

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 12527 OF 2023****Deep Satish Puri****..... Petitioner****VERSUS****Roma Deep Puri Alias****Miss Roma Ramesh Chauhan****..... Respondent**

Mr.Anukul Pradhan, Senior Advocate a/w. Mr.Sachinkumar Rajepandhare for the Petitioner.

Mr.Ashok Singh a/w. Mr.Pravin Singh for the Respondent.

**CORAM: RAJESH S. PATIL, J.****DATE : 15 FEBRUARY, 2024****P.C. :-**

This writ petition challenges the impugned order dated 11 April, 2023 passed by the Family Court, Mumbai in application on order below Ex.43 in Petition No. A-2744 of 2017.

2. The Petition No. A-2744 of 2017 is filed by the petitioner/husband seeking a divorce under section 13 of the Hindu Marriage Act. During the pendency of the divorce petition, petitioner preferred an application Ex.43, which seeks a prayers of (i) grant of decree of divorce by exercising its inherent power

under section 151 of the Code of Civil Procedure, 1907, and (ii) any other order or further orders as this Hon'ble Court may deem fit and proper.

3. The respondent wife filed her reply to the said application through her power of attorney, opposing the application filed by the husband. The Judge, Family Court at Mumbai thereafter heard both the parties on the application filed (Ex.43), and by its order dated 11 April, 2023 rejected the application of the petitioner/husband.

4. This writ petition challenges the said impugned order dated 11 April, 2023 passed by the Family Court at Mumbai.

5. Mr.Pradhan, learned senior counsel appeared on behalf of the petitioner/husband, and made his submissions :-

(i) Mr.Pradhan submits that once the respondent has admitted that she does not want to contest the present divorce proceedings, the Court should

have exercised its power under section 151 of the Code of Civil Procedure and should have granted a decree of divorce to the petitioner husband.

(ii) Mr.Pradhan submits that his client though is a Canadian citizen, has an Overseas Citizenship of India (OCI) card and he resides in a flat which belongs to his father in the city of Mumbai.

(iii) Mr.Pradhan submitted that the Family Court of Mumbai has jurisdiction to try and entertain the divorce proceedings. He submitted that the impugned order be set aside, and decree of divorce should be granted.

(iv) Mr. Pradhan has submitted before this Court that the application filed before the Canada Court for custody has been answered in favour of the wife, and the husband as of now has not filed any

appeal challenging the said order passed by the Canada Court.

(v) Mr.Pradhan also argued that section 207 of the Contract Act applies to these proceedings. He submits that the power of attorney holder of the wife i.e. the father of the wife has no authority to contest the matter on behalf of the respondent wife. The respondent wife is at present in Canada on a permanent residential visa. The son of the respondent wife and the petitioner is aged 8 years is a Canadian citizen and is a school going boy. He submits that therefore, section 207 of the Contract Act applies to this proceeding.

6. Mr.Singh, learned counsel appeared for the respondent wife and made his submissions :-

(i) Mr.Singh submits that the petitioner is a Canadian citizen and wife, is staying in Canada

from 2014 on a permanent resident visa. He further submits that the son was born out of the said wedlock at Canada and at present, the son is with the respondent/wife studying in Canada.

(ii) He submits that the Family Court at Bandra, Mumbai has no jurisdiction to try and entertain the divorce petition. He submits that the marriage between the parties took place at Ghaziabad. The wife was a resident of Ghaziabad. The husband is a Canadian citizen. The wife is at present in Canada and the wife is residing in Canada on a permanent resident visa. The son born out of this wedlock is also studying at Canada. He submits that the couple last resided at Canada. The Family Court at Bandra has no jurisdiction.

(iii) He further submits that the written statement

has already been filed in the Family Court proceedings. He submits that the application Ex.43 filed by the husband under the provisions of section 151 of the Code of Civil Procedure, 1908 seeking a decree of divorce is not maintainable in law. He submits that his client has already opposed the application Ex.43. He submits that therefore, the Court should not have invoked the powers under section 151 of the Code of Civil Procedure, 1908.

(iv) He submits that therefore the Family Court at Mumbai has not committed any mistake and the application Ex.43 has therefore been dismissed. He submits that this writ petition should be dismissed with exemplary cost to be imposed on the petitioner.

7. I have heard both the learned counsel and gone through the documents on record. So also, the impugned order dated 11

April, 2023.

8. It is a matter of record that the application Ex.43 has been filed by the husband in the petition filed by him for divorce. He has filed the said application on his belief that the wife desire not to contest the divorce proceedings at Family Court, Bandra, Mumbai.

9. Mr.Pradhan, learned counsel appearing for the petitioner husband has shown me the extract of the statement recorded by the Ontario Court of Justice, Canada in the custody petition of the son.

10. It is important here for me to reproduce the statement recorded of the wife in the proceedings at Ontario Court of Justice, Canada :-

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| MS.PURI : Your Honour, I have no connection to that case. Respondent went to India, in his city where he lives, I have no idea. He filed for a case there. I have no connection to that case, and I'm not going to litigate that case. I have no |
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connection. What, we live here and I, I'm requesting honourable court for an order here. I have no connection to India. I have no connection to any case that's in India, and neither I'm going to, you know, spend my effort, my time, my energy litigating in another foreign country where I don't, where I know that I'm going to go. So .....

MS. PURI : ..... I cannot withdraw something that I don't submit. That's what I understand. If I make an application to any court, I can withdraw it, but I didn't initiate, I didn't, I didn't make any submissions. So, how I, I don't know what I have to withdraw. I didn't do anything.

MS. PURI : I'm not going there, Your Honour, to India, to litigate this case.

MS. PURI : Because I live here, like, you know, I will not go for this case .....

11. After going through the statement recorded by the Judge at Canada, I am of the view that the respondent wife has not admitted that she does not want to contest the divorce proceedings filed by the husband in the Family Court at Mumbai. She has only submitted that she can withdraw something which

she had filed.

12. Mr. Pradhan has submitted that in the reply to the application filed by the husband seeking a divorce (Ex.43), the wife in paragraph (7) has specifically submitted that : ‘ I say that this Hon’ble Court has no jurisdiction to entertain the divorce petition filed by the petitioner.’ And in paragraph (25), she has further specifically stated that the husband is not entitled to any relief.

13. Therefore, according to me, the statement made by the respondent wife in the Canadian Court does not amount to any kind of acceptance of her that she wants to give consent for the divorce and not contesting the proceedings in the Family Court, Mumbai.

14. In my opinion, she has specifically taken a defence in the first opportunity available to her by way of an reply to the application of the husband by taking an objection of jurisdiction

of the Family Court at Bandra, Mumbai.

15. She has further opposed the grant of any relief to the petitioner husband. It would have been a totally different case if in a reply she would have submitted that she has no objection if such a relief is granted. She has in fact stated that only the Court at Canada will have jurisdiction as she has filed certain proceedings in the Court of Canada including the proceedings for the permanent custody of the son and also the proceedings for granting divorce, and also for granting maintenance.

16. Mr.Pradhan was not able to demonstrate the relevance of section 207 of the Contract Act, to the present proceedings.

17. Having regard to all the above circumstances, according to me, no case is made out to interfere with the findings recorded in the impugned order. There is no merit in the writ petition.

18. Writ petition is dismissed. No cost.

**[RAJESH S. PATIL, J.]**