



C.R.P.(MD).No.2594 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.03.2023

DELIVERED ON: 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2594 of 2022

and

C.M.P(MD).No12712 of 2022

Vimal Jayachandran

...Petitioner

Vs

Diana Jerine Johnson
Represented through her power agent
K.Thavaselvi Jeyanthi Koilraj

...Respondent

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to strike off the petition in I.D.O.P.No.170 of 2017 on the file of the I Additional District Court, Tirunelveli by allowing this civil revision petition.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondent : Mr.M.Vallinayagam
Senior Counsel
For Mr.M.Muthumalairaja



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C.R.P.(MD).No.2594 of 2022

ORDER

The revision petition has been filed by the respondent/husband in IDOP.No.170 of 2017 on the file of the I Additional District Court, Tirunelveli to strike off IDOP.No.170 of 2017.

Factual Matrix:

2.The revision petitioner and the respondent got married as per Christian Ceremony on 06.02.2012 and the same was also registered with Marriage Registrar of Tisayanvilai on 13.02.2012. After marriage, the wife went to U.S.A where the husband was working. While the couple was in U.S.A, the wife delivered a girl child on 30.07.2013. On 05.02.2014, the wife visited India and returned back to U.S.A on 26.05.2015. On 10.11.2015, the husband had filed a petition before the 1st Judicial District in Family Court, State of Minnesota for divorce. The wife had filed an answer petition and a counter contending that the said Court has no jurisdiction whatsoever to entertain such a divorce petition.

3.Despite the petition filed by the wife pointing out the issue of jurisdiction, the Court proceeded with the divorce petition.



C.R.P.(MD).No.2594 of 2022

4.The wife had filed IDOP.No.170 of 2017 before the District Court, Tirunelveli on 01.08.2017 through her mother as power agent for the relief of restitution of conjugal rights. In the said petition, the wife had filed I.A.No.114 of 2017 seeking interim injunction restraining the husband from proceeding with the divorce proceedings in U.S.A till the disposal of the main I.D.O.P. An interim order was granted as prayed for on 30.10.2017 granting interim injunction restraining the husband from continuing the divorce proceedings in USA or filing any other case as against wife in any Court of USA till 03.01.2018. The said interim order was passed in the presence of the counsel appearing for the husband. The interim order was extended on 03.01.2018 till 10.01.2018 and it was extended on various dates of hearing and the injunction order is still in force.

5.The 1st Judicial District in Family Court, State of Minnesota, County of Dakota passed an order on 27.02.2018 dissolving the marriage between the parties. Based upon the said divorce order granted by the County Court in U.S.A, the present civil revision petition has been filed by the husband to strike off I.D.O.P.No.170 of 2017 mainly on the ground that



C.R.P.(MD).No.2594 of 2022

once a divorce decree has been granted by a competent Foreign Court, thereafter, restitution of conjugal rights proceedings cannot be permitted to be proceeded with and the same would only amount to abuse of process of the Court.

The contentions of the learned counsel appearing for the revision petitioner are as follows:

6.As per the law applicable to the State of Minnesota, it is enough that any one of the parties have being a resident of the said State for more than 180 days immediately preceding the commencement of the proceedings is entitled to file a Divorce Petition.

7.The husband being a resident of the said State for more than 180 days prior to the filing of the divorce proceedings, the said Court has got every jurisdiction to entertain the divorce petition.

8. The wife had filed her answer and counter affidavit on 03.12.2015. Therefore, the wife had participated in the said proceedings up to the stage of filing of the counter and only thereafter, she had failed to



C.R.P.(MD).No.2594 of 2022

appear before the Court voluntarily and without any reasonable cause.

Therefore, the County Court was constrained to proceed further and pass orders on merits. Hence, it cannot be contended that it is an ex parte order.

9.The husband had filed the said divorce petition before U.S.A Court alleging that the wife had physically assaulted him and lodged a false police complaint to get him arrested and threatened to damage the career of the husband. Therefore, it could be seen that the divorce petition was not only filed on the ground of irretrievable breakdown of marriage but also on the ground of cruelty which is also one of the grounds for divorce under the Divorce Act. The order of the County Court in Paragraph No.9 refers to the said cruelty and therefore, it cannot be considered that the divorce has been granted on the ground of irretrievable breakdown of marriage alone.

10.The learned counsel for the petitioner had further contended that after passing of the divorce order, the County Court had put the wife on notice about the order dated 27.02.2018 enclosing a copy of the order for the purpose of limiting the time for appeal. Having knowledge about



C.R.P.(MD).No.2594 of 2022

the divorce order passed by the County Court, the wife ought to have filed an appeal before the Appellate Forum in U.S.A and without challenging the said order of divorce, the wife cannot prosecute I.D.O.P.No.170 of 2017 before the Indian for seeking restitution of conjugal rights.

11.Once a competent Foreign Court has granted an order of divorce on merits after giving due opportunity to the wife, thereafter the wife cannot ignore the said order and proceed with the restitution of conjugal rights application in India. The learned counsel for the petitioner had relied upon a judgment of our High Court reported in **2011 (5) CTC 22 (Dorothy Thomas Vs. Rex Arul)** to impress upon the Court that where the wife had actively participated in the proceedings before the Foreign Court and the judgment was rendered on merits, the said judgment is binding upon the Indian Court and they are conclusive proof of evidence between the parties.

12.The learned counsel for the revision petitioner has also relied upon a judgment of the Hon'ble Supreme Court **in Civil Appeal Nos.4984 and 4985 of 2021 dated 13.09.2021 (Sivasankaran Vs. Santhimeenal)** to



C.R.P.(MD).No.2594 of 2022

contend that the cruelty committed by the wife even during the pendency of the proceedings would be taken into consideration and it need not be the one that has arisen prior to the institution of the petition.

13.The learned counsel for the petitioner had further contended that at the time of filing of I.D.O.P.No.170 of 2017 the wife was in U.S.A and she had presented the said petition through her mother as power agent. Therefore, it is clear that only in order to harass the petitioner/husband such a legal proceedings has been initiated before the First Additional District Court at Tirunelveli. When the wife was very much residing in U.S.A, she could have availed the appeal remedy before appropriate forum in U.S.A itself. Therefore, it is obvious that it is a case of abuse of process of law and the divorce order of the Foreign Court being the conclusive proof of termination of marriage between the parties, no useful purpose would be served in continuing the restitution proceedings initiated by the wife in India. Therefore, he prayed for allowing the revision and to strike off I.D.O.P.No.170 of 2017.



C.R.P.(MD).No.2594 of 2022

Submission on the side of the learned Senior Counsel appearing for the respondent:

14. The marriage has taken place between the parties in India as per Christian Rites and therefore, the law applicable to the parties is only the Divorce Act 1869 and the proceedings could be initiated only in India under the said Act.

15.A perusal of the divorce petition filed by the husband in U.S.A. does not refer to any cruelty. It only refers to the irretrievable breakdown of marriage relationship of the parties as a ground for divorce. Paragraph No.10 of the order also points out that the matrimonial relationship between the parties is dissolved on the ground of irretrievable breakdown of marriage between the parties. Therefore, according to the learned Senior Counsel, the ground of irretrievable breakdown of marriage is not available as a ground for divorce under the Divorce Act 1869. Therefore, even assuming that a competent County Court had granted a decree for divorce, the same cannot be considered to be a conclusive proof, in view of Section 13(c) and (f) of C.P.C.



C.R.P.(MD).No.2594 of 2022

16. In the counter filed by the wife before U.S.A Court on 30.05.2017, in Paragraph No.15, the wife has taken a specific stand that the County Court in Minnesota State does not have any jurisdiction over property in India. He had further contended that the said counter filed by the wife objecting to the jurisdiction of the Court was attempted to be answered in the divorce order by referring to the fact that the parties have been living for more than 180 days prior to the commencement of the dissolution proceedings. However, it is a matter of fact that the wife had returned to U.S.A only on 26.05.2015, but the petition for divorce was filed on 10.11.2015 even before completion of 180 days period and therefore, the said Court did not have any jurisdiction at all to entertain such a divorce petition based upon their statute.

17.The learned Senior Counsel had further contended that I Additional District Court, Tirunelveli had granted an order of interim injunction restraining the husband from prosecuting the divorce proceedings as against the wife in U.S.A on 03.01.2018. In violation of the said anti-suit injunction order, the husband had proceeded with the divorce proceedings and an order of divorce has been granted on 27.02.2018.



C.R.P.(MD).No.2594 of 2022

Therefore, the divorce order passed by the Foreign Court in violation of the injunction order passed by the Indian Court as against the husband is clearly null and void and the same would not dissolve the marriage between the parties.

18.The learned Senior Counsel had further contended that Paragraph No.6 of the order of the Foreign Court clearly points out that though the wife has initiated restitution of conjugal rights proceedings in India, it has wrongly noted the said proceedings as proceedings for dissolution of marriage. Therefore, it is clear that the proceedings of the Indian Court was neither placed nor brought to the notice of the Foreign Court and under misunderstanding that the wife has also filed an application for divorce, the Foreign Court has proceeded to dissolve the marriage. Therefore, it is a case that falls within Section 13(e) of C.P.C that the divorce order has been obtained by fraud.

19. The learned Senior Counsel had further contended that the irretrievable breakdown of marriage is not a ground available to the couple for getting a divorce decree in India under Divorce Act 1869. However, a



C.R.P.(MD).No.2594 of 2022

perusal of Paragraph No.10 of the divorce order passed by the Foreign Court would clearly reveal that the divorce has been granted on the sole ground of irretrievable breakdown of marriage between the parties. Therefore, the divorce order is based upon the breach of law that is in force in India and squarely falls within the mischief of Section 13(f) of C.P.C.

20.The learned Senior Counsel relied upon the judgments of the Hon'ble Supreme Court reported *in (1991) 3 SCC 451 (Y.Narasimha Rao and others Vs. Y.Venkata Lakshmi and another)* and *(2011) 2 MLJ 556 (Deepalakshmi Vs. K.Murugesh)* and an order passed *in W.A.No.1181 of 2009 dated 09.07.2010 (R.Sridharan Vs. The Presiding Officer, Principal Family Court, Chennai and another)* to contend that where a Foreign decree is not in accordance with law applicable, the parties in India and the resident had not submitted to the jurisdiction of the said Court, it cannot be recognised by the Courts in this Country and therefore, the divorce is unenforceable.



C.R.P.(MD).No.2594 of 2022

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21.The learned Senior Counsel had further contended that when a divorce decree has been granted by the Foreign Court in violation of the interim injunction order passed by the Indian Court and the said divorce order is clearly in violation of the law that are applicable to the husband in India and the same has been obtained by playing fraud, the same cannot be considered to be conclusive proof. Therefore, mere passing of a divorce order by an incompetent Court which is not a conclusive proof before the Indian Court, the same cannot be raised as a ground to strike off I.D.O.P.No.170 of 2017 filed by the wife for restitution of conjugal rights in India.

22.I have considered the submissions made on either side and perused the records and judgments cited by either parties.

23.It is not in dispute that the parties have got married on 06.02.2012 at St.Johna Church, Tisayanvillai in Tirunelveli and registered their marriage on 13.02.2012 as per Tamil Nadu Registration of Marriage Act 2009. Therefore, there cannot be any dispute that the parties are governed by Christian Marriage Act and Divorce Act, 1869 with regard to any matrimonial dispute that may arise between them.



C.R.P.(MD).No.2594 of 2022

24.The husband had initiated divorce proceedings before the First Judicial District Family Court Division, State of Minnesota, County of Dakota on 11.10.2015. A perusal of the divorce petition reveals that the husband had claimed jurisdiction of the said County Court on the ground that he is residing there for more than 180 days preceding the filing of the said divorce petition. It is brought to the notice of the Court that as per Minnesota Statute 2022, it is informed that one of the parties to the marriage should have resided in County for not lesser than 180 days immediately proceeding the commencement of the proceedings. There is no dispute that the husband was residing in the said County for more than 180 days preceding to the filing of the divorce petition. Therefore, the contention of the learned Senior Counsel that the wife was not residing in U.S.A for more than 180 days prior to the commencement of the divorce proceedings and hence, the said proceedings are without jurisdiction, is not legally sustainable.

25.A perusal of the divorce petition further reveals that the said petition has been filed on the ground of irretrievable breakdown of marriage relationship between the parties. There is no reference whatsoever about the cruelty alleged to have been committed by the wife.



C.R.P.(MD).No.2594 of 2022

The order of divorce dated 27.02.2018 though refers to some physical assault on the husband by the wife, divorce has been granted solely on the ground of irretrievable breakdown of marriage relationship between the parties. Therefore, it is clear that the order of divorce has been granted by the Foreign Court only on the ground of irretrievable breakdown of marriage.

26.A perusal of Section 10(1) of Divorce Act, 1869 reveals that 10 grounds have been enumerated for filing an application for dissolution of marriage by either parties. None of the said grounds provide for dissolution of marriage on the ground of irretrievable breakdown of marriage.

27. Section 13 of C.P.C is extracted as follows:

13. When foreign judgment not conclusive.- *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 recognize the law of (India) in cases in which such law is applicable;



C.R.P.(MD).No.2594 of 2022

(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.”

28. Interpreting Section 13(b) and 13(c) of C.P.C, the Hon'ble Supreme Court in a judgment reported ***in (1991) 3 SCC 451 (Y.Narasimha Rao and others Vs. Y.Venkata Lakshmi and another)*** in Paragraph Nos.16 and 17 have held as follows:

“16. Clause (b) of [Section 13](#) states that if a foreign has not been given on the merits of the case, the courts in this country will not recognise such judgment. This clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. 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 to the jurisdiction of the Court, should not be considered as a decision on the merits of the case. In this respect the general rules of the



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acquiescence to the jurisdiction of the Court which may be valid in other matters and areas should be ignored and deemed inappropriate.

17.The second part of clause (c) of [Section 13](#) states that where the judgment is founded on a refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognised by the courts in this country. 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. When, therefore, a foreign judgment is founded on a jurisdiction or on ground not recognised by such law, it is a judgment which is in defiance of the Law. Hence, it is not conclusive of the matters adjudicated therein and therefore, unenforceable in this country. For the same reason, such a judgment will also be unenforceable under clause (f) of [Section 13](#), since such a judgment would obviously be in breach of the matrimonial law in force in this country.”

29.In view of the judgment of the Hon'ble Supreme Court, it is clear that unless the decision of the Foreign Court is delivered on a ground available under the laws under which the parties have married, the said Foreign judgment cannot be considered to have been delivered on merits of the case. Further, in the present case, the Foreign Court has granted a divorce decree on the ground of irretrievable breakdown of marriage which is not a ground available under the Divorce Act which governs the



C.R.P.(MD).No.2594 of 2022

parties to the marriage. That apart, if a judgment is delivered on refusal to recognize the ground of divorce enumerated in the Divorce Act 1869, the judgment cannot be recognized by the Court in this Country. The divorce decree of the Foreign Court is founded on a ground not recognized by the Divorce Act and hence, it is a judgment clearly in violation of the law of India and therefore, it clearly falls under the mischief of Section 13(c) of C.P.C.

30. The wife had initiated only restitution proceedings in India by filing I.D.O.P No.170 of 2017. However, it has been projected before the Foreign Court by the husband that the wife has attempted to commence proceedings for dissolution of marriage in India. The Foreign Court was swayed away by the fact that the wife had also sought for divorce decree in India and hence, there may not be any legal impediment for granting divorce to the husband in the Foreign Court. Therefore, it is clear that the divorce decree that was granted in Foreign Court has been obtained by playing fraud which makes it as not a conclusive proof as contemplated under Section 13(e) of C.P.C.



C.R.P.(MD).No.2594 of 2022

31.The I Additional District Judge, Tirunelveli has granted an order of interim injunction restraining the husband from proceedings with the divorce proceedings in U.S.A after referring to the case number and Court before which it was pending. The said order was passed on 30.10.2017. The said order was passed in the presence of the counsel for the husband and he had sought time to file counter. The wife had filed a sworn affidavit before the Foreign Court on 10.02.2018 and in Paragraph Nos. 8 and 9 of the said affidavit, the wife has pointed out about the pendency of the restitution proceedings and also anti-suit injunction granted by the Indian Court on 30.10.2017. In the said affidavit, the wife has also pointed out that the proceedings in U.S.A are without jurisdiction and not unenforceable in India. Ignoring the affidavit filed by the wife, the Foreign Court has proceeded with the divorce proceedings and passed an erroneous order that the wife had filed divorce proceedings in India. Therefore, it is clear that the affidavit filed by the wife challenging the jurisdiction of the Court and the right of the husband to proceed with the divorce proceedings has not at all been considered by the Foreign Court and the said Court has proceeded to pass the divorce decree. The non-consideration of the sworn affidavit filed by the wife pointing out the anti-



C.R.P.(MD).No.2594 of 2022

suit injunction and passing a divorce decree is clearly opposed to the principles of natural justice. Therefore, the said judgment cannot be considered to be a conclusive proof in view of Section 13(d) of C.P.C. The divorce granted on a ground of irretrievable breakdown of marriage would clearly be an order based on breach of Divorce Act 1869. Therefore, as contemplated under Section 13(f) of I.P.C, the judgment becomes unenforceable in India.

32.In view of the above said deliberations, It is clear that the divorce decree granted by the Foreign Court on 27.12.2018 is not conclusive between the parties and therefore, the said judgment cannot be a ground to strike off I.Do.P.No.170of 2017 filed by the wife for restitution of conjugal rights in India.

33.The learned counsel for the petitioner pointed out that in view of pendency of the revision petition, the husband had not let in any evidence and his side has been closed and it is posted for arguments. The respondent/husband has already filed I.A.No.2 of 2023 to reopen the case for adducing evidence and I.A.No.3 of 2023 to recall PW1 for marking



C.R.P.(MD).No.2594 of 2022

certain documents. These applications may be considered positively by the trial Court and an opportunity may be granted to the respondent/husband to adduce evidence on his side.

34.In view of the above said deliberations, there are no grounds to strike off I.D.O.P.No.170 of 2017 pending on the file of I Additional District Court, Tirunelveli. The District Judge shall proceed with the trial and pass orders on merits and in accordance with law after providing due opportunity to both the parties.

35.This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.03.2023

Index : Yes/No
Internet : Yes/No
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C.R.P.(MD).No.2594 of 2022

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To

The I Additional District Judge
Tirunelveli



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C.R.P.(MD).No.2594 of 2022

R.VIJAYAKUMAR, J

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Pre-delivery order made in
C.R.P.(MD).No.2594 of 2022
and
C.M.P(MD).No.12712 of 2022

08.03.2023