IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FAMILY COURT APPEAL NO. 42 OF 2023

Yogeshwar Dattatraya Suryawanshi
Age : 41 years, occ : Nil
R/o Yog Kutir, Vaibhav Nagar,
Latur Appellant

Versus

Mrs. Neha Nayak w/o
Yogeshwar Suryawanshi
Age : 42 yrs, occ : service
R/o 509-817 Na'a Drive SW,
Calgary, Province of Alberta
T3H 6C2, Canada

Second Residing Address:
Mrs. Neha Nayak w/o
Yogeshwar Suryawanshi
3027, Finch Avenue West,
Unit#6, North York,
Ontario-M9M 0A2, Canada Respondent

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Mr. Archit Jayakar a/w Mr. Harish Adwant a/w Ms. Pooja Yadav, Advocates for the appellant.
Mr. Anand Bhandari, Advocate for respondent (appointed) a/w Advocate R.P. Totala, Advocate A.P. Nahar, Advocate Trupti Joshi and Advocate Sejal Sisodiya.

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CORAM : SANDIPKUMAR C. MORE AND VAISHALI PATIL-JADHAV, JJ.

Reserved On : 04.08.2026

Pronounced on : 03.11.2026

Judgment (Per Sandipkumar C. More, J.) :

1. The appellant-husband has challenged the judgment and order dated 15.03.2023 passed by the learned

Family Court Judge, Latur (hereinafter referred to as the "learned Judge") whereby his petition for divorce bearing No. A-152/2022 filed under Sections 13 (1) (ia) and 13 (1) (ib) of the Hindu Marriage Act ("the Act" for short), has been rejected solely on the ground of territorial jurisdiction under Section 19 (i), (ii), (iii) of the Act.

2. The background facts in nutshell are as under :

Both the parties are Hindus by religion and they got acquainted through social media in the year 2007 and thereafter decided to marry with each other. At the relevant time the appellant-husband was in Chicago (United States) and respondent-wife was in Toronto (Canada). Their marriage was solemnized as per Hindu rites on 19.12.2008 at Boriwali, Mumbai. The said marriage was also registered subsequently in the office of Marriage Registrar, Latur. They are having one son born on 25.06.2015 in Edmonton (Canada) and he is having Canadian citizenship by birth. At the time of marriage the appellant and respondent were citizens of India, but after the marriage they shifted to USA first and from there to Canada where they resided for several years. In the year 2013 both of them obtained Canadian citizenship and also Overseas Citizenship of India (OCI). In the year 2019 both of them travelled to Latur, Maharashtra for attending marriage of the

sister of appellant and stayed there in the matrimonial home at Latur. This was the last occasion on which the parties resided together as husband and wife in India. Prior to that they had also purchased two properties jointly in Canada; one in Calgary in 2013 and another in Edmonton in 2014. Besides, they also purchased one property at Bangalore, Karnataka in the year 2016 in their joint names. After they resided at Latur on last occasion in the mother of December 2019 as mentioned above, some dispute arose between them, and therefore, respondent-wife, on her own, went back to Canada alone. Though the appellant-husband followed her to Canada and attempted to reconcile and settle the dispute between them, but ultimately the respondent-wife filed divorce petition before the Court of Alberta at Canada. The appellant, after receiving summons, had participated in the said proceeding initially and also appointed Solicitor to appear on his behalf.

3. As per the orders of the said Court at Alberta, the appellant and respondent by mutual consent, sold all three joint properties including the properties at Calgary and Edmonton. The sale proceeds of those two properties at Canada were divided between them, but the share of the appellant was kept with one real estate lawyer as per the direction of that Court. Though the property situated in

Banglore was also sold in the month of June 2022, neither of them received any consideration as it was utilized for clearing the loan taken for it's purchase. Thereafter the appellant-husband due his financial constraints was unable to contest the proceeding at Canada since he had returned to Latur and started residing there. Thus he filed the petition which is the subject-matter of this proceeding before the Family Court at Latur on 04.07.2022 for dissolution of marriage on the ground of cruelty and desertion. Respondent-wife had filed appearance purshis through her lawyer on 07.09.2022 and thereafter learned trial Judge referred the matter for counselling. However, respondent-wife preferred not to attend the counselling sessions. On 15.03.2023 learned trial Judge suo-moto framed issue of jurisdiction and dismissed the divorce petition of the appellant-husband holding that it lacks jurisdiction under Section 19 (i) to (iii) of the Act, under the impugned judgment. Hence, this appeal.

4. Learned counsel for the appellant-husband vehemently argued that the impugned judgment suffers from jurisdictional error since while examining this issue of territorial jurisdiction the learned trial Judge confined his consideration only to clauses (i) to (iii) of Section 19 of the Act. According to learned counsel for the appellant, learned trial

Judge completely ignored clause (iv) of Section 19 of the Act. According to him, the at the time of filing divorce petition the appellant was residing at Latur whereas the respondent was residing in Canada i.e. the place which is outside the territories to which the Act applies. Thus according to him, the said fact had in fact given territorial jurisdiction to the learned trial Judge under Section 19 (iv) of the Act. He claimed that clause (iv) of Section 19 of the Act has conferred independent and alternative forum of jurisdiction to the petitioner irrespective of other clauses viz. (i) to (iii) of Section 19 of the Act. He contended that the objection raised by the respondent regarding inapplicability of the Act in the present proceeding, is untenable and the aspect of domicile is not at all applicable in this matter and it has only to be observed that since the parties are governed by Hindu Law, then the remedy for divorce also lies as per the provisions of the Act only and not by the provisions of foreign Court. He also pointed out that the decision of the Court of Canada is not at all binding since Canada is not reciprocating territory notified under Section 44A of the Code of Civil Procedure. According to him, the decree of Canadian Court is not directly executable in India and the issue before learned trial Judge was not the enforceability of any order of Canadian Court, but only it is to

be seen whether the statutory provisions under Section 19 of the Act are satisfied. In the alternative, he submitted that even under Section 19 (iii) of the Act the Family Court is having jurisdiction, since the parties had lastly resided together at Latur in the month of December 2019. For supporting his submissions, the learned counsel for the appellant has relied on the following judgments.

(i) R. Sridharan vs The Presiding Officer, Principal Court, Chennai and another; (2010) 8 Mad LJ 438

(ii) Smt. Madhvi Sirothia vs N.N. Sirothia; AIR 1974 ALL 36

(iii) Meena Anilkumar Walambe vs Anilkumar Govind Walambe; (1992) 1 Mah LJ 458

(iv) Mandeep Kaur vs Dharam Lingam; (2017 1 HLR 199

(v) Arunima Naveen Takiar vs Naveen Takiar (2019) 3 Mah LJ 885

5. On the contrary, learned counsel for the respondent-wife strongly opposed the submissions made on behalf of the appellant-husband. Though he admitted that the appellant and respondent are Hindus by religion and also the citizens of Canada, but according to him, the respondent-wife was never domiciled in India so as to apply the provisions of Section 19 (v) read with Section 1 (2) of the Act. According to him, Section 19 (iv) needs to be read with Section 1 (2) of the Act, and therefore, it is necessary for the appellant-husband to establish the fact that the respondent-wife was domiciled in

the territories to which the Act extends. According to him, the proceeding filed by the respondent-wife in Canadian Court was earlier in time and the appellant-husband, by participating in the said proceeding, had subjected himself to the orders of Canadian Court. As such, when he submitted himself to the jurisdiction of the foreign Court i.e. the Canadian Court, whatever order would be delivered by the said Court, also binds on him. According to him, the stay of appellant and respondent at Latur cannot be considered as their last residence together as the same took place only for temporary period. According to him, Section 19 (iiia) of the Act was introduced in the Act by way of Amendment Act, 2003 which gives wife choice of forum and it carves out the exception to Section 19 (iv) read with Section 1 (2) of the Act which says that even if the husband is not domiciled India, the proceeding can be filed in the Indian Court by wife. In support of his submissions, he relied on the following judgments.

(i) Karan Goel vs Kanika Goel; MANU/DE/1854/2020

(ii) Neeraja Saraph vs Jayant Saraph and others MANU/SC/0862/1994

(iii) R. Sridharan vs The Presiding Officer, Principal Family Court, Cheenai; 2010 SCC Online Mad 3807

(iv) Kashmira Kale vs Kishorkumar Mohan Kale AIR 2010 (NOC) 632 (BOM)

(v) Sondur Gopal vs Sondur Rajni and others MANU/SC/0694/2013

(vi) Ms. Shikha Lodha vs Suketu Shah (Writ Petition No.8829 of 2013, High Court of Bombay, Civil Appellate Jurisdiction

(vii) Y. Narasimha Rao vs Y. Venkata Lakshmi AIR ONLINE 1991 SC 10

6. Heard rival submissions. We have also gone through entire documents placed on record by the rival parties and judgments relied upon by them.

7. It is not in dispute that at the time of marriage, which is admittedly solemnized in Boriwali, Mumbai, the rival parties were Hindu by religion. Further, they have resided for substantial period in Canada and also acquired citizenship of Canada. It is not in dispute that for the brief intervals they visited India. The filing of divorce proceeding by respondent-wife in the Court at Canada is also not disputed. Therefore, in the light of these admitted facts and their respective contentions, following questions arise for our consideration.

(a) Whether Hindu Marriage Act, 1955 is applicable to the parties before us?

(b) Whether the appellant-husband can maintain a petition for divorce under the Act in the Family Court at Latur?

It is extremely important to not that there was no contest on the part of respondent-wife in the petition of divorce filed by the appellant-husband before the learned trial Judge. On the

contrary, learned trial Judge suo-moto framed issue of jurisdiction based on the pleadings of the appellant and came to the conclusion that the petition lacks territorial jurisdiction. However, it is to be noted that while rejecting the petition of appellant-husband on the ground of territorial jurisdiction, the learned trial Judge has considered only clauses (i), (ii) and (iii) of Section 19 of the Act. Now learned counsel for the appellant claims that the learned trial Judge completely ignored Section 19 (iv) of the Act by which the appellant gets right to file petition before it. Though learned counsel for the respondent-wife raises objection that the ground under Section 19 (iv) of the Act was not raised by the appellant before the learned trial Judge, but being the question of law and considering the fact that the petition of appellant has been rejected solely on the ground of territorial jurisdiction, we have to consider the entire Section 19 of the Act which provides jurisdiction for filing petition before the Family Court. So far as applicability of Hindu Marriage Act to the parties herein is concerned, we would like to quote the relevant provisions of the Act to that effect, as under.

> *"1. Short title and extent.*
>
> *(1) This Act may be called the Hindu Marriage Act, 1955.*

(2) It extends to the whole of India except the State of Jammu and Kashmir , and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.

(1) This Act applies

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation. The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression Hindu in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section".

8. It is not in dispute that both the parties are Hindus by birth and initially domiciled in India at the time of their marriage which would performed as per Hindu customs, rites and rituals in Mumbai, Maharashtra. Therefore, apparently the Hindu Marriage Act is applicable to their marriage and also to any proceedings between them for divorce. However, as per the submission of learned counsel for the respondent-wife, pertinent question is that, when the parties are no more domiciled in the territories to which this Act extends due to their change in citizenship, then it certainly affects jurisdiction of the Court in India for entertaining divorce proceeding under the Act. As per Section 1 (2) of the Act, the Act applies to Hindus domiciled in the territories to which the Act extends, who are outside the said territories. It is the contention of learned counsel for the respondent-wife that since the wife is not domiciled in India, the petition is not maintainable unless it is shown that the wife has abandoned her Canadian domicile or intends to accept the Indian domicile. It is to be noted that the finding of change of domicile at the outside is given by the learned trial Judge on the actual pleadings in the divorce proceedings and therefore, it is seriously challenged by the appellant.

9. Law of domicile is widely discussed by the Hon'ble Apex Court in various judgments. In the case of ***Sondur Gopal*** (supra), the Supreme Court has made following observation in paragraphs 26 and 27.

> *"26. Domicile are of three kinds, viz. domicile of origin, the domicile by operation of law and the domicile of choice. In the present case, we are concerned only with the domicile of origin and domicile of choice. Domicile of origin is not necessarily the place of birth. The birth of a child at a place during temporary absence of the parents from their domicile will not make the place of birth as the domicile of the child. In domicile of choice one is abandoned and another domicile is acquired but for that, the acquisition of another domicile is not sufficient. Domicile of origin prevails until not only another domicile is acquired but it must manifest intention of abandoning the domicile of origin. In order to establish that Australia is their domicile of choice, the husband has relied on their residential tenancy agreement dated 25.01.2003 for period of 18 months; enrollment of Natasha in Warrawee Public School in April,2003; commencement of proceedings for grant of permanent resident status in Australia during October-November, 2003; and submission of application by the husband and wife on 11.11.2003 for getting their permanent resident status in Australia.*
>
> *27. The right to change the domicile of birth is available to any person not legally dependent and such a person can acquire domicile of choice. It is done by residing in the country of choice with intention of continuing to reside there indefinitely. Unless proved, there is presumption against the change of domicile. Therefore, the person who alleges it has to prove that. Intention is always lodged in the mind, which can be inferred from any act, event or circumstance in the life of such person. Residence, for a long period, is an evidence of such an intention so also the change of nationality".*

The key principal noted in this judgment is that Hindu governed by Hindu Marriage Act must be domicile in India for the Act to apply. Mere residence outside the India or

acquisition of foreign citizenship does not take such Hindu outside the purview of the Act and the Act has extra territorial operation only for Hindus domiciled in India. The domicile of origin (India) continues only for Hindus domiciled in India. The domicile of India continues until the person proves with clear evidence both acquisition of new domicile and abandoned of Indian domicile. Thus from the above quoted paragraphs it can be inferred that even if one of the party still domiciled in India, Hindu Marriage Act applies to the parties.

10. In the case of ***Kedar Pandey vs Narain Bikram Sah*** reported in ***AIR 1966 SC 160***, the Supreme Court has held in para No.10, as under :

> *"The law on the topic is well-established but the difficulty is found in its application to varying combination of circumstances in each case. The law attributes to every person at birth a domicil which is called a domicil of origin. This domicil may be changed and a new domicil, which is called a domicil of choice, acquired; but the two kinds of domicil differ in one respect. The domicil of origin is received by operation of law at birth; the domicile of choice is acquired later by the actual removal of an individual to another country accompanied by his animus manendi. The domicil of origin is determined by the domicil, at the time of the child's birth, of that person upon whom he is legally dependent. A legitimate child born in a wedlock to a living father receives the domicil of the father at the time of the birth; a posthumous legitimate child receives that of the mother at that time. As regards change of domicil, any person not under disability may at any time change his existing domicil and acquire for himself a domicil of choice by the fact of residing in a country other than that of his domicil of origin with the intention of continuing tO reside there indefinitely. For this purpose residence is a mere physical fact, and means no more than personal presence in a locality, regarded apart from any of the circumstances attending it. If this physical fact is accompanied by the required state of mind, neither its character nor its duration is in any way material. The state of mind, or animus manendi, which is required demands that the person whose domicil is*

the object of the inquiry should have formed a fixed and settled purpose of making his principal or sole permanent home in the country-of residence, or, in effect, he should have formed a deliberate intention to settle there. It is also well-established that the onus of proving that a domicil has been chosen in substitution for the domicil of origin lies upon those who assert that the domicil of origin has been lost. The domicil of origin continues unless a fixed and settled intention of abandoning the first domicil and aquiring another as the sole domicil is clearly shown (see Winarts v. Attorney-General. (1) In Munro v. Munro (2) Lord Cottonham states the rule as follows:

> *"The domicil of origin must prevail until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicil, and acquiring another as his sole domicil. To effect this abandonment of the domicil of origin, and substitute another in its place, it required animo et facto, that is, the choice of a place, actual residence in the place then chosen and that it Should be the principal and permanent residence, the spot where he had placed larem rerumque ac fortunarum suarum summam. In fact, there must be both residence and intention. Residence alone has no effect, per so, though it may be most important as a ground from which to infer intention."*

In Aikman v. Aikman(1), Lord Campbell has discussed the question of the effect on domicil of an intention to return to the native country, where such intention is attributable to an undefined and remote contingency. He said:

> *"If a man is settled in a foreign country, engaged in some permanent pursuit requiring his residence there, a mere intention to return to his native country on a doubtful contingency, will not prevent such a residence in a foreign country from putting an end to his domicil of origin. But a residence in a foreign country for pleasure, lawful or illicit, which residence may be changed at any moment, without the violation of any contract or any duty, and is accompanied by an intention of going back to reside in the place of birth, or the happening of an event which in the course of nature must speedily happen, cannot be considered as indicating the purpose to live and die abroad."*

11. The Hob'ble Supreme Court in the above mentioned judgments has observed that the right to change the domicile by birth is available to any person not legally dependent and such a person can acquire domicile of choice. Unless proved,

there is presumption against change in domicile. Otherwise, the person who aleges it, has to prove it.

12. In the instant case, the appellant-husband is assuming his domicile in India. However, the respondent-wife has not contested this position by filing response leading to the fact that there is change of domicile.

The learned trial Judge has thus erred in drawing the inference that there is change in domicile of the parties and they are domiciled in the territories to which the Act does not extend and held that the Hindu Marriage Act would not apply.

13. The next issue is that, whether the appellant-husband can maintain petition for divorce under the Act in Family Court at Latur. For the purpose of deciding the said issue, we would like to reproduce Section 19 of the Act, as below :

> *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 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".

14. Learned counsel for the petitioner has challenged the impugned judgment being vitiated since the learned trial Judge has failed to consider the scope of Section 19 (iv) of the Act. It is to be noted here that the learned trial Judge, by suo-moto undertaking exercise of determining territorial jurisdiction under Section 19, only by discussing clauses (i) to (iii) of Section 19 of the Act dismissed the petition. He has not discussed clause (iv) of Section 19 of the Act. Learned counsel for the respondent-wife on the contrary submits that Section (iiia) is specially incorporated for the petitioner who is wife, and therefore, clause (iv) does not have any application in this case. We are not in agreement with such submission made by learned counsel for the respondent-wife mainly because by way of subsequent amendment in Section 19, Clause (iiia) has been inserted with an object to safeguard the interest of wives who are victims of atrocities made by their husbands residing outside the India. In such case, if the wife is treated with cruelty and deserted on foreign lands, then she should not

suffer to obtain a divorce decree there from the husband when she is not having any monetary source. On the contrary on going through Clause (iv) of Section 19 of the Act, it is not depending upon gender of the petitioner, and therefore, the same is applicable either to wife or husband. It is not depending upon Clause (iiia) of Section 19 of the Act.

15. Learned counsel for the respondent-wife heavily relied on the judgment in the case of ***Karan vs Kanika*** (supra) wherein it is observed that wife has remedy under Section 19 (iiia) which protects the deserted wives. However, the said judgment is only applicable to the wives who are petitioners. Moreover, in the case of ***Neeraja Saraph vs Jayant Saraph*** (supra) same view is taken by the Hon'ble Apex Court for protecting the right of women deserted by NRI husband. It is specifically observed by highlighting the emerging social evil of NRI husbands marrying Indian women and deserting them after obtainiong divorce decrees. These women loose their jobs, status, dignity and are left with no remedy. It is for that purpose clause (iiia) appears to have been inserted. Moreover, the learned counsel for the resopndent also placed reliance on the judgment of this Court in the case of ***Kashmira Kale vs Kishorkumar Kale*** (Supra). However, this judgment has relied upon by wife mainly on the aspect of last resided

together. It has been observed in the said judgment that single night stay in India does not constitute last resided together, and therefore under Section 19 (iii) of the Act the appellant is not having territorial jurisdiction. However, this judgment is also not applicable since the learned counsel for the appellant himself waived this clause during the course of argument and led emphasis only on clause (iv) of Section 19 of the Act.

16. Learned counsel for the respondent-wife also pointed out the observation of this Court in the aforesaid case wherein it is observed that when the parties are domiciled in foreign country and have their matrimonial home outside India, the Hindu Marriage Act does not apply to them. Mere fact of Indian origin, performance of Hindu marriage rites, or a brief stay in India does not confer Indian domicile or jurisdiction. The foreign divorce decree obtained on merits after service and filing of written statement is conclusive and enforceable. So far as foreign judgment is concerned, admittedly, the respondent-wife has filed divorce petiton in Canadian Court at Alberta. However, learned counsel for the appellant heavily relied on the judgment of Madras High Court in the case of ***R. Sridharan Vs Presiding Officer, Principal Family Court, Chennai*** (supra) wherein the appellant-husband was originally Indian citizen and later obtained US

citizenship. His marriage solemnized as per Hindu rites in Balaji Temple, New Jersy. Wife came to India in January 2003 and filed divorce petition before Family Court, Chennai on the ground of cruelty. However, though *ex parte* divorce decree was granted against the husband and he filed application for setting aside the said *ex parte* order contending that Family Court at Chennai lacks jurisdiction as he was citizen and domicile in USA, but ultimately it is held that Family Court, Chennai had jurisdiction to entertain divorce proceedings initiated by the wife against her husband, who was US citizen domiciled in USA at the relevant.

17. Madras High Court has discussed various issues and ultimately held that when the marriage of the parties had solemnized under the provisions of Hindu Marriage Act, it can be dissolved only under the provisions of that Act and for that purpose the findings of foreign Court are not applicable. For that purpose the High Court of Madras relied on the observation of the Hon'ble Apex Court in the case of ***Y. Narasimha Rao vs Y. Venkatalakshmi*** reported in ***(1991) 3 SCC 451***. In that case the Supreme Court has categorically held that marriages performed under Hindu Marriage Act can be dissolved under that Act only. It is also observed by the High Court of Madras in the case of R. Sridharan (supra) that

when the marriage was solemnized under Hindu law, the marital relationship is introduced by Hindu Marriage Act and therefore, the residence of wife determines jurisdiction when the proceedings are initiated by her. The husband's US citizenship or domicile is immaterial. In the instant case also, where the situation is reverse, the appellant-husband can maintain marriage petition before the Family Court, Latur in view of the clause (iv) of Section 19 of the Act by applying same analogy.

18. We have already observed herein-above that clause (iiia) of Section 19 of the Act is specially made for women whereas clause (iv) is irrespective of gender of the parties. As such, when the appellant-husband is seeking shelter of Section 19 (iv) of the Act for entertainment of his petition for divorce, then he definitely succeeds in the light of aforesaid observation which is also based on the judgment of Hon'ble Apex Court in the case of ***Y. Narasimharao vs Y. Venkatalakshi*** (supra). Thus, the key principal laid down by the judgment of Madras High Court in case of ***R. Sridharan*** (supra) is that, Hindu Marriage Act applies to all Hindus, domiciled in India even when they reside outside India and that the the Hindu marriage can be dissolved only under Hindu Marriage Act and foreign Courts have no jurisdiction to

entertain such proceedings. Thus, considering this position, even if the respondent-wife has filed divorce petition in the court at Canada, the said Court cannot be said to have jurisdiction to entertain such proceeding.

19. Learned counsel for the respondent-wife also raised objection that when the appellant-husband had participated in Canadian court proceedings, then it certainly extinguishes his independent statutory right under Hindu Marriage Act. It is to be noted that the Canadian Court proceedings are not under the provisions of Hindu Marriage Act, but the same are under relevant laws in Canada. These laws are not applicable in India since the parties have married under the provisions of Hindu Marriage Act. We have already mentioned the observation of Hon'ble Apex Court which says that if the marriage is solemnized under the provisions of Hindu Marriage Act, then it can be dissolved only under the said Act and not other. Even otherwise also, the appellant-husband participated in Canadian court proceedings for only limited purpose and complied certain direction relating to distribution of their joint assets only. However, the divorce petition is filed by him in Family Court, Latur in exercising his independent statutory right under the Hindu Marriage Act, and therefore, territorial jurisdiction can be determined solely on the basis of

clause (iv) of Section 19 of the Act which does not say anything about domicile of the parties.

20. There is also another angle raised by learned counsel for the appellant-husband by referring to Section 13 of the Code of Civil Procedure (C.P.C.). We would like to reproduce Sections 13 and 14 of C.P.C. herein below:

> *"13. When foreign judgment not conclusive.—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—*
>
> *(a) where it has not been pronounced by a Court of competent jurisdiction;*
>
> *(b) where it has not been given on the merits of the case;*
>
> *(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of [India] in cases in which such law is applicable;*
>
> *(d) where the proceedings in which the judgment was obtained are opposed to natural justice;*
>
> *(e) where it has been obtained by fraud;*
>
> *(f) where it sustains a claim founded on a breach of any law in force in [India].*
>
> *14. Presumption as to foreign judgments.—The Court shall presume 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 the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction".*

Moreover Section 44A of C.P.C. deals with execution of decrees passed by Courts in reciprocating territory. The same

is also reproduced herein-below :

> *"44A. Execution of decrees passed by Courts in reciprocating territory.—*
> *(1) Where a certified copy of a decree of any of the superior Courts of 3*** any reciprocating territory has been filed in a District Court, the decree may be executed in 4[India] as if it had been passed by the District Court.*
>
> *(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.*
>
> *(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.*
>
> *[Explanation 1.—"Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means suchCourts as may be specified in the said notification.*
>
> *Explanation 2.—"Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment".*

21. On going through Section 13 of C.P.C. it is clearly evident that in what circumstances foreign judgment is conclusive. The Hon'ble Apex Court in the case of ***Kishorekumar Mohan Kale vs Kashmira Kale*** reported in

2026 SCC OnLine SC 448 has referred it's earlier judgment in the case of ***Y. Narasimharao*** (supra) and came to the conclusion that US Court granted decree of divorce on the ground of irretrievable breakdown of marriage which is not recognised under the Hindu Marriage Act i.e. the matrimonial law applicable to the parties. Thus, it was held that even though there was judgment of foreign Court, but considering the fact the parties were married as per Hindu rites and rituals, the judgment of foreign Court not as per the provisions of Hindu Marriage Act, cannot have any application. Moreover, the Hon'ble Apex Court in the aforesaid judgment also discussed in what circumstances foreign judgment is applicable, and therefore, made the following observation.

> *"In the present case, the US Court granted a decree of divorce on the ground if irretrievable breakdown of marriage. This ground is not recognised under the HMA, which is the matrimonial law applicable to the parties. Further, while the appellant-husband was duly served, he only filed a written statement by post expressly contesting the jurisdiction of the US Court, and did not participate in those proceedings any further. It cannot therefore be said that he voluntarily or effectively submitted to the jurisdiction of the foreign forum, or that he was afforded a meaningful opportunity to contest the matter. The foreign decree accordingly does not satisfy the conditions laid down in Y. Narasimha Rao (supra) and the principles of natural justice cannot be said to have been complied with".*

22. Even otherwise also, if the foreign court passes a decree against the appellant-husband, but it cannot be executed in India since Canada is not reciprocating territory as

per Explanation 1 of Section 44A of C.P.C. Therefore, for the applicability of divorce decree passed by the Canadian court, which is yet to be passed, the respondent-wife has to initiate fresh proceeding in India for redressal of her grievance against the appellant-husband. Therefore, on that count also any decree for divorce, if passed by the Canadian Court, is not binding upon the parties.

23. It is to be noted that the issue before the learned trial Judge was not at all about the enforceability of any judgment of Canadian Court, but it was to see whether there is any statutory condition prescribed under Section 19 of the Act which debars it's territorial jurisdiction. As such, the case of appellant, so far it relates to territorial jurisdiction, squarely fits in clause (iv) of Section 19 of Hindu Marriage Act. Therefore, we come to the conclusion that the learned trial Judge has definitely erred in holding that the petition of appellant-husband lacks territorial jurisdiction. On the contrary, it can be seen that the learned trial Judge, for arriving at such particular conclusion, had considered only clauses (i) to (iii) of Section 19 and ignored the vital provision under clause (iv) of Section 19 of the Act.

24. Therefore, considering all these aspects as

discussed above regarding objections raised by the parties, we are of the opinion that the learned trial Judge has definitely erred in dismissing the petition of the appellant-husband on the ground of territorial jurisdiction. **On the contrary, we hold that the learned trial Judge is having territorial jurisdiction to entertain the divorce petition of the appellant-husband and therefore, the same needs to be heard on it's own merit.** It is extremely important to note that we have not made any observation in this judgment as regards merits of the case of appellant, and therefore, both the parties are at liberty to contest their respective claims on their respective contentions except the issue of territorial jurisdiction. In view of the same, we pass the following order.

ORDER

(i) Family Court appeal is hereby allowed.

(ii) Judgment of the learned trial Judge i.e. Family Court Judge, Latur dated 15.03.2023 in divorce petition bearing No.A-152/2022 filed by the appellant-husband is set aside and the matter is remanded back to the learned Trial Court by holding that the learned Family Court Judge, Latur is having territorial jurisdiction to entertain the said petition as per Section 19 (iv) of the Hindu Marriage Act.

(iii) Needless to say, the learned Family Court Judge, Latur shall hear the parties after giving them full opportunity to contest the petition in the light of their respective contentions, by leading required evidence and decide the same on it's own merit.

(iv) The parties shall appear before the learned Family Court Judge, Latur on or before 10.12.2026. The learned Trial Judge may issue notice to respondent wife, if required.

(v) Record and proceeding be sent back to the concerned Court forthwith.

(vi) We quantify the fees of appointed learned counsel for the respondent-wife Mr. Anand Bhandari to the tune of Rs. 10,000/- (Rupees Ten Thousand) to be paid by High Court Legal Services Sub-Committee, Aurangabad expeditiously.

(vii) The appeal is accordingly disposed of.

(VAISHALI PATIL-JADHAV)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

VD_Dhirde