

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

FMAT No. 466 of 2025

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CAN 1 of 2025

**Vidushi Jain Bajoria
– Versus –
Sri Mihir Prakash Bajoria**

For the appellants	:	Mr. Aniruddha Chatterjee, Sr. Adv., Mr. Tanmoy Mukherjee, Mr. Abir Lal Chakravarti, Ms. Rajkumari Priyanka Devi, Mr. Parikshit Lakhotia
For the respondent	:	Mr. Abhrajit Mitra, Sr. Adv., Mr. Samriddha Sen, Mr. Ayush Jain, Ms. A. P. Agarwalla
Heard on	:	08.12.2025
Reserved on	:	08.12.2025
Judgment on	:	15.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The defendant-wife in a suit for divorce instituted by the respondent-husband has preferred the instant appeal against an order dated November 1, 2025, whereby the learned Trial Judge granted ad interim injunction restraining the defendant/appellant, her men, agents, servants and assigns from prosecuting, continuing

or taking any step or further step in or in connection with the proceedings instituted by the appellant before the Central Family Court, United Kingdom, being Case No. 1727-9691-3208-3233 and Case No. 1728-8776-1486-0043 or any other proceedings of like nature between the same parties before any foreign court.

- 2.** The brief facts of the case are that the parties have been residing abroad since long. The appellant-wife has been residing in the United Kingdom (UK) since the year 2015, initially on a student visa and thereafter for a limited period on a work visa and at present again on a student visa.
- 3.** Both the parties are Indian citizens governed by Hindu Law. The marriage between the parties took place in Kolkata, India on December 15, 2018 according to Hindu customs and rituals.
- 4.** Upon the relationship between the parties having turned acrimonious, the respondent-husband instituted the present suit for divorce in the Alipore Court, District: South 24 Parganas, in India on September 4, 2024.
- 5.** On the other hand, the appellant-wife instituted a divorce application before the concerned District Court in UK on October 10, 2024. On the very next day, that is on October 11, 2024, the appellant-wife also filed an application for financial relief (maintenance) ancillary to the divorce petition. The divorce petition was numbered as Case No. 1727-9691-3208-3233 and the

maintenance application was registered as Case No. 1728-8776-1486-0043.

- 6.** On December 06, 2024, the case was recorded to be a complex case and was allocated to District Judge (DJ) Ashworth as a Complexity Judge in the Central Family Court.
- 7.** On May 16, 2025, the Family Court in UK passed an order directing the respondent-husband to pay maintenance under different heads at the rates specified therein.
- 8.** On September 25, 2025, the appellant-wife filed in the husband's suit an application under Section 151 of the Code of Civil Procedure (CPC) for stay of the matrimonial suit instituted by the respondent-husband in India, which was rejected by the learned Additional District Judge.
- 9.** The respondent-husband, on October 29, 2025, filed an application for temporary injunction in his divorce suit, upon which the impugned ad interim anti-suit injunction order dated November 1, 2025 was passed.
- 10.** The primary grounds for grant of injunction, as recorded in the impugned order, were as follows:
 - (i) The divorce suit filed by the respondent-husband in India was earlier on point of time than that of the appellant-wife;
 - (ii) The District Court in UK has no jurisdiction, since the appellant-wife is not a permanent resident of UK; and

(iii) The maintenance order passed by the UK court is onerous and oppressive, as the amount granted exceeds the income of the respondent-husband as per his income tax returns and that compliance of the said order has affected the financial stability of the husband and may expose him to coercive measures abroad.

11. Learned senior counsel appearing for the appellant-wife argues that the contention of the respondent-husband to the effect that the UK court does not have jurisdiction is *inter alia* based on the apprehension that if any judgment is passed in the said UK proceeding, it would not be conclusive in India since it would be founded on refusal to recognize the law of India, that is the Hindu Marriage Act (for short, “the HMA”).
12. Learned senior counsel argues that the plinth of such contention of the respondent-husband is that irretrievable breakdown of marriage is not a valid ground of divorce in India whereas the divorce suit of the appellant-wife has been filed in the UK on such ground. In this context, learned senior counsel relies on *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433, where the Hon’ble Supreme Court of India observed, *inter alia*, that a marriage which has broken down irretrievably spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(i-a) of the HMA.

- 13.** Secondly, it is argued that it would be premature at this stage to consider the conclusive nature of the foreign judgment which might be passed in the wife's suit, since the said suit is till at the inchoate stage of interlocutory applications. Thus, such considerations would be premature at this stage.
- 14.** It is next argued that the Hon'ble Supreme Court held in *Dinesh Singh Thakur v. Sonal Thakur*, reported at (2018) 17 SCC 12, that before passing an order of anti-suit injunction, courts should be very cautious and careful, and it should be granted sparingly and not as a matter of routine, as such orders involve a court impinging on the jurisdiction of another court, which is not entertained very easily, especially when it restrains the parties from instituting or continuing a case in a foreign court.
- 15.** Learned senior counsel for the appellant-wife argues that the premise of the contention that the UK Family Court lacks territorial jurisdiction is also incorrect, since the appellant-wife has been residing since 2015 in the UK and has been coming to India merely on occasions, recently to settle the matrimonial dispute between the parties.
- 16.** Learned senior counsel cites Section 5(2)(b) of the Domicile and Matrimonial Proceedings Act, 1973, which governs divorce proceedings in UK and stipulates that the court shall have jurisdiction to entertain proceedings for divorce if either of the parties to the marriage was habitually resident in England and

Wales throughout the period of one year ending with the date when the proceedings are begun.

- 17.** Although initially a divorce petition was instituted in UK during a period when the appellant-wife was not residing regularly in UK for such period, by a subsequent order, the UK Family Court permitted a second divorce petition to be filed by the wife and is now proceeding by clubbing the said two matters.
- 18.** Learned senior counsel appearing for the appellant next contends that the next date fixed by the UK Family Court is for deciding on forum/jurisdiction and, as such, there cannot be any reason for the respondent to apprehend that his objection as to jurisdiction of the UK Court will not be addressed by the said court itself.
- 19.** It is contended that the UK court is the forum of convenience for both parties, not only because the appellant-wife has been residing in UK since 2015 but also since the respondent-husband admittedly owns a company in the UK as well as has a flat in the name of his company. Thus, it is clear from the admitted facts that the respondent-husband is also a habitual resident of England.
- 20.** Moreover, it is submitted that the respondent-husband has filed his response to the maintenance proceeding in the UK Court as well as adduced evidence in connection therewith before the Family Court in UK. Thus, there cannot be any difficulty for the respondent/husband to participate in the UK Court proceedings.

- 21.** While addressing the issue of the UK proceeding being onerous/oppressive, it is contended by the appellant that the said argument of the respondent cannot be accepted since the UK Court is fairly proceeding in due process of law, fixing the next date for adjudication of the forum/jurisdiction issue. The proceedings in both the suits pending in the UK have been stayed till such adjudication, which goes on to show that the proceeding is not onerous or oppressive at all.
- 22.** Learned senior counsel argues that the learned Additional District Judge, by the impugned order, sat in judgment over a maintenance order passed by a court of co-ordinate jurisdiction in UK, which is not permissible in law.
- 23.** The appellant accordingly seeks the impugned order to be set aside.
- 24.** Learned senior counsel for the respondent-husband, while controverting the arguments of the appellant, submits that an anti-suit injunction can be granted under three considerations:
- (i) When the foreign court is not of competent jurisdiction, as envisaged under Section 13(a) of the Code of Civil Procedure (CPC), or the foreign proceedings are founded on a refusal to recognize the law of India in cases in which such law is applicable, as stipulated in Section 13(c), CPC;
 - (ii) Where the proceeding is onerous/oppressive; and
 - (iii) Where the principle of *forum non conveniens* is applicable.

- 25.** Insofar as the jurisdiction of the UK Family Court is concerned, it is argued that the appellant-wife did not habitually reside for a continuous period of one year before the institution of either of her divorce proceedings in UK. Moreover, the UK Court is not one of the courts contemplated under the HMA, in terms of the place of institution of a divorce suit as envisaged in the said Act.
- 26.** By relying on *Y. Narasimha Rao and Others v. Y. Venkata Lakshmi and Another*, reported at (1991) 3 SCC 45, it is argued that the Hon'ble Supreme Court of India held therein that the jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this Rule may be where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married or where the respondent voluntarily and effectively submits to the jurisdiction of the forum. Neither of the said criteria are fulfilled in the present case, it is submitted.
- 27.** In the said judgment, the Hon'ble Supreme Court further observed that the only law that can be applicable to 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 a ground not recognized by such law, it is a judgment which is in defiance of the law.

- 28.** It was further held that Section 13(a) of the CPC should be interpreted to mean that only that court will be the court of competent jurisdiction which the HMA or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression “competent court” in Section 41 of the Indian Evidence Act, it was held, was also to be construed likewise.
- 29.** Learned senior counsel for the respondent-husband next places reliance on an unreported judgment of the Hon’ble Supreme Court of India in *Rinku Baheti v. Sandesh Sharda* [2024 INSC 1014], where the Hon’ble Apex Court considered all the judgments, including *Rakesh Raman (supra)*¹, and came to the conclusion that the cases in which the Hon’ble Supreme Court of India granted divorce on the ground of irretrievable breakdown of marriage were all under Article 142 of the Constitution of India, which empowers the Supreme Court to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it and any decree so passed or so made shall be enforceable throughout

1. *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433

the territory of India. Thus, such judgments are not law declared by the Supreme Court to be binding on all courts as envisaged in Article 141 of the Constitution of India. Hence, the latest judicial position in India is that irretrievable breakdown is not a valid ground recognized by the HMA for divorce, as opposed to the English Courts, where irretrievable breakdown of marriage itself is a ground for divorce and has been resorted to by the appellant-wife in her divorce petition as the sole ground for divorce. As such, it is argued that the judgment which might be ultimately passed by the UK Court on such ground would not be conclusive within the contemplation of Section 13(c) of the CPC, since it would be founded on a refusal to recognize the law of India.

- 30.** Thus, it is contended that the anti-suit injunction granted by the learned Trial Judge was justified on both grounds.
- 31.** It is next contended by the respondent that the principle of *forum non conveniens* would be squarely applicable, since the husband has declared categorically that he has returned to India in October, 2023 for good. That apart, the oppressive and onerous nature of the exorbitant maintenance order made against the respondent is also a component which is required to be considered while granting anti-suit injunction.
- 32.** The High Court in England, it is pointed out, has passed an order restraining the respondent from relying on or giving effect to the order impugned herein, going to the extent of directing the

respondent to file an application before the Indian Court to have the said order discharged. Such coercive measures taken by the English Courts against the respondent give rise to a reasonable apprehension that if the respondent is compelled to participate in the proceedings before the English Courts, it would be palpably oppressive against the respondent.

- 33.** In this regard, the respondent relies on *Madhavendra L. Bhatnagar v. Bhavna Lall*, reported at (2021) 2 SCC 775, where the court restrained the respondent from proceeding with a pending suit instituted by her in the Superior Court of Arizona, USA or to file any other proceedings including interim applications in any proceedings thereafter except in the proceedings pending in the court at Bhopal until further orders passed by the Bhopal Court. It was held in the said judgment that in the proceedings before the Superior Court of Arizona, objection regarding jurisdiction of that court was taken by the appellant and while dealing with the preliminary objection, that court made it amply clear that it intended to apply the laws of the State of Arizona and would not take into account the laws applicable to Hindu marriages, namely, the HMA, for dissolution of the marriage.
- 34.** On the strength of the above arguments, learned senior counsel for the respondent-husband seeks to justify the impugned order and prays for dismissal of the present appeal.

- 35.** The arguments of the parties in the present appeal pose several questions before the Court, which we shall answer while proceeding to adjudicate the matter as follows:

(i) *Forum Non Conveniens*

- 36.** At the outset, it is to be noted that the principle of *forum non conveniens* is normally applicable to the court where a proceeding is initiated. It is for the said Court to decide that it is a *forum non conveniens* and, on such ground, to consider as to whether to dismiss the case or permit it to be instituted before another court which is more convenient to the parties. The said principle confers discretion on the court where the proceeding is initiated to decline the case when it would be more just and convenient for the parties to have it heard elsewhere.
- 37.** As such, invocation of the said doctrine has to be before the *forum non conveniens* where the proceeding is initiated, which itself has to take a call on whether the proceedings should be permitted to continue there or be relegated to a more convenient forum.
- 38.** By necessary implication, it is not for another court, which is considered by one of the parties to be the convenient forum, to usurp the jurisdiction of the court where the proceeding is instituted and declare itself to be the convenient forum, thereby having a legal action initiated before a different jurisdiction

transferred to itself or granting an anti-suit injunction to stay the proceeding in the *forum non conveniens*.

- 39.** The respondent herein seeks to turn the principle on its head by seeking to clothe its perceived convenient forum, that is the Alipore Court in India, with the power to invoke the principle of *forum non conveniens*, which is not vested in any such perceived convenient forum but in the *forum non conveniens* where the proceeding is initiated. The said principle is premised on a self-imposed restraint, whereby a court may decide that it is not the forum of convenience and relegates the parties to some other more convenient forum. Hence, the said principle is not applicable to the Alipore Court but can be invoked by the UK Court where the wife's suit has been instituted.
- 40.** However, even if we apply the *forum conveniens* test and assess whether it is convenient for the parties to contest the litigation in UK, which is one of the premises of the anti-suit injunction granted by the learned Trial Judge, *prima facie* we find that it would not be inconvenient for either of the parties to contest the proceeding in UK. Insofar as the wife is concerned, she obviously wants her UK suit to be disposed of by the said court, having instituted two divorce proceedings and a maintenance application there. Moreover, the materials on record show *prima facie* that the wife has been residing in the UK since 2015 for the most part of a decade till date. Irrespective of whether she was in the UK on a student visa or

on a work visa, fact remains that she resides in a flat in UK and only came over to India on occasions, primarily to negotiate the matrimonial dispute with her husband, the respondent.

41. On the other hand, the respondent-husband categorically admits in his response to the maintenance application filed by the appellant-wife that he is employed as the Chairman of one Monocon International Refractories, a company based in the UK and that he is a part of the key leadership team there, being involved with all high-level decisions and strategy. He further admits in Paragraph No. 11(c) of the said response that he has an active role at all Board Meetings and is winning maintenance contracts at a high level. He further goes on to state that, “as has now become public knowledge from around September, 2025”, he would be assuming the role of Group Managing Director. Although the husband states that he has been able to continue his role remotely from India since his relocation in October 2023, his own admissions in his response to the appellant/wife’s maintenance application show that the respondent-husband has high stakes in the UK. That apart, the materials and averments on record indicate that the respondent/husband’s company has at least one flat in UK, where the respondent has been residing for years.

42. The respondent-husband asserts in paragraph nos. 12 to 15 of his said response that he is not a legal or beneficial owner of either Flat 14 or Flat 58 at Academy Gardens in UK. He states that he does

not own or control either of the properties and is not the owner of the properties in any way. Such statement is evasive as to whether the flats are owned by the company of the respondent as per the allegation of the appellant-wife. In any event, it is an admitted position that the respondent-husband has been residing all along in Flat 58, Academy Gardens in UK before he allegedly came back in India in October, 2023.

43. Even apart from the above facts, the respondent-husband filed his response to the maintenance petition of the wife on April 17, 2025 and has adduced evidence in connection therewith as lately as on October 24, 2025. Thus, it is *prima facie* not credible that the respondent-husband is not in a position to contest the wife's divorce proceedings and alimony application in the UK.
44. Hence, this issue has is decided against the respondent-husband.

(ii) Competence of UK Family Court

45. The competence of the UK Family Court has been challenged primarily on two grounds – jurisdiction and law.
46. The first ground is based on Section 13(a) of the CPC, which stipulates that a foreign judgment is not conclusive where it has not been pronounced by a court of competent jurisdiction.
47. It is to be noted that the question of whether the appellant-wife has been habitually residing in England, which is a pre-requisite of Section 5(2)(b) of the Domicile and Matrimonial Proceedings Act,

1973 of England in order to maintain a suit in an UK Court, is arguable, to say the least, in view of the factual narrative above. Hence, it is debatable as to whether the appellant-wife has been “habitually residing” in the UK for a period of one year prior to the institution of her divorce petition. The expression “habitually” can have different shades of connotations. There is an element of permanence in the term, for which the intent of the party is to be looked into. Despite a moderately long period of stay in a place, the same may not be a person’s “habitual” residence but a temporary place of stay for some specific purpose. It may very well be construed that a person, despite having occasionally gone out of the UK jurisdiction and come to India, has been a ‘permanent’ or ‘habitual’ resident of the UK. The expression “resident”, when jointly read with “habitual”, has a different meaning than mere physical residence for the period-in-question. It is to be adjudicated by a proper forum as to whether the wife retained her habitual residency in the UK while occasionally visiting India for certain specific purposes.

- 48.** We also ought to take note of the fact that the UK Family Court has stayed all proceedings in the divorce petition as well as the maintenance proceeding of the wife till the adjudication of the forum/jurisdiction issue by it on the next date. Thus, the question is already pending consideration before the UK Family Court.

49. Such procedure is in consonance with due process of law and not *de hors* the law, befitting any civil court in a common law country having established rule of law.
50. Even under the HMA, which is the law governing the parties as per Indian jurisprudence, just because the marriage between the parties took place in Kolkata, India and under the HMA, the UK District Court cannot be said to be without jurisdiction.
51. Section 19(iii) of the HMA provides that every petition under the said Act can be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the parties to the marriage last resided together whereas Section 19(iia) stipulates that the court, in case the wife is the petitioner, can be where she is residing on the date of presentation of the petition.
52. Viewed from such perspective as well, it cannot be said that even within the contemplation of the Indian Law governing the parties, the District Court in UK would not otherwise be a court of competent jurisdiction.
53. Although Section 3(b) of the HMA defines “District Court” to mean Indian Courts and not foreign courts, taken in its true spirit and in a liberal perspective, the conferment of territorial jurisdiction under Section 19 is available in principle to the UK Family Court, since the wife is, *prima facie*, residing there and, at least, the parties last resided together as spouses in UK. Hence, on the issue of territorial jurisdiction, it cannot be said outright that the judgment which

might ultimately be passed in the divorce suit of the wife in UK would be inconclusive in India.

54. Proceeding from the perspective of law as well, in line with Section 13(c) of the CPC, which provides that where it appears on the face of the proceedings to be founded on a refusal to recognise the law of India, a foreign judgment would be conclusive, the moot question which arises is whether irretrievable breakdown of marriage is a good ground of divorce in India, as opposed to the UK.
55. It is an admitted position that the divorce suit of the wife has been filed in the UK only on the ground of irretrievable breakdown.
56. Section 13(1)(ia) of the HMA provides cruelty by the respondent against the petitioner as a ground for divorce, without defining the term “cruelty” anywhere in the statute. The said provision has been scrutinized by the Hon’ble Supreme Court of India in numerous cases. It is not in doubt that in most of the cases where the Hon’ble Supreme Court has granted divorce on the ground of irretrievable breakdown, it did so by resorting to Article 142 of the Constitution of India which, unlike Article 141, would be binding between the parties in all territories but not have the status of a binding precedent, as under Article 141, as a “law declared”.
57. In *Rakesh Raman (supra)*², it specifically fell for consideration before the Hon’ble Supreme Court as to whether irretrievable breakdown of marriage can be construed as a ground for divorce. The Hon’ble

2. ***Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433**

Supreme Court, by considering several of its previous judgments, including *Naveen Kohli v. Neelu Kohli*, reported at (2006) 4 SCC 558 and *Samar Ghosh v. Jaya Ghosh*, reported at (2007) 4 SCC 511, observed that irretrievable breakdown of marriage may not be a ground of dissolution of marriage under the HMA but cruelty is. However, the Court proceeded further to hold that a marriage which has broken down irretrievably spells cruelty to both parties as in such a relationship each party is treating the other with cruelty. Thus, the Hon'ble Supreme Court held that it is, therefore, a ground for dissolution of marriage under Section 13(1)(ia) of the HMA. Hence, although not holding that irretrievable breakdown of marriage is independently a ground of divorce recognised under Section 13 of the HMA, the said component was included within the definition of "cruelty", as an ingredient thereof, thereby permitting a divorce decree to be granted under Section 13(1)(ia) on the ground of cruelty by incorporating irretrievable breakdown of marriage as a facet of cruelty of both parties against each other. Thus, the term 'cruelty' as contemplated in Section 13 (1) (ia) of the HMA was interpreted to include irretrievable breakdown of marriage.

- 58.** The said judgment, a path-breaking and progressive decision in its own right, clearly lays down the law on the issue within the contemplation of Article 141 of the Constitution of India and is, thus, a binding precedent in India.

- 59.** The consideration in *Rinku Baheti (supra)*³ was, on the other hand, completely different in view of the Supreme Court considering a transfer petition under Section 25 of the CPC therein. While doing so, the Hon'ble Supreme Court was assessing the facts of the said case. In such context, it was observed that unlike a divorce proceeding before the Family Court, where the court is bound by the fault-divorce provisions contained in the HMA and other allied legislations and thus has to necessarily appreciate the evidence to give a finding about whether a party had indeed committed the alleged matrimonial offence or not, the Supreme Court while dealing with an application seeking divorce under Article 142(1) of the Constitution of India can depart from the said procedure as well as substantive laws by acting as a problem solver and balancing out the equities between the conflicting claims. While holding so, however, it was never disputed that irretrievable breakdown of marriage, although not independently a ground for divorce under Section 13 of HMA, can be incorporated as a component of cruelty under Section 13(1)(ia), as held in *Rakesh Raman (supra)*⁴.
- 60.** In fact, in Paragraph No. 8.1 of *Rinku Baheti (supra)*⁵, the Hon'ble Supreme Court held that the exercise of power by the said court under Article 142(1) to grant a decree of divorce and the factors to be considered while doing so have varied with facts and

3. *Rinku Baheti v. Sandesh Sharda* [2024 INSC 1014]

4. *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433

5. *Rinku Baheti v. Sandesh Sharda* [2024 INSC 1014]

circumstances of each case. While holding so, it was independently observed that in *Rakesh Raman (supra)*⁴, the court had come to a finding that irretrievable breakdown was a ground for dissolution of marriage under Section 13(1)(ia) of the Act and that in the light of such observations, the Supreme Court had granted a decree of divorce and dissolved the marriage between the parties in that case.

61. In the very next paragraph, that is Paragraph No. 8.2, of *Rinku Baheti (supra)*⁶, it was observed that the aforementioned position has since then been followed by the said court in several cases “while exercising power under Article 142(1) of the Constitution of India”.

62. Thus, on a composite reading of Paragraph Nos. 8.1 and 8.2 of *Rinku Baheti (supra)*⁶, it is nowhere found that the ratio laid down in *Rakesh Raman (supra)*⁷ was deviated from or overruled or held to be bad law. The relevant paragraphs of *Rakesh Raman (supra)*⁷ were quoted, which was followed up by the observation that the Supreme Court, in the light of the said observation, had in several cases granted a divorce, although in the latter cases under Article 142(1), without ever disputing the fact that *Rakesh Raman (supra)*⁷ categorically incorporated irretrievable breakdown as a component of cruelty, which is a recognized ground of divorce under Section 13(1)(ia) of the HMA, or holding that the Supreme Court had resorted to Article 142 in the said report.

6. *Rinku Baheti v. Sandesh Sharda* [2024 INSC 1014]

7. *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433

- 63.** At this juncture, it is made clear that this Court is not oblivious of the ramifications which the above observations might have on the litigation between the parties before us in different fora. Hence, we hasten to add that the above observations are only tentative and *prima facie* in nature, arrived at for the limited purpose of adjudication of the present appeal in connection with the impugned anti-suit injunction, and shall not have any bearing whatsoever and/or prejudice the rights of any of the parties in the proceedings pending either before the Indian Court or the UK Court.
- 64.** While saying so, we simultaneously find that the above legal position is an evolving branch of law in India. Thus, it cannot be conclusively stated at this juncture that irretrievable breakdown of marriage, even as a component of cruelty, cannot form a valid ground for grant of divorce, even under the HMA. On a Dylanish note, we can only observe that “The Times They Are A-Changin’” and it is too early to draw a terminus on the debate on such issue.
- 65.** Thus, we cannot hold conclusively that the said ground of divorce, recognized by UK law, would be founded on a refusal to recognize “the law of India” in cases in which such law is applicable, at least at this stage.
- 66.** That apart, since the UK Court had stayed its hand in all the pending proceeding pending before it till the adjudication of the forum/jurisdiction issue by it, it would be inappropriate and premature for us to comment on the said issue at this stage.

(iii) Comity of courts

- 67.** Comity of courts is a well-established common law principle since medieval times and is based not on the binding effect of judgments and laws of different jurisdictions but premised on mutual respect and deference of the courts of one jurisdiction to that of another. In a civilised society, the principle of comity of courts forms a foundation and a cornerstone for uniformity and certainty, which are the primary characteristics of good law.
- 68.** Such principle is recognized in Sections 13 and 14 of the CPC. Section 14 provides that the court shall presume, merely upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless, of course, the contrary appears on the record, which presumption may be displaced by proving want of jurisdiction.
- 69.** Section 13, by default, makes all foreign judgments conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties litigating under them, subject only to the exceptions laid down therein, out of which those stipulated in sub-clauses (a) and (c) are germane in the present case and have been discussed above.
- 70.** Proceeding on such premise, although we find the judgment delivered by the High Court of Justice (Family Division) in UK dated

November 10, 2025 a tad bit disturbing, since the said court virtually sat in judgment over an order passed by a court of competent jurisdiction in India without attributing detailed reasons to justify the same, at the same time we cannot also overlook the fact that, by the present impugned order, the learned Trial Judge in the husband's suit has also committed a similar error insofar as the maintenance order passed by the UK Family Court is concerned. Although two wrongs do not make a right, fact remains that merely because of such order passed by the High Court in UK, it cannot be presumed that the respondent-husband would not get justice in an evolved judicial system in the UK, before its District Courts, where the petitions for divorce and maintenance of the wife are pending. Moreover, the judgment of the UK High Court of Justice (Family Division) also had the little courtesy of directing the respondent to apply in India for discharge of the Indian anti-suit injunction order and gave permission to both parties to disclose the order of the UK High Court in full to their Indian legal advisors and into the Indian divorce proceedings as well as the Indian interim anti-suit injunction.

- 71.** Be that as it may, fact remains that in deference to the principle of Comity of Courts, this Court is of the opinion that since the UK Family Court has already fixed the matter for adjudication on the issue of jurisdiction/forum, it would be inappropriate to grant an

anti-suit injunction at this stage to stall such proceedings altogether.

(iv) Stage of suit

- 72.** It is an admitted position that the divorce suit of the respondent-husband was earlier on point of time, having been filed on September 4, 2024. However, we cannot lose sight of the fact that the husband waited till the wife filed her divorce petitions, both first and second, as well as the financial remedy (maintenance) proceeding, respectively on October 10 and October 11, 2024, and only thereafter took out the injunction application in his suit. Thus, for all practical purposes, although the husband's divorce suit was filed earlier, the injunction application was filed in his suit subsequent to the filing of the wife's divorce petitions as well as maintenance application in UK.
- 73.** Another factor to be considered is that an alimony order has been passed in favour of the wife in the UK proceedings, thereby conferring an accrued right in her favour. By the impugned order, the learned Trial Judge virtually sat in judgment over the said order, which is *de hors* the basic tenets of law, particularly keeping in view the fact that the courts are of collateral jurisdiction, both being original courts of institution of the suit. Such an order, entering into the merits of the maintenance order passed in the wife's suit, is not in consonance with the principle of Comity of Courts or cardinal principles of justice.

- 74.** In any event, it is always open for the respondent-husband, if aggrieved, to challenge such maintenance order before a superior forum in UK.
- 75.** That apart, the wife's suit is already fixed for adjudication on the forum/jurisdiction issue, which should not be precluded or interdicted, after being so fixed, by grant of an anti-suit injunction in the husband's suit in India, thereby throwing a spanner in the wheels of the UK proceeding in an unwarranted manner.

CONCLUSION

- 76.** In view of the above, we are of the considered opinion that the learned Trial Judge acted *de hors* the law and against basic principles of Comity of Court and private international law in granting an anti-suit injunction at this stage on erroneous premises, entering into the merits of a maintenance order passed by a *prima facie* competent foreign court and incorporating prematurely considerations under Section 13 of the CPC, which refers to conclusiveness of the final judgment, at the initial stages of the foreign suit. Moreover, the provisions of Section 10 of the CPC are not applicable in terms to a foreign court and hence, the mere earlier institution of the husband's suit would not be sufficient to pass an order of stay of the foreign suit. In any event, Section 10 mandates the court before which the subsequent suit has been filed to stay such suit and does not empower the court where the earlier proceeding was initiated, to pass such an order.

- 77.** Accordingly, FMAT No. 466 of 2025 is allowed on contest, thereby setting aside the impugned order dated November 1, 2025 passed by the learned Civil Judge (Senior Division), First Court at Alipore, District: South 24 Parganas in Title Suit No. 1656 of 2025.
- 78.** CAN 1 of 2025 is consequentially disposed of.
- 79.** It is made clear that none of the above observations shall operate to the prejudice of the parties in any proceeding before any forum, either pending or to be instituted, in India or in the UK, and are only of a tentative nature.
- 80.** There will be no order as to costs.
- 81.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

Later

After the above judgment is passed, learned counsel for the respondent seeks a stay of the operation of the above judgment.

However, in the event such stay is granted, the same shall operate counter to the very grain of the above judgment.

Accordingly, we refuse such prayer for stay.

(Supratim Bhattacharya, J.)

(Sabyasachi Bhattacharyya, J.)