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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 29th August, 2023*

+ **MAT.APP.(F.C.) 76/2023**

SANJANA SHARMA Appellant

Through: Ms. Seema Rewal Issar, Advocate.

versus

ASHOK SHARMA Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 13037/2023 (Condonation of delay)

1. *Vide* the present application, the applicant/appellant seeks condonation of 280 days' delay in filing the present appeal.
2. For the reasons and grounds stated in the present application, the application is allowed; the delay of 280 days in filing the present appeal is condoned.
3. Accordingly, the present application is disposed of.

MAT.APP.(F.C.) 76/2023

4. The present appeal has been filed against the Order 06.03.2021, whereby the application of the respondent herein (respondent in the Divorce Petition) under Order VII Rule 11 Code of Civil Procedure (*hereinafter referred to as "CPC"*) was dismissed by the Principle Judge, Family Court, Patiala House Courts but the Petition was returned under Order VII Rule 10



CPC to be presented before the competent *jurisdiction* as the Family Court had no territorial jurisdiction to adjudicate the matter.

5. The appellant herein (petitioner in the Divorce Petition) had filed a Divorce Petition before the Family Court, Patiala House Courts on 14.07.2014 under Section 13(1)(ia) of the Hindu Marriage Act, 1956 (*hereinafter referred to as the “Act, 1956”*) on the ground of cruelty.

6. **The facts in brief** are the marriage between the parties was solemnized on 18.10.1989 in Udupi, Karnataka and was registered at District Centre, New Delhi on 17.09.2002. The parties have a child named Tanya from the wedlock who was born on 02.07.1991. The appellant and the respondent last resided together in India in DDA Flat No. 4427, Pocket No. 5&6, Sector-B, Vasant Kunj, New Delhi-110070 after which the appellant moved to the USA in the year 2000 and was subsequently joined by the respondent in 2006. The couple separated in November, 2012 after which the appellant stayed back in North Carolina, USA for work, while the respondent moved back to India and resided at his parental house at House No 252, Khasra No. 636; Near Hanuman Temple Ghitorni Enclave, Phar Colony, M.G. Road, Mehrauli, New Delhi.

7. The appellant thereafter filed for divorce before the District Court, North Carolina, USA on the ground of cruelty and a Decree of Divorce was granted by the said court on 07.03.2014. Since there is no reciprocity between Indian and USA the Decree of Divorce was not executable in India. Thus, the appellant filed the petition under Section 13(1)(ia) of the Act, 1956.

8. The respondent filed an **application under Order VII Rule 11 CPC** to reject the Petition filed by the appellant. It is **submitted in the**



application that the Petition was not maintainable as the marriage was solemnized in Udupi Karnataka and the couple lastly resided in the USA. Further, the respondent resided at Ghitorni, Mehrauli, New Delhi when the Petition was filed and hence the Patiala House Courts did not have the territorial jurisdiction under Section 19 of the Act, 1956.

9. The **appellant, in reply to the application** under Order VII Rule 11 CPC submitted that the respondent had already submitted to the territorial jurisdiction of the Patiala House Courts when his Written Statement was filed on 21.12.2015. It was also reiterated that the marriage was registered in New Delhi and the couple lastly resided in Vasant Kunj, New Delhi, which is the permanent residence of the appellant. Therefore, the Patiala House Courts has the jurisdiction to adjudicate the Petition.

10. The appellant further claimed that the application had been filed with oblique motive to delay the proceedings. Furthermore, it was pointed out that the date of verification of the Divorce Petition is mentioned as 08.07.2013, though the affidavit filed along with the Petition is of 08.07.2014, i.e. after one year.

11. **The Principal Judge, Family Court, Patiala House Courts vide Order dated 06.03.2021**, observed that since the appellant as per her own documents, has been residing in USA since 2000, and admittedly, the last place where the couple resided together was also USA, it had no territorial jurisdiction to entertain the Petition and the Petition was directed to be returned to the appellant under Order VII Rule 10 CPC, to be filed before the court of competent jurisdiction.

12. Aggrieved by the said Order, the present appeal has been filed.

13. **Submissions heard.**



14. It is an admitted fact that the marriage of the parties was solemnized on 18.10.1989 in Udupi, Karnataka which was registered at District Centre, New Delhi on 17.09.2002.

15. The legal question for determination is whether the PHC has territorial jurisdiction (Patiala House Courts) to entertain and adjudicate the said Petition. Section 19 of the Hindu Marriage Act, 1955 provides for the place where the petition may be filed. It reads under: -

“Section 19: -

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

(i) ***the marriage was solemnized, or***

(ii) ***the respondent, at the time of the presentation of the petition, resides, or***

(iii) ***the parties to the marriage last resided together, or***

[(iiia) in case the wife is the petitioner, where she is residing on the) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were date of presentation of the petition; or]
(iv alive.)”

16. The divorce petition can thus be filed at the place where the marriage was solemnized or where the respondent at the time of presentation of divorce petition resides or whereby the parties last resided together. An exception has been made in the case, where the appellant is a wife in which situation, the divorce petition may be filed where she is residing on the date of presentation of divorce petition.



17. Admittedly, the marriage of the parties was solemnized at Udupi, Karnataka. They last resided together in U.S.A. The appellant had claimed that they last resided together in India at DDA Flat No. 4427, Pocket No. 5&6, Sector-B, Vasant Kunj, New Delhi and thereafter, the appellant moved to U.S.A. in the year 2000 and she was subsequently joined by the respondent. Even though it was argued on behalf of the appellant that they last resided together in DDA flat at Vasant Kunj, Delhi, but admittedly, from Vasant Kunj, Delhi they shifted to U.S.A. where they continued to reside together till 2012. Therefore, the place of last residence where they resided together was U.S.A. and not Vasant Kunj, Delhi as has been argued on behalf of the appellant.

18. The appellant had claimed that the DDA Flat No. 4427, Pocket No. 5&6, Sector-B, Vasant Kunj, New Delhi is her permanent residence as is also reflected in her passport and she is residing in U.S.A. only for the purpose of her job and livelihood. This contention is totally fallacious since as per the appellant, this flat belonged to her parents and not to her and was thus, shown in her Passport as a permanent address essentially for correspondence. However, her own submissions make it evident that she is residing for the last 20 years in U.S.A., where she is gainfully employed.

19. Pertinently, there is no document or averment to show that she was residing in India at the time of presentation of the divorce petition. In fact, in the case title of the Divorce Petition as well, her address has been reflected as that of U.S.A. The appellant was thus, not residing in India at the time of presentation of the Divorce Petition. Significantly, the appellant has even obtained the decree of divorce dated 07.03.2014 from the District Court in



North Carolina, U.S.A. which further shows that she is residing in U.S.A. and is not a resident of India as is claimed by her.

20. Insofar as the respondent is concerned, at the time of presentation of the divorce petition, was residing at House No. 252, Khasra No. 636; Near Hanuman Temple Ghitorni Enclave, Phar Colony, M.G.Road, Mehrauli, New Delhi. However, Mehrauli, Delhi also does not fall within the jurisdiction of District New Delhi.

21. The learned Principal Judge has thus rightly concluded that the Court had no territorial jurisdiction in terms of Section 19 of the Hindu Marriage Act, 1955 and returned the Divorce Petition under Order VII Rule 10 of CPC, 1908.

22. Accordingly, we find no infirmity in the impugned Order dated 06.03.2021 and the Appeal is hereby dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 29, 2023
S.Sharma/Ek