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C.R.P.No.1988 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1988 of 2021
and
C.M.P.No.15150 of 2021

Lalithamani Deivasigamani

.. Petitioner

VS

Gopal Arumugam
Respondent

..

Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.04.2021 made in I.A. No.3 of 2020 in H.M.O.P. No.932 of 2019 on the file of the Court of the Additional Principal Family Judge, Coimbatore.

For Petitioner : Mr.N.Sridhar
for Mr.R.Bharath Kumar

For Respondent : Ms.K.Sumathi

ORDER

This is a revision arising against the petition filed for rejection of plaint. There is no dispute in the relationship between the parties. The civil revision petitioner is the wife and the respondent is the husband. Both entered into a matrimony on 22.02.2002 at Pollachi. The marriage was registered on



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01.03.2002.

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2. The respondent claims that he is a businessman, who travels across the globe and having his business interest in Canada. He also admits that he is a Canadian citizen and so are his wife and two children. Two children were born from the wedlock on 07.12.2007 and 23.03.2009.

3. In and around 2014, the claim of the respondent is that they decided to shift to India in order to teach the children Tamil and Indian cultural values. They started residing at Villa No.138, Mayflower Sakthi Graden, Nanjundapuram Road, Coimbatore. For the purpose of this petition, suffice it to state that on 29.12.2008, the respondent left India and travelled to Canada for business with an intention to return to India in February, 2019. The petition further avers that, without notice to the respondent, the petitioner left the country and travelled to Canada and informed the husband that she has landed in Canada after arriving within its borders.

4. The husband states he left Canada and came back to India and presented a petition for divorce on 15.06.2019. To this



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divorce petition, the civil revision petitioner / wife filed an application for rejection of plaint on the ground that the Indian Courts do not have jurisdiction and it is only the Canadian Courts which have jurisdiction.

5. I will also have to point out that the wife launched proceedings in Canada itself before the Superior Court, Ontario. The husband in his petition before the trial Court also wanted anti suit injunction restraining from proceeding further.

6. On being served with the summons by the Court, the petitioner/wife took out an application for rejection of plaint. The ground on which the plaint was sought to be rejected is as per Sections 19(i) and (iii) of the Hindu Marriage Act, the Courts in India do not have jurisdiction and it is only the Courts in Canada which have jurisdiction.

7. This application in I.A.No.3 of 2019 came to be dismissed by the learned Family Court, against which, the present petition is filed.

8. I heard Mr.Sridhar, learned counsel for the petitioner



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and Ms.K.Sumathi, learned counsel for the respondent.

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9. Mr.Sridhar, learned counsel, would draw my attention to paragraph XVIII and would state that the respondent / husband himself had conceded that the husband and wife last resided at 37, Rochdale Ave, Toronto, Ontario, M6E 1W9. He would state that as per Section 19(iii) of the Hindu Marriage Act, the Courts in India will have jurisdiction only if they have last resided within this country's jurisdiction. He would state that paragraph XVIII concedes to the fact that they were last residing in Ontario and, therefore, the Indian Courts do not have jurisdiction. He would further add that the pleadings do not speak anything about Canada being a temporary residence and, therefore, I will have to read it as if the parties decided to shift permanently to Canada.

10. This is countered by Ms.Sumathi, who would point out from paragraph VI of the pleadings to state that they were initially residing in Villa No.2E, Olive, Mayflower Skathi Garden, Coimbatore and thereafter moved to the villa purchased by the respondent / husband in the name of the petitioner/wife. She would further point out that in order to give education to the children, they were also admitted in Vivekalaya's Prakryia



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International School. She would also state that from paragraph VII that the specific pleading of the husband is that the petitioner's sojourn for business led to several visits to Canada and the petitioner, particularly having moved his family to India, considered and treated Coimbatore as his home and place of residence. From these pleadings, she would point out that the parties had lastly resided at Coimbatore and, therefore, the Courts in Coimbatore will have jurisdiction.

11. I have carefully perused the records and the orders of the Court below and heard the learned counsel in detail.

12. For the purpose of Section 19(iii) of the Hindu Marriage Act, what must be seen is that where they have lastly resided. Apart from that, this is a case which arises out of an application filed for rejection of plaint. Such an application is a plea in demurrer and I have to take the averments made in the plaint to be true. Unfortunately, I am prevented by the provisions of Order 7 Rule 11 CPC to look into defences that might be set up by respondent during the course of trial. Even the passports which Ms.Sumathi wants to produce cannot be looked into as they are presently not part of the Court records.



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13. Suffice it to say, on a reading of the petition, the following aspects becomes clear:

(i) the petitioner and the husband decided to make India their permanent place of residence; and

(ii) the husband wanted to continue his business interest in Canada for which he would make frequent visits from Coimbatore to Canada and would return back to Coimbatore as that was his place and home of residence.

14. These averments are sufficient in order to prove that the respondent / husband would always want to treat only India as place of residence. The specific averment made in paragraph VII that the petitioner and the respondent only intended Canada to be the place they will make their earning but would continue to treat India as their place of residence is sufficient for Section 19(iii) of Hindu Marriage Act.

15. The statement of Mr.Sridhar is that the pleadings do not speak that Canada was to be treated as a separate residence as is found in paragraph XVIII. I have to add that one cannot dissect the plaint and read it divorcing one paragraph from another. A wholesome and a fruitful reading of the plaint shows



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that the averments in paragraph XVIII had been made only for the purpose of the anti-suit injunction relief that the respondent/husband wanted as against the petitioner/wife with respect to the proceedings initiated at Ontario. The previous paragraphs very clearly show that they wanted to reside permanently in India and as stated above Canada was only a place where the husband wanted to do his business. The learned trial Judge has appreciated the position of law in a proper perspective. It does not require any interference.

16. At this stage learned counsel for the petitioner would point out that petitioner and their children are now residing in Canada and it would not be possible to come for trial to Coimbatore. The law has been very well developed in this country. It is always open to the petitioner to move an application for appearing through video conferencing before the Family Court and I am sure if such an application is filed, it will be positively considered by the Court below.

17. With the above observation, the civil revision petition stands dismissed. No costs. Connected miscellaneous petition is closed.



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Index:Yes/No

Neutral Citation:Yes/No

ssm

To

The Additional Principal Family Judge, Coimbatore.



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V. LAKSHMINARAYANAN,J.

ssm

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