

Suraj Seth Vs. Ruchika Abbi

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Court : Delhi

Decided On : Nov-26-2014

Judge : G.P. Mittal

Appellant : Suraj Seth

Respondent : Ruchika Abbi

Advocate for Def. : Mr. Anil Malhotra, Mr. Rajat Bhalla

Advocate for Pet/Ap. : Mr. Jagat Singh, Mr. Bhagat Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

26. h November, 2014 + CS (OS) 2902/2014 SURAJ SETH Through: Plaintiff Mr. Jagat Singh, Adv. with Mr. Bhagat Singh, Adv. versus RUCHIKA ABBI Through: Defendant Mr. Anil Malhotra, Adv. with Mr. Rajat Bhalla, Adv. and Defendant in person. CORAM: HON'BLE MR. JUSTICE G.P. MITTAL G.P. Mittal, J.

(Oral) IA No.19884/2014 (O.VII Rule 11 CPC) in CS(OS) 2902/2014 1. This suit for declaration and injunction has been filed by the Plaintiff primarily seeking ante suit injunction. The Plaintiff is the husband of the Defendant. As per the averments made in the plaint, the parties got married in January, 2001 at New Delhi according to Hindu rites and ceremonies.

2. According to the Plaintiff, after the marriage, the parties stayed at Virginia, USA. They were blessed with a baby girl on 24.12.2007. Certain averments have been made about the ill habits of the Defendant in para 4 and other paragraphs of the plaint which are not very relevant for disposal of the instant application moved by the Defendant for rejection of the plaint. The sum and substance of the averments made is that the Defendant had initiated proceedings in Virginia, USA which according to the Plaintiff are malicious, oppressive, vexatious, false and frivolous. It is averred that invocation of the judicial process in USA is the abuse of process of law and against settled principles of law, treaties, conventions and judicial procedure. The Plaintiff states that inspite of the best efforts of the Plaintiff to save the marriage for the welfare and interest of the child Roshni Seth born in the year 2007 and making various concessions, the same proved of no avail.

3. It is case of the Plaintiff that elders including the parents of both the parties and family friends intervened to bring to an end to the ongoing and unending marital discord between the parties. The parties therefore, came to India in April, 2013 and a settlement/agreement was entered into between the parties on 19.04.2013 and reduced to writing.

4. One of the grievances of the Plaintiff is that the Defendant is not complying with the terms of the agreement and on the other hand, initiated the proceedings in USA which as stated earlier are malicious and oppressive.

5. This application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) running into 45 pages has been filed by the Defendant for rejection of the plaint primarily on the ground that the jurisdiction of the Civil Court to entertain the suit with regard to family matters is barred because of the explanation (d) and (g) appended to Section 7 of the Family Courts Act, 1984 (the Act). Section 7 of the Act is extracted hereunder:

7. Jurisdiction. - (1) Subject to the other provisions of this Act, a Family Court shall have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and b. be deemed, for the purposes of exercising such jurisdiction under such law, to be a

district Court or, as the case may be such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. Explanation -The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely: a. a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage; b. a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person; c. a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them; d. a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship; e. a suit or proceeding for a declaration as to the legitimacy of any person; f. a suit or proceeding for maintenance; g. a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor. (2) Subject to the other provisions of this Act a Family Court shall also have and exercise; a. the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and b. such other jurisdiction as may be conferred on it by any other enactment.

6. Learned counsel for the Defendant has referred to the order dated 07.11.2014 passed by the Division Bench of this Court in W.P.(Crl.) No.1735/2014 to urge that the Plaintiff has himself chosen the remedy before the Family Court and that is why, he has preferred a Guardian Petition and therefore, the Plaintiff himself has admitted that the jurisdiction of the Civil Court is barred.

7. Learned counsel for the Defendant has also referred to *Vibha Suri v. Vikram Suri*, 2010 (167) DLT577 to urge that in relation to family matters, the Civil Court will not have any jurisdiction. Reference is also made to *Sandip Shankarlal Kedia v. Pooja Kedia*, WP26362013, decided by the Bombay High Court on 29.04.2013. Heavy reliance is also placed on *K.A. Abdul Jaleel v. T.A. Shahida*, AIR 2003 SC252 to contend that the Civil Court will not have any jurisdiction with regard to matters provided for under Section 7 of the Act.

8. There is no dispute about the proposition of law that with regard to the matters stated in Section 7 of the Act, exclusive jurisdiction vests only with the Family Court wherever Family Courts have been established.

9. I have already extracted above the provisions of Section 7 of the Act. A great emphasis has been made on Explanation d and g to Section 7 of the Act which bars (i) a suit or proceeding for an order or injunction in circumstances arising out of marital relationship and (2) a suit or proceeding in relation to guardianship of a person or the custody of, or access to any minor. What Explanation d refers to is an injunction with regard to a marital relationship. Ante-suit injunction is claimed to debar the Defendant from prosecuting the proceedings before the Court in USA and thus, the instant suit cannot be said to be to obtain an order of injunction arising out a marital relationship. Similarly, the instant suit cannot be said to be a proceeding in relation to the guardianship of any person or the custody of, or access to any minor. In fact, it was stated by the learned counsel for the Plaintiff that the Plaintiff is prepared to withdraw the instant suit if the Defendant gives an undertaking that he will not prosecute his proceedings in the Court of USA and will be bound by the proceedings taken before the Family Courts in the Court of Competent jurisdiction in Delhi.

10. Irrespective of the fact whether the Plaintiff has any case on merits or not it cannot be said that the suit is barred in view of provisions of Section 7 of the Act.

11. Thus, application under Order VII Rule 11 CPC is misconceived and is devoid of any merit; the same is accordingly dismissed with costs of Rs.20,000/-. Rs.10,000/- shall be paid to the Plaintiff and Rs.10,000/shall be deposited in the Prime Ministers Relief Fund within four weeks. IA No.18534/2014 (O.XXXIX Rules 1 &2 CPC) in CS (OS) 2902/2014 12. Learned counsel for the Plaintiff requested for a shorter date. Learned counsel for the Defendant states that he is in personal difficulty and some date may be given in January, 2015.

13. On request, list the application for hearing on 29.01.2015. (G.P. MITTAL)
JUDGE NOVEMBER26 2014 vk