

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.28 OF 2015  
IN  
SUIT NO.880 OF 2014

Arunima Naveen Takiar, )  
wife of Naveen Takiar, R/o 203, )  
Building No.16, Solitaire III, Poonam )  
Garden, Mira Road (E), Thane – 401 107 ) ...Applicant

**IN THE MATTER BETWEEN :**

Arunima Naveen Takiar, )  
wife of Naveen Takiar, R/O 203, )  
Building No.16, Solitaire III, Poonam )  
Garden, Mira Road (E), Thane – 401 107 ) ...Plaintiff

....Versus....

Naveen Takiar, R/o 30, )  
Kingsbury Drive, Wilmslow, Cheshire, )  
SK 9 2GU, UK. ) ...Respondent

Ms.Anubha Rastogi for the Applicant in the Notice of Motion and for the Plaintiff.

Mr.Abhishek Khare i/b Khare Legal Chambers for the Respondent.

**CORAM : R.D. DHANUKA, J.**  
**RESERVED ON : 10TH DECEMBER, 2018**  
**PRONOUNCED ON : 29TH JANUARY, 2019**

**JUDGMENT :-**

1. By this notice of motion the applicant (original plaintiff) seeks *ex-parte ad-interim* order for staying the divorce proceedings

in MA14D00552 by the defendant and pending before the Family Court, Manchester, United Kingdom (UK) and also seeks an injunction against the defendant from proceeding with the said proceedings. Some of the relevant facts for the purpose of deciding this notice of motion :

2. It is the case of the plaintiff that the parties to the suit were engaged in Mumbai on 11<sup>th</sup> December, 2012 in presence of the family members. On 12<sup>th</sup> December, 2012, the parties were married as per Hindu rites and ceremonies in Shri Ram Mandir, Bandra (East), Bombay. The marriage was registered at Mira Bhayander Municipal Corporation. On 17<sup>th</sup> December, 2012, the defendant along with his daughters from his first marriage left for UK leaving the plaintiff behind till her visa papers were processed. During the period between December, 2012 and July, 2013, the parties were in regular contact through telephone and email. The plaintiff was regularly calling the defendant. On 19<sup>th</sup> March, 2013, the father of the plaintiff passed away at Mumbai.

3. It is the case of the plaintiff that on 14<sup>th</sup> July, 2013, the plaintiff arrived in UK and was received by the defendant at the airport. From 14<sup>th</sup> July, 2013 itself, the defendant started ill- treating the plaintiff and used to pick up fights with her.

4. It is the case of the plaintiff that on 31<sup>st</sup> August, 2013, the defendant arrived at the matrimonial home of the parties along with two policemen asking her to leave the premises. The agreement of matrimonial home was up for renewal on 1<sup>st</sup> September, 2013. The defendant insisted on evicting the plaintiff on 31<sup>st</sup> August, 2013 and

the plaintiff was forced to pack some of her belongings and was made to leave the matrimonial home.

5. It is the case of the plaintiff that during the period 31<sup>st</sup> August, 2013 and 2<sup>nd</sup> November, 2013, the plaintiff was placed in a hotel by the defendant. The defendant however, paid only for 15 days. The plaintiff had to bear the cost of remaining number of days.

6. It is the case of the plaintiff that on 2<sup>nd</sup> November, 2013, the plaintiff was forced to leave back to India as she had no resources remaining to spare. On 22<sup>nd</sup> November, 2013, the plaintiff received a confirmation about the job that she had applied for in UK and decided to travel back to UK. The plaintiff was however, refused entry in the country, as the defendant had notified the authorities that he had withdrawn the support of the plaintiff. The plaintiff was accordingly sent back to India by the next available flight.

7. It is the case of the plaintiff that during the period November, 2013 till June, 2014, the plaintiff and her family members constantly tried to reconcile the issues between the parties. The defendant however, blocked the email and telephone numbers of the plaintiff and cut off all the communication. Though the plaintiff had sent the gifts to the defendant on their anniversary, birthday, birthdays of the children, Christmas and New Year, the defendant did not give any response.

8. On 18<sup>th</sup> April, 2014, the plaintiff sent a reconciliation notice to the defendant asking him to take steps to reconcile the issue. There was however, no response to the said notice.

9. On 9<sup>th</sup> June, 2014, the plaintiff was informed by the electronic email by the lawyer of the defendant that the defendant had initiated the divorce proceedings in the concerned Court in UK against the plaintiff. On 14<sup>th</sup> June, 2014, the plaintiff sent a response to the said notice dated 9<sup>th</sup> June, 2014 informing the defendant that the marriage of parties was governed by the Indian law and the plaintiff was refusing to accept the jurisdiction of UK Court amongst other issues. On 16<sup>th</sup> June, 2014, the plaintiff received the response from the advocate of the defendant. On 20<sup>th</sup> June, 2014, the plaintiff sent a copy of notice dated 14<sup>th</sup> June, 2014 which was sent to the defendant and to the concerned Court in Manchester, UK along with the covering note. On 27<sup>th</sup> June, 2014, the plaintiff filed this anti injunction suit for various reliefs. The plaintiff also filed this notice of motion *inter-alia* paying for interim reliefs.

10. The defendant filed a written statement on 17<sup>th</sup> June, 2015 raising various issues including a preliminary objection challenging the jurisdiction of this Court. By an order dated 30<sup>th</sup> June, 2014, this Court passed an *ex-parte ad-interim* injunction in terms of prayer clause (b) of the notice of motion thereby restraining the defendant from proceeding with the said proceedings filed by the defendant before the Family Court at Manchester, UK. This Court also granted an opportunity to the defendant to apply for modification, variation or recalling of the said order by filing an affidavit. The defendant thereafter filed a Notice of Motion bearing No.1774 of 2018 *inter-alia* praying for vacating an *ex-parte* order dated 30<sup>th</sup> June, 2014 and for other reliefs.

11. Ms.Rastogi, learned counsel appearing for the applicant invited my attention to various annexures to the plaint and submits that both the parties are admittedly Hindus. The marriage of the plaintiff with the defendant was solemnized at Mumbai as per the provisions of Hindu Marriage Act, 1956. The cause of action arose on 31<sup>st</sup> August,2013 when the defendant evicted the plaintiff from the matrimonial home of the parties at UK. The cause of action again arose when the defendant refused to permit the plaintiff to enter the matrimonial home on 18<sup>th</sup> October, 2013 and 20<sup>th</sup> October, 2013. The cause of action further arose on 2<sup>nd</sup> November, 2013 when the plaintiff was forced to return to India due to the conduct of the defendant. The action of action again arose on 22<sup>nd</sup> November, 2013 when the plaintiff was refused entry into UK in view of the defendant having given the information that he had withdrawn the support to the plaintiff. The cause of action arose subsequently on 18<sup>th</sup> April, 2014 and on 9<sup>th</sup> June, 2014 when the plaintiff also applied for leave under Clause XII of the Letters Patent which came to be granted by this Court.

12. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **Modi Entertainment Network vs. W.S.G. Cricket Pte.Ltd. AIR 2003 SC 1177** and in particular paragraph 23 in support of her submission that one of the principle prescribed by the Hon'ble Supreme Court in the said judgment to be considered by exercising discretion to grant anti injunction is that in a case where more forums than one are available, the Court in exercise of its direction to grant anti-suit injunction will examine as to which is the appropriate Forum (Forum Conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in

regard to proceedings which are oppressive or vexatious or in a Forum Non-Conveniens. She submits that the plaintiff has no capacity to defend the suit filed by the defendant in the Family Court in UK. The defendant has stopped supporting the plaintiff. The entry of the plaintiff was also stopped by the defendant and the plaintiff had visited UK by airport itself. It is thus not the plaintiff to visit UK and to prosecute the said proceedings filed by the defendant. This Court thus exercised its discretion in favour of the plaintiff in view of the fact that the divorce proceedings filed by the defendant being oppressive or vexatious and since it was not convenient to the plaintiff to pursue the proceedings filed by her, if any, before the Courts in India.

13. Learned counsel placed reliance on an unreported judgment delivered on 11<sup>th</sup> December, 2014, in case of **Ravindra Harshad Parmar vs. Dimple Ravindra Parmar** in Family Court Appeal No.72 of 2014 and in particular paragraph 32 in support of her submission that Hindu Marriage Act, 1955 would apply to the parties though residing outside India but after marriage was performed in accordance with the Hindu Marriage Act, 1955 and in India.

14. Learned counsel for the plaintiff placed reliance on the judgment of the Hon'ble Supreme Court in case of **Sondur Gopal vs. Sondur Rajini** decided on 15<sup>th</sup> July, 2013 in Civil Appeal Nos.4629 of 2005 and 487 of 2007 in support of the submission that even if the defendant has obtained the domicile in UK, the divorce proceedings filed by the defendant before the UK Court is not maintainable in view of the fact that the plaintiff and the defendant

were admittedly married in Mumbai and were governed by the provisions of Hindu Marriage Act, 1955.

15. Learned counsel for the plaintiff placed reliance on Article 3(1) of Council Regulation (EC) No.2201/2003 of 27<sup>th</sup> November, 2003 on the issue of jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. She submits that the plaintiff has already filed the petition for restitution of conjugal rights against the defendant before the Family Court, Thane and the same is pending. The defendant admittedly visits India. There is no criminal proceedings filed by the plaintiff against the defendant. The defendant has thus no apprehension if the defendant attends the proceedings filed by the plaintiff before the Family court, Thane. The defendant also could have filed the divorce proceedings before the Family Court in India. Learned counsel invited my attention to the reasoned ad-interim order passed by this Court on 30<sup>th</sup> June, 2014 and would submit that the said order being in force since then and be confirmed by this Court.

16. Mr.Khare, learned counsel appearing for the defendant on the other hand invited my attention to some of the exhibits and also some of the paragraphs of the plaint. He submits that the defendant is a natural citizen of UK and also domiciled in UK and thus the provisions of the Hindu Marriage Act, 1955 is not applicable to the defendant. The anti injunction suit thus filed by the plaintiff is not at all maintainable. He submits that merely because the defendant has filed a written statement in this anti injunction suit filed by the plaintiff, the same cannot be construed as the defendant submitting to the

jurisdiction of the Courts in India.

17. It is submitted that after the marriage of the plaintiff with the defendant, she had joined the defendant and his daughters in their house at UK and was erratic and unreasonable from the very first day. The defendant has never changed his domicile from UK to India. The defendant stayed barely four to five days after the marriage with the plaintiff in India and left for UK. He submits that the defendant was domiciled at the time of marriage and ever since his birth in UK and thus the question of applicability and the provisions of the Hindu Marriage Act, 1955 to a party who was not domiciled in India, did not arise. He placed reliance on section 1(2) of the Hindu Marriage Act, 1955 in support of his submission that the Hindu Marriage Act, 1955 applies to Hindus domiciled in the territories to which this Act extends. The person must be not only Hindu but must be domiciled in India. This Court does not have supervisory jurisdiction over the defendant and thus cannot entertain this anti injunction suit filed by the plaintiff.

18. Learned counsel for the defendant submits that the defendant works and resides in UK and is not going to change his domicile from UK. He placed reliance on the judgment of the Delhi High Court in case of ***Anoop Beniwal vs. Dr. Jabir Singh Beniwal*** in Suit No.905 of 1989, decided on 25<sup>th</sup> October, 1989 and in particular paragraphs 15, 27, 28, 32 to 35 and 39 to 42 in support of the submission that the plaintiff will have an opportunity to defend the suit filed by his client in appropriate Court in UK. There are no allegations of fraud made by the applicant against the defendant.



19. Leaned counsel for the defendant placed reliance on the judgment of the Supreme Court in case of **Sondur Gopal** (supra) and would submit that the said judgment would assist the case of the defendant and not the plaintiff. He also placed reliance on the judgment of the Hon'ble Supreme Court in case of **Dinesh Singh Thakur vs. Sonal Thakur, 2018 SCC OnLine SC 390** and in particular paragraphs 9, 10, 12 to 14 and 17 to 20 in support of his submission that the Court before passing an order of injunction in an anti injunction suit should be very cautious and careful and cannot exercise such powers as a matter of routine.

20. Learned counsel for the defendant distinguished the judgment of the Division Bench of this Court in case of **Ravindra Harshad Parmar** (supra) on the ground that in that matter, the respondent did not have property in India. In this case, the defendant is citizen of UK by birth. He also placed reliance on various paragraphs of the written statement filed by his client stating that his client does not have any property in India.

21. Ms.Rastogi, learned counsel for the plaintiff in rejoinder invited my attention to paragraphs 3 and 4 of the affidavit in support of the notice of motion and would submit that the plaintiff has no capacity to pursue the proceedings before the Court in UK hearing the divorce proceedings filed by the defendant. The sponsorship of the plaintiff by the defendant is already cancelled by the defendant. She submits that the marriage of the plaintiff and the defendant was admittedly solemnized in India. The registration of marriage was at Mira Bhayander, Thane. The defendant has taken steps to get the spouse visa of the plaintiff in UK. The plaintiff had not given up the

jurisdiction of the Courts in India and never filed any appearance in such proceedings before the Court in UK.

22. Learned counsel for the plaintiff placed reliance on section 19 of the Hindu Marriage Act, 1955 in support of her submission that the divorce proceedings could be filed only at Mumbai and not in UK. She distinguished the judgment of the Delhi High Court in case of **Anoop Beniwal** (supra) on the ground that the facts before the Delhi High Court in the said judgment were totally different. The wife had already led oral evidence in the divorce proceedings filed by the husband. In this case, the plaintiff did not even enter her appearance in the said divorce proceedings filed by the defendant. The plaintiff has never participated in the said proceedings also on the ground that the plaintiff did not have any means to participate.

23. Learned counsel for the plaintiff distinguished the judgment of the Hon'ble Supreme Court in case of **Sondur Gopal** (supra) on the ground that in this case the plaintiff had stayed with the defendant for one and half months and separately for two months in UK. Learned counsel for the plaintiff distinguished the judgment of the Hon'ble Supreme Court in case of **Dinesh Singh Thakur** (supra) on the ground that in that matter both the parties had chosen to contest the matter outside India. She submits that in any event paragraph 17 of the said judgment is in favour of the plaintiff and not the defendant. The plaintiff does not intend to file any criminal proceedings against the defendant.

24. Mr.Khare, learned counsel for the defendant submits that the Hon'ble Supreme Court in case of **Dinesh Singh Thakur** (supra)

has set aside the order of anti suit injunction. He submits that since the UK Court is already ceased of the matter, this Court shall vacate the *ex-parte ad-interim* injunction passed by this Court and shall dismiss the notice of motion filed by the plaintiff.

**REASONS AND CONCLUSIONS :**

25. A question that arises for consideration of this Court is as to whether the respondent could have filed the petition for divorce against the plaintiff before the Family Court in Manchester against the plaintiff though the marriage between the plaintiff and the defendant, both Hindus was solemnized at Mumbai or not ?

26. It is the case of the plaintiff that the plaintiff has been residing in India. The plaintiff and the defendant both Hindus were married as per the rites and ceremonies on 12<sup>th</sup> December, 2012 in Mumbai under the provisions of Hindu Marriage Act, 1955. The said marriage was registered with Mira Bhayander Municipal Corporation. The parties also had co-habited after the marriage in Mumbai and then in Delhi. The defendant has been residing in U.K. with his two daughters from the earlier marriage.

27. A perusal of the written statement filed by the defendant also clearly indicates that the marriage between the plaintiff and the defendant was solemnized at Mumbai and was registered with the Mira Bhayander Municipal Corporation. It is also not in dispute that both the parties are Hindus. The plaintiff has annexed a copy of the divorce petition filed by the defendant dated 27<sup>th</sup> May, 2014. A perusal of the said petition indicates that it is the case of the

defendant in the petition that the said Manchester Court had jurisdiction to hear the said case under Article 3(1) of the Council Regulation (EC) No.2201 of 2003 on 27<sup>th</sup> November, 2003. The said petition for divorce was filed on the ground that the marriage had allegedly broken down irretrievably by the respondent (plaintiff herein) had behaved in such a way that the petitioner (defendant herein) could not reasonably be accepted to live with the respondent (plaintiff herein). In the said petition, the defendant herein also admitted that the religious marriage ceremony between the plaintiff and the defendant was conducted in Mumbai on 12<sup>th</sup> December, 2012 and the said marriage was registered on 10<sup>th</sup> January, 2013.

28. It is also the case of the defendant in the said petition that the plaintiff herein was granted resident visa and entered the U.K. on 14<sup>th</sup> July, 2013. The parties lived together at the residence of the defendant herein at 30 Kingsbury Drive along with two children from his previous marriage. Shortly after the plaintiff herein arrived, she started to behave in a very controlling and confrontational manner and started making various allegations. The defendant accordingly contacted Cheshire police on 25<sup>th</sup> August, 2013. The plaintiff agreed to move in the hotel for which the defendant has allegedly paid for. It is thus clear that it is an admitted position that both the parties are Hindus and their marriage was performed in Mumbai and the same was registered with Mira Bhayender Municipal Corporation. The defendant has not disputed that the said marriage was performed under the provisions of the Hindu Marriage Act, 1955.

29. There is no dispute that the plaintiff herein has filed a separate petition before the Family Court, Thane *inter-alia* praying for

restitution of conjugal rights against the defendant. The defendant has been attending the said proceedings.

30. It is also the case of the plaintiff that the defendant forced the plaintiff to leave back to India and accordingly on 2<sup>nd</sup> November, 2013, the plaintiff having no resources remaining to spare thereto returned to India. Though the plaintiff had made an attempt to visit U.K. in view of the confirmation about the job that she had applied for in U.K., the plaintiff was however, refused entry in the said country, as the defendant had notified the authorities that the defendant had withdrawn the support of the plaintiff. The plaintiff was accordingly sent back in India by the next available flight. It is the case of the plaintiff that she was placed in a hotel by the defendant during the period 31<sup>st</sup> August, 2013 and 2<sup>nd</sup> November, 2013. The defendant however paid only for 15 days. The plaintiff had to bear the costs of remaining number of days exclusively. The plaintiff in these circumstances, was made to leave the matrimonial home.

31. It is also the case of the plaintiff that when the plaintiff received a notice from the lawyer of the defendant that the defendant had initiated the divorce petition in a Court in U.K. against the plaintiff, the plaintiff sent a response to the said notice on 14<sup>th</sup> June, 2014 and informed that the marriage of the parties was governed by Indian Law and the plaintiff was refusing to accept the jurisdiction of U.K. Court against other issues. The plaintiff also informed that the plaintiff has no shelter and relatives around in U.K. and the plaintiff is not in a position to defend herself before the Family Court in Manchester as this was not a Forum acceptable and applicable to her. The plaintiff also contended that since the defendant had not

paid any moneys towards the maintenance to the plaintiff and that was a Forum Non-Conveniens, it was monetarily not possible for the plaintiff to incur huge expenses towards defending herself before the Forum Court of law.

32. On the other hand, it is the case of the defendant that though the parties are Hindus and their marriage was solemnized in Mumbai, the defendant is a citizen of U.K. and was born in the said country and had ever since resided there and being domiciled, in view of section 1(2) of the Hindu Marriage, Act, 1955, the provisions of the Hindu Marriage Act, 1955 are not applicable to the defendant and thus the defendant was entitled to file a petition for divorce before the Family Court, Manchester.

33. The Division Bench of this Court in case of **Ravindra Parmar vs. Dimple Ravindra Parmar** in a judgment dated 11<sup>th</sup> December, 2014 in Family Appeal No.72 of 2014 has after adverting to various judgments including the judgment of the Hon'ble Supreme Court in case of **Sondur Gopal vs. Sondur Rajini, (2006) 3 AIR Bombay 487** and also unreported judgment of this Court in case of **Nikhil Shrinivas Kulkarni vs. Priya Nikhil Kulkarni** delivered on 20<sup>th</sup> February, 2014 in Family Appeal No.237 of 2013 has held that since the marriage was solemnized in Mumbai and both the parties were Hindus at the time of marriage and it was nobody's case that either of them were disqualified by reason of non-compliance of conditions under section 5, the parties were governed under the provisions of the Hindu Marriage Act, 1955.

34. The Division Bench of this Court in case of **Nikhil**

**Srinivas Kulkarni** (supra) had considered the question as to whether the Family Court in India has got jurisdiction to try the matter involving a party whose domicile was outside the territory to the Hindu Marriage Act, 1955 or not. The Division Bench of this Court in the said judgment after adverting to various judgments and after construing the provisions of section 1 of the Hindu Marriage Act, 1955 and section 19 thereof, held that in case the marriage was solemnized under the Hindu law, the matrimonial relationship is governed by the provisions of the Hindu Marriage Act, 1955. Section 19 of the Hindu Marriage Act, 1955 has to be given a purposeful interpretation. This Court held that when the marriage was solemnized under the Hindu Law, the proceedings for divorce has also to be made under the provisions of the Hindu Marriage Act, 1955. A party cannot take any exception to the proceedings in India under the provisions of the Hindu Marriage Act, 1955 merely on account of his citizenship or domicile in U.S.A.

35. This Court after adverting to the judgment of the Hon'ble Supreme Court in case of **Y. Narasimharao vs. Y. Venkatalakshmi, (1991) 3 SCC 451** held that there was no question of wife initiating the divorce proceedings before the Court at USA invoking the provisions of the Hindu Marriage Act, 1955. It is held that the husband had married the wife in India as per the Hindu Vedic Rites under the provisions of the Hindu Marriage Act, 1955, and thus subjected himself to the jurisdiction of the Court designated with the matrimonial disputes under section 19 of the Hindu Marriage Act, 1955. It is also held that section 19 of the Hindu Marriage Act, 1955 clearly gives the jurisdiction to the Court to deal with the matrimonial proceedings in whose jurisdiction marriage was solemnized.

36. The Division Bench of this Court adverted to the judgment of the Hon'ble Supreme Court in case of **Surinder Kaur Sandhu vs. Harbax Singh Sandhu & Anr., (1984) 3 SCC 698**, in which it was held by the Hon'ble Supreme Court that it is the duty and function of the Court to protect the wife against the burden of litigating in an inconvenient Forum. The Division Bench held that a wife had no support in U.S.A., she was always an Indian citizen domiciled, her travel to U.S.A. on fiancée visa after the marriage could be held as the act of innocent mind and excessive belief in her husband. It would be unfair to ask the wife to travel to hostile territory only to redress her grievance. The Division Bench of this Court accordingly held that the Family Court at Pune had got jurisdiction to try the matrimonial litigation initiated by the respondent notwithstanding the fact that the appellant is a citizen of United States of America and not an ordinary resident in India.

37. The Hon'ble Supreme Court in case of **Y. Narasimharao** (supra) has held that under the private International Law, domicile of wife does not follow that of the husband and thus domiciliary law of the husband cannot determine the jurisdiction of Forum or applicable law. The Hon'ble Supreme Court in the similar facts held that a decree of divorce obtained by the husband, from a foreign Court was not enforceable in law in India.

38. In my view, the provisions of section 1(2) of the Hindu Marriage Act, 1955 has to be read with section 19 of the Hindu Marriage Act, 1955 which clearly provides for jurisdiction of the Court where the petition under the said Act shall be presented. Section



19(i) clearly provides that such proceedings have to be presented before the District Court within whose limits the marriage was solemnized. Admittedly in this case, the marriage was solemnized in Mumbai and thus merely because the defendant is having domiciled of U.K. whether by birth or by choice or otherwise would be no significance and would not divest the jurisdiction of the Court provided under section 19 of the Hindu Marriage Act, 1955 for the purpose of filing the proceedings under the provisions of the Hindu Marriage Act, 1955.

39. The Hon'ble Supreme Court in the case of **Sondur Gopal vs. Sondur Rajini** (supra) has held that the domicile are of three kinds viz. domicile of origin, the domicile by operation of law and the domicile of choice. The Hon'ble Supreme Court considered the fact that the wife at the time of presentation of petition for judicial separation and for custody of children was resident of India. Parties were governed by the Hindu Marriage Act, 1955. The husband who was foreign resident had raised an issue of jurisdiction in the proceedings filed before the Family Court filed by the wife in India. The petitioner before the Hon'ble Supreme Court lost one of the proceedings before the lower Court refusing to grant injunction in the said proceedings filed by wife. The Supreme Court refused to interfere in the Special Leave Petition filed by the husband. In my view, the judgment of the Hon'ble Supreme Court in the case of **Sondur Gopal vs. Sondur Rajini** (supra) would assist the case of the plaintiff and not the defendant.

40. Insofar as the judgment of the Hon'ble Supreme Court in the case of **Dinesh Singh Thakur vs. Sonal Thakur** (supra) relied

upon by the learned counsel for the defendant in support of the submission that in case of anti-suit injunction, though the Court has power to grant anti-suit injunction, the same can be granted sparingly and not as a matter of routine is concerned, there is no dispute about the proposition of law laid down by the Hon'ble Supreme Court in the said judgment. Before the Hon'ble Supreme Court in the said matter, the marriage between the parties was admittedly solemnized as per the Hindu rites in India. The husband was working in United States of America (USA) at the time of marriage and he took the respondent-wife to USA on Dependent Visa. Both the parties got the citizenship of USA in May, 2003 and obtained "PIO" status (Person of India Origin) in June 2003 and "OCI" status (Overseas Citizens of India) in July, 2006.

41. The husband had filed a petition under sections 13 and 26 of the Hindu Marriage Act, 1955 against respondent-wife in the Family Court, Gurgaon which was pending adjudication before the Court. The respondent-wife filed a petition in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, USA for divorce on the ground of irretrievable breakdown of marriage and other reliefs. The husband thereafter, filed proceedings before the District Judge, Family Court, Gurgaon, under section 7 of the Act for permanent injunction and declaration. The respondent-wife succeeded before the lower Court and the High Court. The husband filed Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court adverted to the another judgment in the case of **Y. Narasimha Rao & Ors. vs. Y. Venkata Lakshmi & Anr., (1991) 3 SCC 451** in which the Hon'ble Supreme Court has held 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 subject to the exceptions i.e. (i) 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; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

42. The Hon'ble Supreme Court also held that there was nothing on record to show as to how the husband would suffer grave injustice if the injunction restraining the wife from pursuing the divorce petition in Florida, was not granted. Even if the injunction is declined, it could not be said that the ends of justice will be defeated and injustice will be perpetuated. The Hon'ble Supreme Court dismissed the said Special Leave Petition filed by the husband. The facts before this Court are however different. The plaintiff had never given up domicile of this country. Admittedly the plaintiff was in UK for very short period. In view of the obstruction created by the defendant, the plaintiff was required to return back to India. Since then, the plaintiff has been continuously staying within the jurisdiction of this Court. The plaintiff had never submitted to the jurisdiction of UK Court where the proceedings have been filed by the defendant seeking divorce nor has given any consent to the grant of relief sought by the defendant in the divorce petition. In my view, the

judgment of the Hon'ble Supreme Court in the case of **Dinesh Singh Thakur vs. Sonal Thakur** (supra) would not assist the case of the defendant but would assist the case of the plaintiff.

43. In my view, the defendant has even otherwise created such a situation for the plaintiff that the plaintiff is not able to defend the said proceedings filed by the husband. Though the defendant filed Divorce petition before the Family Court at UK, no maintenance at all has been paid to the plaintiff by the defendant. When the plaintiff visited UK after marriage with the defendant, the defendant took assistance of police and forced the plaintiff to return to India. The sponsorship of the plaintiff was also cancelled by the defendant. In my view, in these circumstances, this is a fit case for exercising the powers of this Court to grant an order of anti-suit injunction. This matter cannot be considered as a matter of routine as sought to be canvassed by the learned counsel for the defendant.

44. The Hon'ble Supreme Court in the case of **Surinder Kaur Sandhu vs. Harbax Singh Sandhu & Anr.** (supra) has held that it is the duty and function of the Court to protect the wife against the burden of litigating in an inconvenient forum. The plaintiff has no support in UK and she was always an Indian citizen domiciled in India. It will be unfair to ask her to travel to hostile territory only to redress her grievance. In my view, the principles of law laid by the Hon'ble Supreme Court in the case of **Surinder Kaur Sandhu Vs. Harbax Singh Sandhu & Anr.** (supra) would squarely apply to the facts of this case.

45. The entry of the plaintiff is restricted by the defendant from

all sources in the country where the divorce petition has been filed by the defendant. In these circumstances, the plaintiff is not expected to defend the said proceedings in the country, having been filed by the defendant in spite of the fact that the marriage between the parties having been solemnized under the provisions of the Hindu Marriage Act, 1955 and both the parties being Hindus at the time of their marriage, only the said provisions would be applicable to the parties.

46. The Hon'ble Supreme Court in the case of **Modi Entertainment Network and Anr. vs. W.S.G. Cricket Pte. Ltd.** (supra) has considered the scope of powers of the Court for granting anti-suit injunction. The Hon'ble Supreme Court has summarized the principles to be considered while exercising the discretion to grant anti-suit injunction by the Court. It is held by the Hon'ble Supreme Court that the Court has to see that the defendant, against whom an injunction is sought, is amenable to the personal jurisdiction of the court. If the injunction is declined the ends of justice will be defeated and injustice will be perpetuated. Where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (Forum Conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a Forum Non-Conveniens. In my view, in the facts of this case, an appropriate forum (Forum Conveniens) for the plaintiff would be the Court in India i.e. the Court within whose jurisdiction, the plaintiff and the defendant were married under the provisions of the Hindu Marriage Act, 1955, the plaintiff resides and is not paid any maintenance by the defendant.

47. Learned counsel for the defendant does not dispute before this Court that the defendant has attended the proceedings in past in India filed by the plaintiff for seeking restitution of conjugal rights. On the other hand, if the plaintiff is forced to defend the proceeding filed by the defendant in UK, the same would be oppressive and would cause hardship to the plaintiff. The principles of law laid down by the Hon'ble Supreme Court in the case of **Modi Entertainment Network & Anr. vs. W.S.G. Cricket Pte. Ltd.** (supra) would squarely apply to the facts of this case. In my view, the plaintiff has made out a case for exercising the powers of the Court to grant anti-suit injunction against the defendant from proceeding the divorce petition filed by the defendant against the plaintiff being a Family Court in UK.

48. A perusal of the divorce petition filed by the defendant indicates that the defendant has invoked the Article 3(1) of the Council Regulation (EC) No.2201/2003 of 27<sup>th</sup> November 2003 and has applied for divorce on the ground that the marriage has broken down irretrievably and also on the ground that the plaintiff herein has alleged to have behaved in such a way that the defendant cannot reasonably be expected to live with the plaintiff. Under the provisions of the Hindu Marriage Act, 1955, no decree of divorce can be granted on the ground that marriage has been broken down irretrievably. This Court while granting ad-interim relief on 30<sup>th</sup> June 2014 in favour of the plaintiff in this notice of motion has recorded various reasons and has *prima facie* observed that the parties having been married in Mumbai under the provisions of the Hindu Marriage Act, 1955, that law governs the marriage of the party.

49. This Court also considered that the reliefs have been sought by the defendant in the Family Court, UK against the plaintiff not under the provisions of the Hindu Marriage Act, either on the question of jurisdiction or on the question of grounds for dissolution but under the English Personal law, one that does not govern the marriage of the plaintiff and the defendant. Considering these facts, this Court after recording the detailed reasons, had granted ad-interim injunction in terms of prayer clause (b) of the notice of motion thereby restraining the defendant from proceeding the divorce proceedings filed by the defendant against the plaintiff which are before the Family Court at Manchester, UK. Though by the said order dated 30<sup>th</sup> June 2014, this Court had granted liberty to the defendant to apply for modification, variation or recalling of the said order by filing an affidavit, the defendant filed a Motion of Motion bearing No.1774 of 2018 for setting aside the ad-interim order dated 30<sup>th</sup> June 2014 only on 4<sup>th</sup> July, 2018. The said ad-interim order passed by this Court is already in force since 30<sup>th</sup> June, 2014. The said notice of motion has been withdrawn by the defendant.

50. Admittedly there are no criminal proceedings filed by the plaintiff against the defendant and the defendant had no apprehension if the defendant attends the proceedings filed by the plaintiff against the defendant in the Family Court, Thane. On the other hand, if the plaintiff is asked to defend the proceedings filed by the defendant before the Family Court, Manchester, UK, the defendant who has always obstructed the entry of the plaintiff in UK, the plaintiff even otherwise would not be able to defend the proceedings and that would also without financial assistance of the

defendant.

51. In so far as the judgment of the Delhi High Court in the case of **Mrs. Anoop Beniwal vs. Dr. Jagbir Singh Beniwal** (supra) relied upon by the learned counsel for the defendant is concerned, a perusal of the said judgment indicates that in the said judgment, the wife had submitted to the jurisdiction of the Court of England where the husband had filed the proceedings against the wife. Oral evidence was also recorded in those proceedings by the wife. In my view, the judgment of the Delhi High Court in the case of **Mrs. Anoop Beniwal vs. Dr. Jagbir Singh Beniwal** (supra) is thus distinguishable in the facts of this case and would not assist the case of the defendant.

52. For the reasons recorded aforesaid, the plaintiff has made out a case for grant of anti-suit injunction as prayed.

53. I therefore pass the following order :-

i). The Notice of motion is made absolute in terms of prayer clauses (a) and (b).

ii). There shall be no order as to costs.

**(R.D. DHANUKA, J.)**