended from time to time the decree sought to be executed became executable by the Court at Allahabad.

11. The first contention is unsustainable because the constitutional changes did not effect any change in the status or nationality of the Gwalior Court till after the passing of the decree of November 18, 1948 and there being no specific provision to the contrary those change left the decree unaffected.”

(iii) In the case of “**Smt.Satha Vs Shri Teja Singh**” reported in [1975

1 SCC 120], it is observed as follows,

“50. Section 13(a) of the Code of Civil Procedure, 1908 makes a foreign judgment conclusive as to any matter thereby directly adjudicated upon except "where it has not been pronounced by a court of competent jurisdiction". Learned counsel for the respondent urged that this provision occurring in the, Civil Procedure, Code cannot govern criminal proceedings and therefore the want of jurisdiction in the Nevada court to pass the decree of divorce can be no answer to an application for



maintenance under [section 488, Criminal Procedure Code](#).

This argument is misconceived. The judgment of the Nevada court was rendered in a civil proceeding and therefore its validity in India must be determined on the terms of [section 13](#). It is beside the point that the validity of that judgment is questioned in a criminal court and not in a civil court. If the judgment falls under any of the clauses (a) to (e) of [section 13](#), it will cease to be conclusive as to any matter thereby adjudicated upon. The judgment will then be open to a collateral attack on the grounds mentioned in the five clauses of [section 13](#).”

(iv) It is observed in ***AIR 1963 SC 1*** in ***R.Vishwanathan and others Vs. Rukn-ul-Mulk Syed Abdul Wajid since deceased and others***, as follows:-

“16.A judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a Court of competent jurisdiction; and competence contemplated by Section 13 of the Code of Civil Procedure is in an international sense, and not merely by the law of foreign State in which the Court delivering judgment functions.”

19.In reply, the learned counsel for the defendants submitted that the marriage between the 1st plaintiff and 1st defendant was celebrated on



C.S.No.362 of 2011

21.06.2004 in Thanjavur. It is his first submission that any challenge to the marriage can only be initiated before the Family Court, especially, on the file of Family Court at Thanjavur. The suit filed here seeking the declaration that final decree of divorce granted by Circuit Court for the City of Alexandria, Virginia, United States of America, as *void ab initio*, illegal, not binding on the plaintiffs is without Jurisdiction. No cause of action has arisen for filing the suit in this court.

20.Immediately after marriage, there were some compatible issue between the plaintiffs family and defendants' family, more particularly between the 1st plaintiff and 1st defendant. After the marriage on 21.06.2004, the 1st plaintiff and 1st defendant left to USA on 03.07.2004. They were in India only for 13 days from the date of marriage till the date of leaving to USA. Therefore, the allegations made in the plaint as to the physical violence, harassment, abuse and mental cruelty could not have happened in this limited period of time. Assuming that those violence and harassment had happened, there is no evidence to show that the 1st plaintiff had informed all these violence and harassment either to her parents or relatives or gave a complaint in this regard to the Police. If violence and harassment as alleged by the 1st plaintiff had happened, then certainly she would not



C.S.No.362 of 2011

have proceeded to USA with the 1st defendant. Therefore, it is apparent that the allegations made by plaintiffs with regard to the physical violence, abuse, mental cruelty and harassment are false and invented for the purpose of the case, especially 6 years after the 1st plaintiff coming to India. The suit is barred by limitation. The allegations are made without any supporting evidence. No schedule, with regard to the details of the jewellery available with the defendants, is produced. Similarly, she has not preferred any complaint with the Police authorities in USA about the physical violence and abuse alleged to have been perpetrated by the defendants 1 to 3 against her.

21. It is seen from the e-mail communications with Dr. Anand that she has relationship with him and that she was suffering from mental depression. She had consumed a tablet named 'Xanax' for treating mental depression. While she was treated at USA also, she was treated for her mental depression. It shows that she has mental depression issues, even prior to the marriage and during the marriage. That is the reason why she was not able to cope up with the marital life. She had adjustmental and temperamental issues and abused the defendants especially the 1st defendant. She hurt herself when she was in USA and 1st defendant took



C.S.No.362 of 2011

her for treatment. Thereafter, she left USA on her own to India. After coming back to India, she gave a criminal complaint against the defendants making sweeping and false allegations. The filing of criminal case was circulated in media causing loss of status and mental harassment to the defendants. During pendency of the case, the defendants, especially defendants 4 and 5 were not able to come to India, even to attend the funeral of a close relative. The 1st plaintiff again came back to USA and tried to establish contact with the 1st defendant. If really the allegations of physical violence and mental harassment are true, she would not have made efforts to contact the 1st defendant. The fact that she made efforts to contact 1st defendant shows that allegations of physical violence and mental harassment are not true. The defendants are unnecessarily harassed by filing criminal case and civil case thereby making false and vexatious allegations against them. The 1st defendant's brother and sister are unnecessarily impleaded as parties. Therefore, defendants made a counter claim of Rs.1,00,00,000/-. It is prayed that the suit may be dismissed and the counter claim be decreed.

22.The learned counsel for the defendants relied on the judgments reported in



C.S.No.362 of 2011

WEB COPY

(i) 2012 (4) CTC 337 in “*Bhashyam Ramesh @ Rajagopalan Vs.*

R.Saroja @ K.K.Saroja”,

(ii) [2016 13 SCC 308] in “*Balram Yadav Vs. Rumania Yadav*”,

(iii) [2007 4 MLC 563] in “*Raj Mohan Vs. D.Prema and others*” for

the proposition that only a Family Court has a jurisdiction in a matrimonial dispute between the parties, like cases relating to divorce, restitution of conjugal rights, maintenance etc. Therefore, he submitted that filing of this case in High Court, for the relief of declaration that a final decree of divorce granted by Circuit Court for the City of Alexandria, Virginia, USA as *ab initio* void, illegal and not binding on the first plaintiff is not correct. This Court lacks jurisdiction and therefore, on this ground alone this suit is liable to be dismissed.

It is observed in the judgment reported in [2012 4 CTC 337] in “*Bhashyam Ramesh @ Rajagopalan Vs. R.Saroja @ K.K.Saroja*” as follows,

“7.2. The learned counsel for the husband has relied upon the decision reported in Supreme Court Reports (1963) (*Shaligram Vs. Daulat Ram*), wherein it has been held as follows:-



C.S.No.362 of 2011

“That a person who appeared in obedience to the process of a foreign Court and applied for leave to defend the suit without challenging the jurisdiction of the Court must be held to have voluntarily submitted to the jurisdiction of such Court and therefore this decree did not suffer from any defect which a foreign decree would suffer without such submission.”

7.3. From the facts and circumstances available in this case whether the conduct of the wife in submitting a written representation in response to the summons issued can be construed as amounting to voluntarily submitting herself to the jurisdiction of the Superior Court of California is to be considered. It is necessary to consider the content of the written representation sent by the wife.

7.6. What is crucial is that the wife has challenged jurisdiction of the Foreign Courts. Only, if a party applies for leave to participate in the proceedings without challenging the jurisdiction one can infer that the party has submitted to the jurisdiction of the Court. But, in this case, the wife on receipt of summons has challenged the jurisdiction of the Foreign Court. While so challenging the wife has categorically stated that due to financial and legal constraints her access to justice has been denied. The contents of written submissions made by the wife to the Superior Court of California itself would clearly go to



show that the respondent/wife neither wanted to participate in the proceedings nor subjected herself to the jurisdiction of the Foreign Court, either voluntarily or involuntarily. Under such circumstances, the contention that she has submitted herself to the jurisdiction of the Foreign Court cannot be accepted.

8. The issues discussed above will go to show that the suit filed challenging judgment passed by the Superior Court of California by the wife is perfectly maintainable. The order passed by the Family Court is in accordance with well settled principles and the materials on records. Therefore, the appeal has no merits and is liable to be dismissed.”

In the Judgment reported in **[2016 13 SCC 308]** in “**Balram Yadav**

Vs Fulmaniya Yadav” it is observed as follows,

“7. Under Section 7(1) Explanation (b), a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under [Section 8](#), all those jurisdictions covered under [Section 7](#) are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief



or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.”

It is observed in the judgment reported in **2007 4 MLJ 563** in

“D.Rajmohan Vs D.Prema and others”,

“.....Therefore, the first prayer in the plaint itself is unnecessary and such a relief cannot be granted by Civil Court where there is already a Family Court. If the parties are aggrieved over the marriage of the fifth defendant with the seventh defendant, they can question the same only in a Family Court, that too, if they are having a right to sue. A marriage between the spouse can be questioned only by an affected person by such a marriage.”

23.The learned counsel for the defendants relied on the judgment reported in **2007 7 MLJ 1007** in **“P.C.Balakrishna Raja Vs. S.K.P.Thirumurugan”** for the proposition that the burden is on the plaintiffs to prove the allegations made in the plaint. It is observed in this judgment that,

“13...

14. As such the statements made by the defendant protect himself would attract qualified privilege. The onus of proof on the plaintiff initially to prove that the defendant made



C.S.No.362 of 2011

such complaint to non-judicial authorities with an intention to defame the plaintiff. Only on discharge of the initial burden by the plaintiff, the defendant would be burdened with the responsibility of showing that his case is covered by anyone of the defences available under tort. Here in this case the plaintiff failed to prove the malice but on the other hand the defendant clearly set out that there was no malice at all in making such Petition/Complaint but it was done only for the purpose of seeking protection to himself.”

24.In response, the learned counsel for the plaintiffs submitted that plaintiffs filed Application No.2335 of 2011 seeking leave to file the suit in this Court and leave was granted and the suit was filed. The defendants have not taken any steps to revoke the leave. Therefore, it is not open for them to challenge the jurisdiction of this Court. Not only that, the defendants have raised a plea of counter claim subjecting themselves to the Jurisdiction of this Court. The objection to Jurisdiction was not taken at the earliest point of time. Therefore, the defendants cannot challenge the Jurisdiction of this Court in trying this suit. There is also no plea that this suit is barred by limitation. The limitation is a mixed question of fact and law. There is a criminal proceeding pending against the defendants. The case of the plaintiffs is that marriage between the 1st plaintiff and 1st defendant is not legally terminated. Apart from the physical violence and mental harassment, serious allegation of illegal affair with one Dr.Anand is



C.S.No.362 of 2011

made against the 1st plaintiff. Even in the written statement the allegation is repeated several times. Therefore, it cannot be considered that this suit is barred by limitation.

25.From the pleadings and submissions of the learned counsel for the parties, the plaintiffs filed the suit alleging that there was a,

(i) Demand of 300 sovereigns of gold jewelleryes;

(ii) Demand of silver articles worth Rs.1,00,000/-;

(iii) Demand of a Honda City Car; by the defendants before the marriage between the 1st plaintiff and 1st defendant. The same was later reduced by the defendants as 200 sovereigns of gold jewelleryes, silver articles worth Rs.1,00,000/- and a Honda City Car. However, plaintiffs were not able to provide them as per the expectation of the defendants. Only 110 sovereigns of gold jewelleryes, silver articles worth Rs.75,000/- were given to the defendants. Plaintiffs were also not able to provide Honda City Car.

26.This triggered the subsequent issues between the parties.

Important among them are,

(i) 1st defendant left the marriage hall angrily to the hotel. When the 2nd plaintiff and relatives tried to pacify the defendants, they shouted at the 2nd



C.S.No.362 of 2011

plaintiff and his wife.

(ii) 1st defendant refused to agree for the nuptials until the remaining jewellerys were given.

(iii) 1st plaintiff was brutally attacked by the 1st defendant at the defendant's house at Neelankarai.

(iv) Defendants forced the 1st plaintiff to cook, though she informed them that she was not good at cooking.

(v) Nuptials did not take place in Chennai also.

(vi) Defendants did not permit the 1st plaintiff to speak to her parents.

(vii) Defendants 1, 2, 4 and 5 did not allow the 2nd plaintiff and his wife to visit the 1st plaintiff at their house at Neelankarai.

(viii) When the 2nd plaintiff contacted over phone, defendants 4 and 5 insulted him by using abusive words demanding dowry.

(ix) 1st plaintiff's parents gave Rs.50,000/- in cash in the lounge of Meenambakkam International Airport, but the 1st defendant snatched the currency and threw the same on the floor of the Airport lounge and dragged the 1st plaintiff inside the Airport.

(x) The defendants 1 to 3 treated the 1st plaintiff as a maid servant in USA.

(xi) Under a drunken mode, the 1st defendant attempted to have forced sex with the 1st plaintiff.



(xii) 1st plaintiff was forced to sleep separately while defendants 1 and 2 shared the bed.

(xiii) Defendants 1 to 3 blamed the 1st plaintiff as a Asthma patient and forcefully took her to medical check-up.

(xiv) 1st defendant insisted the 1st plaintiff to sign a property settlement agreement as a pre-arrangement to get divorce from the 1st plaintiff.

(xv) Due to constant ill treatment and harassment, 1st plaintiff inflicted a cut injury on her forearm with a knife.

(xvi) 1st defendant represented 1st plaintiff to the Doctors in Virginia that she is a psychopath and wanted her to admit in psychiatric ward.

(xvii) The 1st plaintiff took shelter with Apna Ghar and with the help of them, 1st plaintiff returned to India.

These incidents resulted in matrimonial disharmony and return of 1st plaintiff to India. Thereafter, criminal and civil litigations between parties at the instance of the 1st plaintiff were initiated and pending.

27. In support of these allegations, we have only the oral evidence of the 1st plaintiff and Exs. P1 to P12 documents. As rightly pointed out by the learned counsel for the defendants, the plaintiffs have not examined any independent witnesses in support of the allegations made against the



C.S.No.362 of 2011

defendants. More particularly, with regard to the claim made by the plaintiffs that their reputation and self esteem are lost in the estimation of the public, due to marital issues and subsequent separate living of the 1st plaintiff and 1st defendant.

28.The demand of dowry will not take place in an open discussion and in the presence of strangers. The talks relating to the demand of dowry are held in a closed quarter among the close relatives of would be bride and bride groom. Only the parents of the would be bride and bride groom and other important close relatives would be present. Similarly whatever the issues have arisen in the marital life between the spouses, shall take place within the four walls. The disputes, disagreement and discard among the family members would take place within the house. Almost and always, it will not come to public, albeit in exceptional cases. Therefore, it is very difficult to get an independent witness with regard to demand/non-demand of dowry or the issues between the spouses and their parents, friends or relatives. We have to consider the allegations and counter allegations based on the evidence presented before the Court. One underlining fact and truth is that no one gets into a marriage life, for it to break. Especially Indian marriages takes place not only for the benefit of would be bride and bride



C.S.No.362 of 2011

groom but for their posterity. It is not only the marriage between the would be bride and bride groom, but between their respective families as well.

Therefore, no one either on the side of the bride or on the side of the bride groom would want the marriage to break, especially in a case like this, in a short span of time.

29. In Indian Marriages, especially in the arranged marriages, where the would be bride and bride groom have no occasion to meet each other, converse with each other and understand each other, before marriage, it takes some time for the spouses to understand each other and the families to understand each other, to ensure a successful matrimonial life between the spouses. Invariably, in every arranged marriage, a woman enters into a new house and have new relatives in the form of in-laws, close relatives of in-laws and friends of bride groom. The family and social circumstance in which the bride lived prior to marriage would have a total change after the marriage. The bride has to understand her husband, his parents and her in-laws and relatives for her to adjust to the changed new environment. It takes some time. There are compatible issues like adjusting to the likes and dislikes of the spouses, comfort level in the new house etc. There comes the role of the bride groom and bride groom's family to give a hand holding and



C.S.No.362 of 2011

comfort zone to the bride to adjust and accommodate her in the new surroundings. Again it is reiterated that it requires some time for her to adjust to the new surroundings. In most of the failed marriages, the marriage fails mainly due to the compatibility issues and lack of patience to give each other a little time to adjust to the new surroundings. If they have the required patience and tackle the minor issues with calmness and maturity, certainly the marriages will last for long. In this case, this Court finds that just immediately after the marriage there were issues, alleged and counter alleged by the parties that contributed to the present litigation. Whether the allegation and counter allegation are true or not is what this Court is going to find out.

30.Many a times when a marital discord happens, the parties tend to make a mountain out of a mole hill. Small issues are blown out of proportion and exaggerated to suit the provisions under the Marriage Act and Criminal Acts. Unfounded allegations are made without a semblance of truth in it.

31.In the case before hand, the plaintiffs have made allegations as narrated above. As observed earlier, there is absolutely no independent evidence in support of these allegations. When it is claimed by the plaintiffs that immediately after the marriage the dowry harassment followed by



C.S.No.362 of 2011

physical violence had happened, this Court wonders whether in such a situation, the 1st plaintiff, who is a Doctor, would have preferred to go with the 1st defendant to USA. Any person with ordinary intelligence would not have ventured to go with a person who committed serious mental harassment and physical violence. If the incident, as alleged by the plaintiffs had taken place, from the date of marriage till the 1st plaintiff left to USA, then certainly she would have informed these things, especially physical violence alleged to have been perpetrated against her to her parents or near relatives and they, in turn, would have taken the matter to the defendants or other nearer relatives or even approached the Police against the physical violence caused to the 1st plaintiff. That is not done here. There is a serious doubt as to the genuineness of the allegations made by the plaintiffs against the defendants with regard to the demand of dowry and other harassment from the date of marriage till the date, 1st plaintiff left to USA.

32.It is alleged that even in USA, the 1st plaintiff was treated as maid servant and she was physically and mentally harassed. There is a serious allegation that the defendants 1 and 2 shared the bed, forcing the 1st plaintiff to sleep separately. Ofcourse, USA is a new place to 1st plaintiff. However, the law enforcing authorities in USA takes strict actions, if it comes to their



notice about any violence. The 1st plaintiff was treated at USA, in Hospital.

It appears that she had made no efforts to inform the law enforcing authorities at USA about the physical violence alleged to have been perpetrated against her. Only record available is the treatment record of the 1st plaintiff in USA. That is marked as Ex.P2. Defendants filed Ex.D1 treatment record.

33.Ex.P2 shows that 1st plaintiff was admitted at Virginia Hospital Centre on 23.02.2005, on a complaint of depression with suicidal ideation. She was treated till 26.02.2005. The case history of the 1st plaintiff shows that,

“There has been marital strife all along. The marriage was not even consummated. Her husband's younger brother and younger sister are living at the apartment right next to their own and the family interferes a lot with the couple and her husband (1st defendant) apparently lets this happen. The patient (1st plaintiff) has been feeling miserable with no emotional support whatsoever. Her Husband (1st defendant) apparently verbally abuses her.

On 23rd of February, after one such outburst, the patient impulsively cut her forearm. This resulted in her being brought to the emergency room and then, admission to



the psychiatric unit. There is no history of mental illness in the patient or her family members prior to last years. Husband (1st defendant) and his family apparently made a big deal of the fact that she had taken Xanax 0.25 mg one tablet on four occasions over the last 8 years. Patient (1st plaintiff) wants to remain committed to the marriage and wants us to make her realize the folly of his ways.'

34.This history of the patient voluntarily, truly and out of heart given to the Doctor at Virginia Hospital Centre by the 1st plaintiff shows that there was marital strife all along, marriage was not consummated. Husband's family is interfering with the affairs of their life. She had no emotional support. Her husband verbally abuses her and only due to that she had cut her wrist. It is also seen that there is no family history of mental illness.

35.The learned counsel for the defendants mainly relied on Ex. D1(B) e-mail communication between the 1st plaintiff and her friend Anand to project that she had an affair with Anand and that she has mental issues. Her e-mail communication reads as follows:

"The thing is not which u came to know to the full extent something is there but not to the extent u perceive. I want to clarify about ur decision towards this issue. The thing which i understood about ur decision is a bit hurting. As u perceived i have not even thought of reducing ur contact(it



C.S.No.362 of 2011

is helpful to me). The only thing i thought is to modify the way of contact that is all i think rest can be clarified only in person.

*Bye bye for now
makkas”*

From this communication we cannot come to a definite conclusion that there was a love relationship between the 1st plaintiff and Anand.

36.The next communication reads as follows:-

*“Hi Iam getting few alliances here. I wish not to get trapped into each one of it as this was the case before. I dont want to start a vicious cycle again. I want to be strong enough so that i don't want to yield to the mood fluctuations for each alliance. If this happens ill go in for a depression again.
Kindly help me to overcome this.
Take care
bye bye.”*

From this communication, what we can understand is that the 1st plaintiff was getting few alliances and that she did not want to get trapped into each one of it, so that she didn't have to deal with the mood fluctuations and depression. We can understand that this communication again cannot reflect any love relationship between the Anand and the 1st plaintiff. If she was really in love with Anand, she would not have informed him about the



C.S.No.362 of 2011

marriage alliances. The process of looking for a right match was taking place for some time and it appears that it resulted in her mood swings and depression.

37.It is understandable in a case where the right match is not able to be found despite multiple proposals. But with these communications, we cannot conclude that there was a love relationship between Anand and the 1st plaintiff and that she was suffering from mental depression which required continuous medical treatment.

38.The defendants produced Ex.D2, yahoo chat communication between the 1st plaintiff and 1st defendant. This communication shed some light on the efforts taken by 1st plaintiff and 1st defendant to understand each other prior to marriage on 21.06.2004 and after the betrothal on 23.03.2004. This Court chooses to discuss only some portion of the chat, which is relevant for the purpose of this case.

39.The communication shows that 1st defendant was keen on knowing about the 1st plaintiff's college life and especially about her friends. When the 1st plaintiff was informing him that she used to fight a lot with one of her



C.S.No.362 of 2011

friends, because she was opposite to her, 1st defendant responded by saying that if one is opposite, how can she be a friend. 1st plaintiff responded by saying that she expects a lot from her but she cannot satisfy her and that is the problem. 1st defendant replied that she didn't make the same mistake in finding her life partner.

40. During the course of chat, the 1st plaintiff asked the measurement of wrist and finger of the 1st defendant to buy bracelet and ring. 1st defendant replied that he doesn't like bracelet and asked her not to buy because he would not wear it. 1st plaintiff asked him what else he prefers, 1st defendant replied that he didn't prefer materials items, he prefers just peace and happiness. 1st plaintiff responded saying that 1st defendant wanted only love and affection. 1st defendant replied that finally she got the point.

41. This chat is relied by the learned counsel for the defendants to show that when 1st defendant is not at all interested in buying bracelet or ring, there is absolutely no necessity for defendants to ask 300 sovereigns or 200 sovereigns of gold jewels.

42. This chat shows that 1st defendant was very eager to know about



C.S.No.362 of 2011

the friends of the 1st plaintiff. 1st plaintiff responded by saying that one friend used to accompany her in all sports. The following part of the chat is very interesting and relevant to understand the psyche of the 1st plaintiff.

“rkramiah: looks like all your friends fight with you... why is that

Suganya: i have certain expectations & certain things from which ill be sticking on that might be the problem.

Rkramiah: certain expectations and certain things?

Suganya: but, now after lyr experience in chennai, now i have changed a lot, learnt more about life.

Suganya: i was expecting more from friends

Suganya: more over my mentality was different from others

rkramiah: mentality was different from others.... like what? example

Suganya: i will be punctual, ill promise thing only which i can

rkramiah: good the chennai, taught you some thing in life

Suganya: not something a lot

rkramiah: good

Suganya: hostelites doesnt give importance to the things which they have to

Suganya: they r more playful

Suganya: they give more importance to worth for nothing matters, this is only a general opinion”

43. This part of the chat shows that 1st plaintiff is a stickler to certain



C.S.No.362 of 2011

principles like punctuality, giving promise for what she can do and she also expects the same thing from her friends. When the friends were not living upto her expectations, there is a fight with them. She clearly informed her mentality to the 1st defendant. Her mentality is that she is punctual, she promises only what she can do and she is sticking to her principles. It appears that she is a person with principles, self discipline and when that is not found among her friends, she gets disturbed.

44.The next part of the chat shows that 1st plaintiff told 1st defendant that she thought of buying chain, bracelet and ring. The 1st defendant replied that he did not like bracelet and therefore she asked him to give his options. 1st defendant responded saying that he need to go now and will talk about it later.

Another portion of chat reads as follows:

“ rkramiah : I am sure mama thinks you are more precious that gold.... he is already giving me a something which weighs more than 62 kgs (because you are more precious) than the metal gold. This itself is going to be very difficult for me to carry it back here.

Suganya: dad is laughing after seeing this msg

Suganya: then shall i put somemore weight

Suganya: we r happy about this



C.S.No.362 of 2011

rkramiah: I wear a chain from my grand mother that is all i will wear. I want to set an example for others (with your help), that in a wedding gold stuff doesn't matter. It will be how we treat the people who come for the wedding and how much they enjoy the day with us. Tomorrow someone would compare and say... oh...they did so much for Suganya, so we should do this....

rkramiah: i didn't know mama was there

Suganya: dad is really proud of his mapillai

rkramiah: If you really want to do and still insist on doing it... do what you want... But don't be sorry if I don't wear it more than one day...

Suganya: will u wear it when u come for the next marriage

rkramiah: Noop.... sorry... ”

This chat is also relied by the learned counsel for the defendants to prove the point that the defendants especially the 1st defendant is not at all interested in any gold jewels. Sure it looks like that.

45.From the aforesaid chat between the 1st plaintiff and 1st defendant, we can see that 1st defendant is not at all interested in jewelleries. Finally he gave the option to the 1st plaintiff to do whatever she wants. He did not insist her on buying this jewel or that jewel. However, this chat surrounds the jewelleries given to the 1st defendant and not the jewelleries that was given to the 1st plaintiff. There is no chat about the demand of 300 or 200



C.S.No.362 of 2011

sovereigns of gold jewels, silver articles worth Rs.1,00,000/- or Rs.75,000/-
or Honda city car.

46.The defendants produced Ex.D6 and D7 phone logs to show that the 1st plaintiff had every opportunity of communicating with her parents and relatives in India. Infact, she made repeated calls to her father. These documents are produced to show that if really there was harassment as alleged by the 1st plaintiff, she might have informed the same to her parents or relatives. USA is not a neighbouring State. It is in different continent. It is not easy for one to travel to USA. There are formalities like getting passport, VISA, flight tickets etc and travel to USA is a costly affair. Maybe, the 1st plaintiff did not want to inform her parents about her sufferings or that she informed them and they were not in a position to take immediate steps because of the distance and other logistic issues involved. We have already found that the cause for 1st plaintiff cutting her wrist was due to the abusive treatment by the 1st defendant and interference from the defendants 2 and 3, and lack of emotional support. Maybe the allegations with regard to the dowry harassment and other harassment are exaggerated, but we cannot discard them as totally false.

47.It is important to refer to the evidence of PW1 and DW1. She was



C.S.No.362 of 2011

not able to say correctly how many sovereigns were purchased in Chennai and Thanjavur and how many sovereigns owned by them. She admitted having e-mail chats with the 1st defendant. She had stated that she did not complain to the Police at USA. She stated that defendants harassed her by demanding dowry at Neelankarai and the 1st defendant brutally attacked her on few occasions. The defendants 2 to 5 also joined in attacking her. However, she stated that she did not suffer any external injuries and there was no damage to her body. She had internal injuries in her hand and tongue. She took treatment at Thanjavur with Dr.Jesudas. She did not file any complaint to the Police. X-ray was taken to her at Thanjavur. If really she was attacked as alleged by her and took treatment, she is expected to file medical records of the treatment. The same is not forthcoming. Therefore, the claim that she was attacked by defendants 1 to 5 in India cannot be accepted.

48.With regard to the gift of Rs.50,000/- given to the 1st plaintiff by her father, it is the evidence of PW1, that her father wanted to convert the amount to US Dollars, but she was not allowed to do so by the defendants. Therefore, she took the Indian rupees, without declaring it to the custom officials. It is also her evidence that the 1st defendant snatched Rs.50,000/-



C.S.No.362 of 2011

and threw it in the International lounge. In the absence of any corroborative evidence in support of this allegation, this Court has to conclude that the about said incident as alleged by the 1st plaintiff did not happen at all. The airport authorities would not permit the Indian currency to be taken to a foreign country without proper approval. The 1st plaintiff stated that she brought this Rs.50,000/- again to India, when she returned from USA. It is also not possible.

49. She admitted by stating in the plaint that defendants 1 and 2 shared the same bed. She also admitted sending e-mails to the 3rd defendant which is marked as Ex.D5. It is the case of the defendants that if 1st to 3rd defendants were staying together, it is not necessary to send Ex.D5, e-mail to the 3rd defendant. There is a force in this contention. She stated that unable to undergo the torture given by the defendants and that when they pushed her to the extent of cutting her hand, she cut her hand. She admitted taking 'Xanax' tablet on four occasions for a period of 10 years. She denied the suggestion that she needs psychiatric treatment and also she denied the suggestion that she had suicidal tendency and therefore could not be compatible with the 1st defendant in the marriage life. She stated that she took all her belongings which she took from India to USA from matrimonial



C.S.No.362 of 2011

home to Chicago.

WEB COPY

50.She admitted receiving a covering letter with a format of divorce form from the 1st defendant, but denied the receipt of summons from the US Court to appear before the Court in USA in the divorce petition filed by the 1st defendant. The reason is that she is not a citizen and resident of USA. She admitted receiving decree of divorce from Court of Virgenia and states that this decree is not valid for the reason that she is a resident and citizen of India and got married under the Hindu Marriage Act. When she visited USA for the second time, she tried to contact the 1st defendant. She stated that she made several calls to her parents from USA and complained about the harassment by the 1st defendant. She admitted that she did not give complaint against the 1st defendant to the USA authorities. Her classmate Anand married one Dr.Bhuvneshwari as they were lovers since the 1st year of college.

51.DW1 denied the harassment against the 1st plaintiff and further denied the demand of dowry. He stated that it is the plaintiffs who harassed the defendants.

52.As said earlier, it appears that marital strife had taken place



C.S.No.362 of 2011

between the parties from the date of marriage, as projected by the plaintiffs.

One thing that is made clear is that her husband's family, especially defendants 2 and 3 who were residing next to them interfered with the life of 1st plaintiff, and 1st defendant verbally abused her. Not only that, on 02.03.2005, 1st defendant wanted the 1st plaintiff to sign the property settlement agreement to formally end the marriage. It appears that the 1st plaintiff had not acceded to his request. The marriage between the 1st plaintiff and 1st defendant was celebrated and marriage expenses was met by the parents of the 1st plaintiff to their best possible means. Within 9 months from the date of marriage, the 1st defendant asked the 1st plaintiff to sign the property settlement agreement for him to get a divorce from the 1st plaintiff. Due to such pathetic situation, apart from facing verbal abuse from her husband and interference from husband's family and lack of emotional support, the 1st plaintiff had eventually resorted to the extreme step of cutting her wrist. The situation prevailed at that point of time, forced her to take such an extreme decision. We have to conclude from the evidence available that decision taken by the 1st plaintiff to cut her wrist was the result of abuse made by the 1st defendant and interference of 1st defendant's family members, especially defendants 2 and 3. These were the immediate and proximate cause for the act of the 1st plaintiff in harming her.



C.S.No.362 of 2011

Therefore, in the considered view of this Court, primarily the 1st defendant was responsible for the 1st plaintiff to take such an extreme decision.

53. From the oral and documentary evidence produced in this case, the only conclusion that can be drawn is that there were difference of opinions, views and some issues between the 1st plaintiff and 1st defendant and their respective family members, prior to and after the marriage. The marriage was celebrated, all with the fond hope that things would be all right in due course. However, it turned to be worst leading to this situation and that the parties are now facing litigation from the year 2005, both criminal and civil. It is not as though there is no harassment or ill treatment by the defendants, but it is exaggerated by the plaintiffs in the plaint and in evidence of PW1 as to the nature of the harassment and ill treatment.

54. The first plaintiff's efforts to make contact with the first defendant when she visited USA second time, is projected by the learned counsel for the defendants in support of his submissions that had there been any harassment as alleged by the first plaintiff, she would not have made efforts to contact the first defendant during her second visit to USA. The fact that she made efforts to make contact with him shows that the allegation of



C.S.No.362 of 2011

cruelty and harassment are not true. There is nothing wrong for the 1st plaintiff trying to make contact with the 1st defendant. It is always possible, if the people are willing to forget the past and look forward to the future, to settle the issues and unite. Merely because the 1st plaintiff made an effort to contact the 1st defendant, we cannot come to the conclusion that there was no harassment at all against the 1st plaintiff by the defendants. Though it is alleged that all the defendants in one way or other harassed or ill treated the plaintiffs, this Court finds that the main person involved in harassing the 1st plaintiff was the 1st defendant. Therefore, this Court is of the considered view that 1st defendant has to pay damages to the plaintiffs for causing mental stress, agony and annoyance to the plaintiffs.

55.The learned counsel for the defendants raised the issue of Jurisdiction to entertain the suit. The reading of the Judgments relied by the learned counsel for the parties discussed above shows that any issue regarding the validity of marriage can be agitated only before the Family Court. There is no doubt in it. The suit is filed not only for declaring the decree of divorce obtained against the 1st plaintiff by the 1st defendant in Circuit Court for the City of Alexandria, Virginia, United States is null and void, but also there are other reliefs asked like the claim of damages and



C.S.No.362 of 2011

WEB COPY

56. At the time of filing of the suit, the plaintiff filed an application in A.No.2335 of 2007 seeking leave to institute the suit in this Court. That application was allowed. The defendants had not taken any steps to revoke the leave granted and there is no objection taken in the written statement also with regard to the Jurisdiction. Rather the defendants raised counter claim, thereby submitted themselves to the Jurisdiction of this Court. The objection to the Jurisdiction should be taken at the earliest point of time, atleast before the settlement of issues. When it is not done by the defendants, this Court finds that defendants cannot object to the Jurisdiction of this Court to entertain this suit.

57. It is apposite to refer the judgment reported in **[1991 3 SCC 451]** in “*Y.Narasimha Rao and others Vs. Y.Venkata Lakshmi and another*”, with regard to foreign Judgment.

58. The validity of foreign Judgment in India is governed by Section 13 CPC.

Section 13 CPC reads as follows,



C.S.No.362 of 2011

“A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except--

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in [India].”

59.As per this Section, normally a foreign judgment shall be conclusive as to any matter directly adjudicated upon between the same parties or between the parties under whom they or any of them claim litigating under the same title. However, there are some exceptions to this presumption. To be a conclusive judgment,

(i) The judgment should have been pronounced by a Court of competent jurisdiction;



C.S.No.362 of 2011

WEB COPY

- (ii) The judgment should have been given on the merits of the case;
- (iii) If the judgment is founded on an incorrect view of international law or a refusal to recognise the law of India, then the judgment cannot be considered as conclusive judgment.
- (iv) The judgment should not be opposed to natural justice;
- (v) The judgment should not have been obtained by fraud;
- (vi) It should not have been delivered on a breach of any law in force in India.

60.From the judgement reported in [1991 3 SCC 451] in "*Y.Narasimha Road and others VS. Y.Venkata Lakshmi and another*", it can be gathered that,

(a) Foreign judgment shall not be recognised, if it has not been pronounced by a court of competent jurisdiction. It means that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognizes as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court.



C.S.No.362 of 2011

WEB COPY

(b) The respondent should have duly served and voluntarily and unconditionally submitted himself/herself to the jurisdiction of the court and contested the claim, or agreed to the passing of the decree with or without appearance, for it to be a court of competent jurisdiction.

(c) A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the Court either in person or through a representative for objecting the jurisdiction of the Court, should not be considered as a decision on the merits of the case.

(d) The marriages which take 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.

(e) Foreign judgment are unenforceable on the ground that, the proceedings in which it is obtained are opposed to natural justice.



C.S.No.362 of 2011

(f) If the rule of audi alteram partem has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule, it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent himself/herself and contest effectively the said proceedings.

(g) If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice.

(h) It is for this reason that the rules of Private International Law of some countries insist, even in commercial matters, that the action should be filed in the forum where the defendant is either domiciled or is habitually resident. Therefore, the courts in this country also insist as a matter of rule that foreign matrimonial judgment will be recognized only if it is of the forum where the respondent is domiciled or habitually and permanently resides .



C.S.No.362 of 2011

61.Coming to the facts of this case, it is admitted by the 1st plaintiff that, she received a covering letter with a format of divorce form from the 1st defendant, however, denied the receipt of summons from the US Court to appear before the Circuit Court for the City of Alexandria, Virginia, USA in the divorce petition filed by the 1st defendant. She also admitted receiving decree of divorce from the Circuit Court for the City of Alexandria, Virginia, USA. It is the submission of the plaintiffs that 1st plaintiff had never received summons from the US Court and she never submitted herself to the jurisdiction of Circuit Court for the City of Alexandria, Virginia, USA. The reason is that, the marriage between her and 1st defendant had taken place, as per Hindu Marriage Act, 1955. She is a citizen of India and she is not a permanent resident of USA, especially within the jurisdiction of Circuit Court for the City of Alexandria, Virginia, USA. She was not even domiciled or habitually residing there. She was residing with the 1st defendant from 21.06.2004 till she left to India due to the cruelty committed by her husband and in-laws. When she had not submitted herself to the jurisdiction of Circuit Court for the City of Alexandria, Virginia, USA; that proceedings had not been conducted on the grounds available under Hindu Marriage Act, 1955; that she was driven out of home and was left on the mercy of her relative and then Apna Ghar.inc for her existence and return to



C.S.No.362 of 2011

India; when the 1st defendant failed to provide for her stay, food and other necessary comforts after throwing her out of home, there is no way, she can defend the divorce proceedings initiated by the 1st defendant against her.

62.Ex.P5 is the final decree of divorce. This decree reads that, “the decree came to be delivered upon the papers and pleadings formerly filed and read therein, upon hearing, *ore tenus*, before the Circuit Court for the City of Alexandria”;

The Latin phrase “*Ore tenus*” as defined in Black's Law dictionary means “By word of mouth”/ “orally”. It is a special proceeding with regard to uncontested divorce, where oral testimony will be taken at hearing. In some jurisdiction, if all issues, such as grounds for divorce and execution of property, are totally uncontested, a party may make motion for an *ore tenus* hearing. Thus, it is obvious that 1st plaintiff was not heard before this decree was passed.

63.This final decree further reads that, “the parties were lawfully married on the 21st day of June, 2004, in Thanjavur, Tamil Nadu, India and they have no children; Parites last cohabited together in Arlington County,



C.S.No.362 of 2011

WEB CONTENT

Virginia; Plaintiff has been domiciled in and has been an actual bona fide resident of the Commonwealth of Virginia for more than six months prior to the institution of the suit; Defendant namely, the 1st plaintiff herein is a non-resident of the Commonwealth of Virginia whose current address is No.308, 12th street, Natarajapuram South, Thanjavur, Tamil Nadu – 613 007, India; Parties have been living separate and apart continuously and without any cohabitation and without any interruption since September 4, 2004; at the time the parties separated, it was the intention of at least one of the parties to remain permanently separate and apart; that there is no hope or expectation of a reconciliation; and that the plaintiff is entitled to a divorce a vinculo martrimonii, (also known as absolute or total divorce, dissolving the marriage and releasing the parties completely from the matrimonial obligation) upon the grounds of having lived separate and apart without any cohabitation and without interruption for a period of more than one year”. Accordingly, final decree for divorce was granted.

64.As already stated it is evident from this final decree of divorce that, it is more like an Ex-parte decree. 1st plaintiff has not submitted herself to the jurisdiction of Circuit Court for the City of Alexandria, Virginia, USA in this divorce proceedings. The ground of grant of divorce was that the



C.S.No.362 of 2011

parties were living separately without any cohabitation and without any interruption for a period of more than one year.

65.The 1st plaintiff and 1st defendant are Hindus and they are married following the Hindu customs. So, they are governed by the Hindu Marriage Act, 1955.

Section 13 of The Hindu Marriage Act,1955 lays out grounds for divorce which are as follows:-

- 1)Adultery
- 2)Cruelty
- 3)Desertion (*for at least for 2 years*)
- 4)Ceased to be a Hindu by conversion
- 5)Incurable unsoundness or suffering continuously/intermittently from mental disorder
- 6)Suffering from venereal disease in a communicable form
- 7)Renounced the world by entering any religious order
- 8)Has not been heard of as being alive for a period of seven years
- 9)No resumption of cohabitation for a period of one year or upwards after the decree for judicial separation
- 10)No restitution of conjugal rights for a period of one year or upwards after the decree for restitution of conjugal rights.
- 11)Bigamy as against wife
- 12)Guilty of rape/sodomy/beastiality



WEB COPY



C.S.No.362 of 2011

13) Since the order/decreed of maintenance, cohabitation between the parties has not been resumed for one year or upwards

14) Marriage solemnized, before the girl attained the age of fifteen years and she repudiated it before attaining the age of eighteen years.

66. If a spouse deserted the other spouse for a continuous period of not less than two years immediately preceding the filing of petition, then it is a cause for filing a divorce petition under Section 13(1) (ib) of Hindu Marriage Act, 1955.

A divorce cannot be granted for the reason that spouses were living separate continuously, without any cohabitation and interruption for a period of one year, but not less than two years.

67. The ground on which final decree of divorce was granted to the 1st defendant against the 1st plaintiff is not available to the 1st defendant under the Hindu Marriage Act, 1955. The evidence available in this case shows that, after the 1st plaintiff was discharged from the hospital, she was not taken to the 1st defendant's house, rather she was taken care of by her relative and then Apna Ghar.inc. During her stay at USA, 1st plaintiff was all along under the control of the 1st defendant. She was not a permanent resident of USA. She was a dependent of 1st defendant for her



C.S.No.362 of 2011

accommodation like food, stay, living etc. There is no evidence produced by 1st defendant to show that, he made the necessary arrangements, like food, stay and other necessary facilities and legal aid to the 1st plaintiff to defend the divorce proceedings initiated by the 1st defendant against her.

68. Therefore, this Court is of the considered view from the evidence available that 1st plaintiff has not submitted herself to the jurisdiction of Circuit Court for the City of Alexandria, Virginia, USA, the 1st defendant has not made any arrangements/facilities for the 1st plaintiff to stay at USA and to defend the case, the grounds on which the divorce was granted is not available to the 1st defendant under Hindu Marriage Act 1955, the rule of audi alteram partem was not followed before granting final decree of divorce. For all these reasons, this Court is of the view that the final decree of divorce granted by Circuit Court for the City of Alexandria, Virginia, USA in favour of 1st defendant is not a conclusive judgment and for the reasons that,

- (i) It has not been pronounced by a Court of competent jurisdiction;
- (ii) It has not been given on merits of the case;
- (iii) The decree was obtained opposed to the principles of natural justice;



C.S.No.362 of 2011

(iv) The grounds available for divorce under Hindu Marriage Act, 1955 were not recognised;

(v) The ground on which the divorce was granted is not available under Hindu Marriage Act, 1955.

(vi) 1st plaintiff had not submitted herself to the jurisdiction of Circuit Court for the City of Alexandria, Virginia, USA.

Therefore, this Court finds that, the final decree of divorce is not valid against the 1st plaintiff and cannot be enforced against her.

69. One of the submissions of learned counsel for the defendants is that the plaintiffs claimed a sum of Rs.2,00,00,000/- (Rupees Two Crores only) as damages for having caused loss of reputation with the plaintiffs' family traditional, professional and social status, and for making defamatory status against plaintiffs and their family members and for causing huge mental stress, agony and annoyance to the plaintiffs and their family members. He further submitted that, except the evidence of PW1, no other independent witness is examined in this case, to prove the claim of the plaintiffs that, they have suffered loss of reputation because of the actions of the defendants or the alleged defamatory statements made against the plaintiffs and their family members.



C.S.No.362 of 2011

70. In response, learned counsel for the plaintiffs submitted that, it is evident from the evidence produced in this case that the allegation with regard to loss of reputation, defamatory statements made by defendants against the plaintiffs and their family members are proved. It is not necessary to examine any independent witness for the reason that the evidence already produced is unassailable.

71. From the case set out by the plaintiffs, we can understand that they claim for loss of reputation of the plaintiffs' family traditional, professional and social status because of the matrimonial disharmony and for the defamatory statements made. The 1st plaintiff was examined as PW1 and produced Ex. P1 to Ex. P12. As rightly pointed out by the learned counsel for the defendants, plaintiffs have not examined any independent witness to prove the case, that because of the matrimonial discard and the defamatory statements alleged to have been made by the defendants against the 1st plaintiff and her family members, they have suffered loss of reputation of plaintiffs' family traditional, professional and social status. The documents produced by the plaintiffs would be of no use to prove this claim. It is not enough to say that the defendants have made defamatory allegations and it resulted in loss of reputation of the plaintiffs in the eye of the public. This



C.S.No.362 of 2011

allegation must be proved by examining independent witnesses to establish the case, that because of the alleged defamatory statements made by the defendants, the reputation of the plaintiffs and their family members was lost in the estimation of the witnesses, in particular, and the public in general. However, plaintiffs have not chosen to examine any witnesses for proving that their reputation is lost in the estimation of the public. Therefore, this Court is of the view that claim made by the plaintiffs for damages for having loss of reputation of the plaintiffs' family traditional, professional and social status by making defamatory statements is not proved.

72.It is also claimed by the learned counsel for the plaintiffs that 1st defendant had made repeated allegations of infidelity and adultery against the 1st plaintiff in his written statement. No doubt that making unfounded defamatory allegations in pleading would amount to publication of that defamatory matter. However, the suit is based on the alleged defamatory allegations made prior to the filing of the suit. Plaintiffs have not chosen to amend the plaint to claim damages, on the basis of the defamatory statements made in the written statement filed by the 1st defendant. Therefore, this Court is of the considered view that plaintiffs cannot, in



C.S.No.362 of 2011

absence of any amendment to the plaint, claim damages for defamatory allegations made in the written statement filed by the 1st defendant.

73. With regard to the claim of damages, on the grounds of causing mental stress, agony and annoyance to the plaintiffs and their family members, tort of intentional infliction of emotional distress would get attracted. Recognition of the intentional infliction of emotional distress as a separate tort is a modern development of the law, which traces its origin to the tort of assault.

74. The 1st plaintiff was given in the hands of marriage to the 1st defendant herein and within 13 days of their marriage, they left for the USA. Though the 1st defendant is used to the surroundings and nothing is new to him, it's not the case for the 1st plaintiff. The country that she has landed, the home she is entering into, the relatives, everything and everyone is new to her. Thus being entrusted with a wife in marriage, the husband has a certain amount of duty to care for his wife in providing food, shelter and emotional support to her. Though it is shown that she had made “n” number of calls to her father, it's not the case that she can share her untoward situation and get comforted within her parents arms.



C.S.No.362 of 2011

WEB COPY

75. Being well-aware that 1st plaintiff's only hope in the foreign land is him, he pushed her to the edge of attempting suicide. Not only that, even after that, he didn't have the heart to take her home, but left her. From where she takes shelter in Apna Ghar. Finally with the help of the agency she comes to India. The parents of the 1st plaintiff who entrusted her in the hands of 1st defendant, would have undergone untold agony on hearing the cruelty that their daughter has met in her matrimonial home and that too in a foreign land.

76. The conduct of the 1st defendant towards 1st plaintiff (i.e) constant verbal abuse, indifferent and "don't care" attitude and ignoring the 1st defendant's family interference, his reckless disregard towards her welfare has pushed the 1st plaintiff to undergo severe mental distress and then to attempt suicide. Thus, in view of this Court, the conduct of the 1st defendant and the suffering met out by the 1st plaintiff has the nexus necessary for the proof of tort of intentional infliction of emotional distress as against the 1st Defendant and thus, established in this case.



C.S.No.362 of 2011

77.It is pertinent here to refer to the judgment of the Hon'ble Supreme

Court in ***Neeraja Saraph Vs. Jayant V. Saraph and another*** reported in ***(1994) 6 SCC 461***. The relevant portion of the judgment is extracted as follows:

For the father-in-law it was an unfortunate experiment, an effort, 'hoping against hope' forgetting that failure of it would be ruination of the other. For the son it was a pleasure trip. But for the daughter-in-law it was loss of everything her maidenhood, status, service, dignity and peace. Her dreams stood shattered and she was reduced to nothing. 'Accepting moral responsibility', 'not knowing the son', 'sharing the grief' by the father-in-law are of little avail to the appellant. There is no whisper in the letter that he was willing to compensate for the wrong done to the appellant due to error in his assessment of his own son. It is not the soothing words alone which were needed but some practical solution to the disaster brought about by him. In these desperate circumstances, the wife having been forsaken by her husband and having lost the job had no alternative except to file a suit for damages against the husband and father-in-law for ruining her life in forma pauperis.

Therefore, this Court directs the first defendant to pay a sum of Rs.25,00,000/- to the first plaintiff for causing mental stress, agony and



C.S.No.362 of 2011

annoyance to her and her family members.

WEB COPY

78. In view of the reasons stated above, this Court finds that final decree of divorce granted by the Circuit Court for the City of Alexandria, Virginia, United States, against the first plaintiff and in favour of the first defendant is not binding on the first plaintiff and cannot be enforced against her. This Court directs the first defendant to pay a sum of Rs.25,00,000/- to the first plaintiff as damages for causing mental stress, agony and annoyance to the first plaintiff and her family members. Thus, issue nos.1 & 2 are answered.

79.Issue No.3:

There is absolutely no details or evidence produced as to what are all the jewels, silver articles are available with the defendants. PW1 admitted that she had taken all her belongings when she left from USA to India. In the absence of any evidence to show that the defendants are in possession of the first plaintiff's jewels, silver articles and other valuables, this Court finds that the first plaintiff is not entitled for the relief of return of jewels, silver articles and other valuables as claimed in the plaint. Thus, this issue is answered.



C.S.No.362 of 2011

WEB COPY 80.Issue Nos.4 & 5:

Ex.P4 is a copy of the FIR in Crime No.7 of 2005. Ex.P6 to P8, P12, D9 and D11 are the copies of the orders and other proceedings made in the Criminal case pending against the defendants. The Hon'ble Supreme Court of India has conformed the quashing of Criminal case against the defendants 4 and 5 in Criminal Appeal No.642 of 2011. Defendants claim a sum of Rs.1 crore as damages for the mental agony resulting in 4th defendant's open heart surgery, pain & sufferings undergone by the defendants due to the false complaint given by the first plaintiff and negative publication given in Tamil newspapers.

81. There is no evidence produced in this case to show that the plaintiffs are responsible for the publication of the news items relating to the criminal proceedings pending against the defendants. Admittedly, criminal case in crime No.7 of 2005 is still pending. The sufferings of the first plaintiff at the hands of the first defendant is proved. On the other hand, there is no evidence available to prove the claim of Rs.1 crore as damages. When the criminal case is still pending, we cannot come to the conclusion that criminal case is a false case and therefore, defendants are to be paid



C.S.No.362 of 2011

damages for malicious prosecution. In this view of the matter, this Court finds that the counter claim made for Rs.1 crore as damages in the present suit, when a criminal case is still pending, is not maintainable and therefore, defendants are not entitled for the damages claimed. Accordingly, these issues are answered.

82.Issue No.6:

With regard to the submissions of the learned counsel for the defendants that the suit is barred by limitation, there is no plea of limitation taken in the written statement. Plaintiffs filed a criminal case against the defendants even in the year 2005. The criminal proceedings are still pending. Even in the written statement, the defendants have made allegations of love affair between first plaintiff and one Anand. Therefore, this Court is of the view that this suit is not barred by limitation.

83.In the result, this suit is decreed as follows:

(i) It is declared that the exparte foreign judgment in Chancery No.CH05003002, dated 06.03.2006, before the Circuit Court for the City of Alexandria, Virginia, United States, in favour of the first defendant is ab initio void, not enforceable and not binding on the first plaintiff.



C.S.No.362 of 2011

WEB COPY (ii) The first defendant is directed to pay damages of Rs.25,00,000/-
to the first plaintiff.

(iii) Defendants are not entitled for damages.

(iv) Thus, the suit is decreed in part with proportionate costs and the
counter claim for damages is dismissed.

gd/sli

22.02.2023



C.S.No.362 of 2011

List of witnesses examined on the side of plaintiff:

1.Dr.Maheswari (PW1)

List of documents marked on the side of plaintiff:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	P1	Original letter from 1 st defendant to the plaintiff with enclosures dated 02.03.2005.
2.	P2	Copy of discharge summary report dated 03.05.2007.
3.	P3	True copy of the letter from Apna Ghar, dated 04.04.2005.
4.	P4	Photocopy of the FIR dated 06.08.2005.
5.	P5	Photocopy of the final decree of divorce, dated 06.03.2006.
6.	P6	Certified copy of the final order in CrI.O.P.(MD) No.9879 of 2006 dated 03.02.2007.
7.	P7	Certified copy of the order in CrI.O.P.(MD) No.6791 of 2007, dated 19.07.2007.
8.	P8	Original letter from Ministry of external affairs to the first plaintiff dated 04.12.2009.
9.	P9	Office copy of the notice sent by the plaintiffs counsel to the defendants dated 07.06.2010.
10.	P10	Photocopy of the record of proceedings dated 16.07.2010.
11.	P11	Original discharge summary reports of the 2 nd plaintiff.
12.	P12	Certified copy of the order passed by the Hon'ble Supreme Court of India in Cr.A.No.642 of 2011.

List of witnesses examined on the side of the defendants:

1.Ramesh Ramiah (DW1)



C.S.No.362 of 2011

List of documents marked on the side of defendants:

WEB COPY

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	D1A	Printout of discharge summary dated 26.02.2005.
2.	D1B	Printout of the 5 emails sent by the 1 st plaintiff to Anand dated 12.08.2003.
3.	D2	Printout of the Yahoo chat between 1 st plaintiff and 1 st defendant.
4.	D3	Certified copy of the Cheque payment to 2 nd plaintiff dated 03.06.2004.
5.	D4	Printout of the Air tickets cancelled on 27.10.2004 dated 08.06.2004.
6.	D5	Printout of the email to the 3 rd defendant by the 1 st plaintiff dated 30.09.2004.
7.	D6	Printout of the telephone bills for the period August 2004 to February 2005.
8.	D7	Printout of the statement of hospital charges dated 27.07.2005.
9.	D8	Printout of the publication in Tamil Daily Newspaper dated 08.08.2005.
10.	D9	Certified copy of the 161 statement of 1 st plaintiff and others.
11.	D10	Printout of the 4 th defendant's open heart surgery at USA dated 19.03.2006.
12.	D11	Certified copy of the order in CrI.O.P.MD.No.2535 of 2008 dated 02.02.2010.
13.	D12	Original general power of attorney dated 16.09.2011.

gd/sli

22.02.2023

Index : yes/no

Speaking order : yes/no



WEB COPY



C.S.No.362 of 2011

G.CHANDRASEKHARAN,J.

gd/sli

Pre-delivery Judgment in
C.S.No.362 of 2011

22.02.2023