

**Prachi Narayan Vs. Lalit Narayan**

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**Court :** Delhi

**Decided On :** Nov-25-2014

**Judge :** Sunil Gaur

**Appellant :** Prachi Narayan

**Respondent :** Lalit Narayan

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: November 25, 2014 + CM(M) No.1386/2009 & C.M.No.17191/2009 PRACHI NARAYAN Through: ..... Petitioner Mr. Arvind K.Nigam, Sr. Advocate with Mr. Abhimanue Shrestha, Advocate versus LALIT NARAYAN Through: ..... Respondent Mr. Vedanta Varma & Ms. Meha Rashmi, Advocates CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

**JUDGMENT**

(ORAL) % Respondent-husband has sought divorce on the ground of cruelty and in the petition for divorce, an application under Order 7 Rule 11 of CPC was filed by the wife, who is petitioner herein and the said application has been dismissed vide impugned order of 21 st October, 2009. Rejection of petition filed for divorce on the ground of cruelty is sought by petitioner-wife on the ground that marriage between the parties stood already dissolved vide decree of 21st November, 2008 by the court of competent jurisdiction in United States of America (USA). The factual background of this case already stands noted in the impugned order and

needs no reiteration. Though the parties were CM(M) No.1386/2009 Page 1 married in Mumbai on 6th August, 1999 but they had left India for USA soon after the marriage and two daughters were born out of this wedlock. Respondent-husband had been residing separately from petitioner-wife since December, 2006 and in November, 2007 he had returned back to India without any reason. Petitioner-wife had filed petition for divorce on the ground of irretrievable breakdown of marriage and respondent husband had initially appeared before the concerned court in U.S.A. but had later on stopped appearing there and a decree of divorce was granted by the court in U.S.A. on 21st November, 2008, which was challenged by respondent-husband on the ground that he was not duly served and the appeal of the respondent-husband was accepted. However, petitioner wife had approached Supreme Court of State of Connecticut and the appellate courts judgment was reversed and trial courts judgment granting divorce was restored. To resist petitioners application under Order 7 Rule 11 CPC respondent-husband had relied upon Second Part of Clause C of Section 13 of Code of Civil Procedure (CPC) which mandates that where a judgment is founded on a refusal to recognize the law of this country in cases in which such a law is applicable, the judgment will not be recognized by the courts of this country. Clause C of Section 13 of CPC reads as under: 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) x x x CM(M) No.1386/2009 Page 2 (b) x x x (c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of [India], in cases in which such law is applicable. Aforesaid Clause of Section 13 of CPC has been interpreted by the Apex Court in Y.Narasimha Rao & Ors v. Y.Venkata Lashmi and Anr. (1991) 3 SCC452(SC), which has been extensively quoted in the impugned judgment. At the hearing, learned senior counsel for petitioner had submitted that rejection of petition for divorce is not sought on the ground of irretrievable breakdown of marriage because no cause of action survives in view of grant of divorce by competent court of jurisdiction in U.S.A. It was pointed out that divorce decree of 21 st November, 2008 (hereinafter referred to as foreign judgment) is not an ex parte decree because respondent-husband had entered appearance

and had raised objection on the ground of lack of territorial jurisdiction and after the said objection was overruled, he refrained from appearing before the trial court in U.S.A. However, it was pointed out that the foreign judgment is on merits and after a contest infact divorce has been granted on the ground of cruelty. To contend so, attention of this Court was drawn to the foreign judgment wherein it is noted that the behavior of respondent husband is reprehensible and that he has deserted petitioner-wife and the minor children. Reliance was placed upon a Division Bench judgment in Meena Chaudhary (DR.) @ Dr. Meena P.N.Singh v. Basant Kumar CM(M) No.1386/2009 Page 3 Chaudhary & Ors. 187(2012) DLT264(DB) in support of above submissions. Learned counsel for respondent had supported the impugned order and had submitted that foreign judgment is on irretrievable breakdown of marriage, which is not a ground available for divorce in this country and so in view of Clause C of Section 13 of CPC petitioners application under Order 7 Rule 11 CPC has been rightly dismissed by trial court and there is no substance in this petition. Upon hearing both the sides and on perusal of impugned order and the material on record, I find that moot question which falls for consideration in this petition is whether foreign judgment is based on a ground, which is not recognized as valid ground for grant of divorce in this country. A bare perusal of foreign judgment makes it amply clear that divorce has been granted on the ground that marriage in question has broken down irretrievably with no possibility of reconciling. Thus, foreign judgment relied upon by petitioner is not recognized by the Courts in this country as the instant case comes within the ambit of Second Part of Clause C of Section 13 of CPC. Moreover, the legal position reiterated in Meena Chaudhary (supra) has no application to the facts of the instant case. Finding no illegality or infirmity in the impugned order, this petition and the application are dismissed. (SUNIL GAUR) JUDGE NOVEMBER25 2014 vn CM(M) No.1386/2009 Page 4

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