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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No. 7589-2017(O&M)
Date of decision:- 25.07.2024

Mohinder Kaur Boyal and others

...Appellants

Versus

Manjit Singh Boyal

...Respondent

CORAM: *HON'BLE MR. JUSTICE SURESHWAR THAKUR*
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present:- Mr. Narinder Kumar Vadhera, Advocate
for the appellants.

SURESHWAR THAKUR, J. (Oral)

1. The plaintiffs/appellants before this Court who are respectively the marital spouse and daughters of the respondent-Manjit Singh Boyal thus instituted a petition cast under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 (herein after to be referred as 'the Act of 1956'), wherebys they espoused qua the rendition of a decree maintenance, as comprised in the relevant clause of petition supra. In the said suit, the learned District Judge (Family Court) made a decision on 16.11.2016 wherebys the suit claim became dismissed, thus leading the aggrieved to institute the instant appeal before this Court.

2. Initially, the instant appeal is misconstituted as also is a gross abuse of the process of law. The reason for forming the above inference becomes engendered from the factum, as occurs in paragraph(s) 10 and 14 of the impugned verdict, paragraphs wehereof, become extracted as under:-

*“10) On the other hand, learned counsel for defendant argued
that the petitioners/plaintiffs have not approached this Court with*



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clean hands as they have suppressed material fact regarding dissolution of marriage of petitioner/plaintiff no.1 with respondent/defendant by the Hon'ble Supreme Court of British Columbia, Canada. A decree of divorce has been finally granted by the Canadian Court on 01.12.2014. The above said judgment has not been set aside by any competent court. Plaintiffs have no right to claim maintenance from the defendant as they are already getting maintenance from the respondent/defendant as directed by the Hon'ble Supreme Court of British Columbia, Canada. Petitioners/plaintiffs have already received \$68,000 from the respondent/defendant in lump-sum. Learned counsel, thus, prayed for the dismissal of the suit.

14) The plaintiff no.1 is claiming maintenance from the respondent being his legally wedded wife, whereas the aforesaid fact has been challenged by the defendant on the pretext that decree of divorce between the parties has already been passed by the competent Canadian Court. This Court has gone through the entire pleadings of the case filed by the plaintiffs for getting the maintenance under Hindu Adoption & Maintenance Act 1956. There is nothing in the pleadings regarding the divorce proceedings filed by both the parties in the Canadian Court. The plaintiff no.1 concealed the aforesaid fact from the court due to the reasons best known to her. The aforesaid fact came into the light after the respondent/defendant filed written statement to the plaint whereby it has been disclosed that Hon'ble Supreme Court of British Columbia, Canada has already granted decree of divorce and



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same has not been challenged by the plaintiff no.1 before any appellate authority. The fact with regard to receiving maintenance amount by all the plaintiffs from the defendant has also been concealed due to the best reasons known to her. The aforesaid facts were duly admitted in the reply to written statement filed by the plaintiffs, although it has been mentioned in the reply to the written statement that petitioner no.1 has already challenged the alleged decree of divorce passed by Foreign Court in Civil Suit filed by her at Ludhiana. The plaintiffs have not proved on record that the aforesaid decree passed by the Canadian Court has ever been challenged or set aside by any court having competent jurisdiction. In order to prove their case, plaintiff appeared through her attorney Kuldeep Kaur Sidhu who clearly admitted during her cross-examination that plaintiff Mohinder Kaur is her daughter who acquired the domicile of Canada with intent to reside there permanently. She further admitted that decree of divorce was granted by the Hon'ble Supreme Court of British Columbia on 01.12.2014 and the same has taken effect on 31.12.2014. She further admitted that the same has not been challenged by her daughter and the said divorce decree has attained finality. She further admitted that her daughter has not filed any petition regarding enhancement of maintenance awarded by Hon'ble Supreme Court of British Columbia. She further admitted that the plaintiffs are getting 1000 Canadian Dollars per month from the respondent/defendant. She further admitted that her daughter has not filed any petition regarding petitioner/



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plaintiff has duly admitted that the plaintiff is the divorced wife of the respondent/defendant and that the plaintiffs are getting maintenance from the respondent/defendant. enhancement of maintenance awarded by Supreme Court of British Columbia, Canada. As such, the present witness who is attorney of petitioner/plaintiff has duly admitted that the plaintiff is the divorced wife of the respondent/defendant and that the plaintiffs are getting maintenance from the respondent/defendant.

A perusal of the above stated paragraphs reveals that the segregation of marital ties *inter se* the estranged marital couple, thus happening through the passing of a decree of divorce by the Supreme Court of British Columbia, Canada on 01.12.2014. Moreover, thereby the plaintiffs/appellants became endowed with a lumpsum amount of \$68,000.

Though therebys, the instant suit besides the appeal as stated (supra) rather is misconstituted besides is a gross abuse of the process of law. However, the learned counsel appearing for the appellants has vehemently submitted before this Court that the segregation of the marital ties amongst the parties concerned, when has occurred upon a decree of divorce becoming passed by the Hon'ble Supreme Court of British Columbia, Canada on 01.12.2014, thereupon, the said decree rather yet does not resultantly cause any segregation of their marital ties, in so far, as the present country is concerned.

However, the said made argument also pales into insignificance besides is ideally made, so as to untenably defeat, the decree (supra) as became passed by the Foreign Court besides to untenably overcome the fact, that in the said passed decree also, a lump sum amount comprised in the sum



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of \$68,000 became assessed to be paid by the respondent to the appellants. Further more, since it is evident on a reading of the impugned verdict that the plaintiffs/appellants are residing in Canada. Moreover, when it is further evident on a reading of the impugned verdict, that even the minor daughters of the estranged marital couple, are thus receiving maintenance from their father i.e the defendant/respondent. Therefore, also when the suit claim is limited to the plaintiff's, thus claiming the awarding of maintenance in respect whereof, an earlier decree has been already passed against the defendant/respondent. Resultantly, thus there is *prima facie* complete inconsequentiality qua the factum qua the above passed decree of divorce, thus has operational effects only in Canada and not in India. As such, irrespective of a decree of annulment of the apposite marital ties becoming rendered by a Foreign Court, yet when therebys the instant suit claim also became assigned to the present appellants. Resultantly, the present suit claim is only an ill-endeavour to ensure ill-double enrichment.

In other words, the awardings and receiving of maintenance by the plaintiffs/appellants from respectively their father and husband, reiteratedly is the *prima donna* fact, thus for this Court invincingly concluding, that the instant appeal is merely an ill-deploy by the appellants to doubly enrich themselves.

Therefore, in the face of the above evident facts emerging before this Court, this Court is constrained to also invoke the principle of *res judicata* wherebys the instant suit (*supra*) is declared to become completely estopped from becoming instituted.

Preponderantly also, the above alluded facts remained suppressed by the plaintiffs in the suit (*supra*) wherebys the suppression of the said facts



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rather tantamounts to an attempt to create contrived grounds for misleading the trial Judge. Furthermore the said suppression(s) is also an evident and loud speaking, that thereby the plaintiffs/appellants herein did actively practice the above vices, and unless the said ill-practices, rather did not ultimately become rendered *blunted*, through a written statement becoming filed by the respondent/defendant, thereby the said ill-practiced devices by the present appellants would have also resulted in a tainted decree become rendered in respect of the suit claim qua the present appellant, thus by the learned trial Judge concerned.

In the wake of the above, this Court finds no merit in the present appeal and the same is dismissed. Moreover, in view of the above ill practice thus deployed by the present appellants, a cost of Rs.2 lacs is imposed upon the appellants to be further forthwith deposited with the Punjab and Haryana High Court Bar Clerks Association.

(SURESHWAR THAKUR)
JUDGE

25.07.2024
G Arora

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No