



2024-DRC-2182



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

% **Judgment reserved on : 25th January, 2024**
Judgment pronounced on : 19th March, 2024

+ **CM(M) 151/2024**

ABHISHEK SAXENA

..... Petitioner

Through: Mr. Kriti Uppal, Sr. Advocate
with Mr. Salman Hashmi, Mr.
Zeeshan Hashmi, Mr.
Himanshu Bidhuri and Ms.
Riyal Gulati, Advs. with
petitioner in person.

versus

ANUKRITI SRIVASTAVA

..... Respondent

Through: Mr. Sunil Kumar Singh and Mr.
Hari Om Sharan Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgment shall decide the present petition filed by the petitioner invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India seeking the following prayers:

- “a. Allow the instant petition and set aside the order dated 02.11.2023 passed in CS no. 4 of 2021 by the hon'ble Judge, Family Court, Patiala House Court and pass a judgment based on the admission of plaintiff/ respondent herein made on 14.03.2023 that she is not a resident on Delhi since 28.09.2019, and the trial court does not have territorial jurisdiction to try CS No.4 of 2021,
b. Any further order in the interest of justice.”

2. Shorn of unnecessary details, the respondent, who was married to the petitioner as per the Hindu rites and ceremonies on 22.01.2013



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at Agra, Uttar Pradesh, has filed a civil suit for declaration to set aside the *ex-parte* decree of divorce in case No.18 DR1 00137 1B dated 28.06.2018 passed by the First Judicial District Court of the State of Nevada in and for Carson City (USA).

3. The respondent filed the suit before the learned Principal Judge, Family Court, Patiala House Court Complex, New Delhi¹, claiming that she is a resident of H.No.C-8/7, Vasant Vihar, New Delhi. The main grievance of the petitioner/husband is that the respondent/ex-wife is a permanent resident of Bangalore and she has been even gainfully employed in Bangalore, and yet the suit has been filed before the Family Court at Patiala House Court, New Delhi, which lacks territorial jurisdiction.

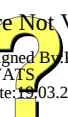
4. Having heard the learned counsels for the parties and on perusal of the record, I find that the present petition is grossly misconceived and tantamount to delaying the outcome of the proceedings before the Family Court concerned. The plea of the petitioner was earlier considered by the Family Court *vide* order dated 06.08.2022 and it was categorically observed that the jurisdiction of the court is not to be guided by Section 19² of the Hindu Marriage Act, 1955, but by

¹ Family Court

² **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 solemnised, 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 date of presentation of the petition, or
- (iv) 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





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Section 20³ of the Civil Procedure Code, 1908⁴ and accordingly, his application under Order VII Rule 10 of the CPC was dismissed.

5. The said order was not challenged and evidently, the evidence of the ex-wife has been recorded during the proceedings/Trial after framing of the issues. However, the petitioner again moved an application under Order XII Rule 6 of the CPC so as to seek judgment on admission with regard to his objections to the territorial jurisdiction of the court, the admission of which as per him, is coming out in the cross-examination of the respondent/plaintiff. It would be expedient to reproduce the impugned order dated 02.11.2023 passed by the learned Family Court, which reads as under:

“02.11.2023

Present:

Sh. Hari Om Sharan Singh, Ld. Counsel for the petitioner.

Sh. Salman Hashmi, Ld. Counsel for the respondent with respondent in person.

Application under Order 8 Rule 1A CPC is pending disposal whereby respondent is willing to place on record documents comprising 99 pages.

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 alive.

³ **20. Other suits to be instituted where defendants reside or cause of action arises.**—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

1 * * * *

2 [Explanation].—A corporation shall be deemed to carry on business at its sole or principal office in 3 [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

⁴ CPC



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Ld. Counsel for petitioner has raised objection with respect to relevancy of these documents as admittedly the present is a suit for setting aside the ex-parte decree of divorce by a foreign court and for declaration regarding the subsequent marriage of the defendant with defendant No.2 as null and void.

Ld. Counsel for respondent submits that these documents are necessary as plaintiff has raised issue of cruelty and maintenance and, therefore, these documents are necessary.

This court finds that there is no issue of cruelty or maintenance and, therefore, these documents are not necessary except document at page No. 86 i.e. driving license of the respondent and publication of some advertisement regarding court notices which has been placed on record with the list of documents at page No. 93 to 99. These documents would be relevant and, therefore, only driving license of respondent and documents at page No. 93 to 99 filed with the index dated 12.05.2023 are taken on record.

With this direction, application of defendant stands disposed of accordingly.

Defendant has filed another application under Order 12 Rule 6 CPC for passing decree of dismissal submitting that during the cross-examination, plaintiff has admitted certain facts, particularly with respect to her residence which makes clear that this court has no territorial jurisdiction and on account of vague pleading of the plaintiff and defendant's specific stand with respect to territorial jurisdiction, this court has been pleased to frame specific issue about the territorial jurisdiction and, therefore, he contends that once material has come on record which shows that this court has no territorial jurisdiction, therefore, the plaint is liable to be rejected and there is no need to put the matter on further trial.

This court is not in agreement with Ld. Counsel for defendant primarily because issues have already been framed and plaintiff has led her evidence and closed it and it is at the stage of defendant's evidence and defendant is coming up with such application which necessarily calls for appreciation of testimony of the plaintiff's witnesses which is not permissible in the application under Order 12 Rule 6 CPC. In any case, relief under Order 12 Rule 6 CPC is discretionary relief and once matter has crossed half trial, it is not in the interest to exercise discretion in favour of defendant even if he has allegedly been able to make out ground for the same, hence, the application of defendant is hereby dismissed.





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Put up for defendant's evidence on 05.02.2024.

Let advance copy of defendant's evidence be supplied to opposite side at least 15 days prior to next date of hearing.”

6. A careful perusal of the aforesaid order would show that the petitioner is indirectly making another attempt to introduce the rigours of Order VII Rule 10 of the CPC and attempting to scuttle down the entire proceedings, which are at advanced stage and going to take final shape. At the cost of repetition, the stage is set for recording of evidence of the petitioner, and thereafter, for final determination of issues on merits, including the issue of territorial jurisdiction. The issue of territorial jurisdiction is a mixed question of law and facts. It cannot be decided in a piecemeal manner. It would be legally inappropriate to read something in the testimony that has come out in the cross-examination of respondent/plaintiff one way or the other, as that would be highly prejudicial to the interests of the parties.

7. Hence, the present writ petition is bereft of the any merits and the same is dismissed with costs of Rs.10,000/- which shall be deposited by the petitioner with New Delhi District Legal Services Authority for wasting the precious time of the Family Court as also this Court.

DHARMESH SHARMA, J.

MARCH 19, 2024/ck