

A. Vs. B.

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Court : Mumbai

Decided On : Aug-21-1992

Reported in : I(1994)DMC238

Judge : V.P. Tipnis,; M.G. Chaudhari and;D.J. Moharir, JJ.

Acts : [Divorce Act, 1869](#) - Sections 3(3), 4, 6, 7, 8, 9, 10, 17, 18, 19 and 20

Appeal No. : Civil Referebce No. 12 of 1991

Appellant : A.

Respondent : B.

Advocate for Pet/Ap. : Pankaj M. Bhat and ;Narayan B. Suvarna, Advs.

Judgement :

ORDER

Tipnis, J.

1. This is a reference under Section 20 of the Indian [Divorce Act, 1869](#) for confirmation of the decree of nullity passed by the learned District Judge, Thane.
2. The petitioner-husband filed M. J. Petition No. 3758 of 1989 on the Original Side of this Court seeking a declaration and decree of nullity of the marriage between the petitioner-husband and the respondent-wife solemnised on 19th January,

1986. The respondent-wife is the cousin of the petitioner-husband. Broadly, the case of the petitioner is that not only he was forced to accept the proposal to marry the respondent but even the respondent was unwilling to marry and her consent was obtained by force by the mother of the respondent. After the engagement, the petitioner went to Dubai from where he wrote many letters to the respondent but she never replied. Even after his return to India from Dubai, despite his efforts, the wife did not respond. Thereafter, the marriage was solemnised on 19th January, 1986. After the marriage, the petitioner tried to have sexual relationship with the respondent, but the respondent did not respond. Ultimately, the respondent told the petitioner not to have any sexual relations. The respondent told the petitioner that she was forced to marry him. The respondent threatened the petitioner that if he tried to have sex with her, she would commit suicide. The petitioner has stated that the marriage was never consummated. The petitioner again went to Saudi Arabia for about a year. During this period also, despite many letters, he did not receive any reply from the respondent. The petitioner sent some substantial amount to the respondent. After about 18 months' period in Saudi Arabia, the petitioner returned to Bombay in or about December 1988. Upon meeting the respondent, the petitioner tried to consummate the marriage, but the respondent wife violently resisted the attempt. The respondent-wife has been serving as a teacher in a municipal school at Andheri. The petitioner-husband alleged that the respondent developed some illegitimate intimacy with a peon of the school. After being confronted, the respondent left the house and started residing at her mother's place.

3. In the month of January, 1989, Father Rodrigues called the respondent to St. Thomas Church and enquired. Two Rev. Fathers had twice visited the house of the respondent. The father of the respondent had also met Father Rodrigues at St. Thomas Church, Vasai, and informed that respondent was not willing to reconcile the marriage with the petitioner and she wanted divorce. Even the respondent-wife declined any reconciliation. All further efforts of reconciliation failed and the respondent-wife categorically stated that she never wanted to marry the petitioner and her consent to the marriage was obtained forcibly by her mother and she and other relatives brought her to the Church and made her sign in the marriage register. She had not done it voluntarily and of her free will. The said statement of

the respondent-wife was recorded by Rev. Father Elias Rodrigues in the presence of all. The original marriage certificate was lodged at Arch Bishop's House, Bombay. The petitioner has further alleged that knowing that the respondent was going astray, the mother of the respondent fraudulently arranged the marriage of the petitioner with the respondent. The petitioner has alleged that the marriage was never consummated. The petitioner alleged that the marriage was brought about by force and fraud and, therefore, he is entitled to a decree of nullity. The petitioner averred that the marriage took place at Vasai and they reside at Vasai, Dist. Thane. Therefore, this Court has exclusive jurisdiction to entertain the matter.

4. This petition was heard by the learned single Judge sitting on the Original Side of this Court who by his judgment and order reported in : AIR1991 Bom156 felt himself bound by the decision of the Division Bench of this Court in Dnyaneshwar v. Surekha AIR 1984 Bom 310 and held that this court will not have any jurisdiction as the parties reside outside the territorial limits of the original civil jurisdiction of this High Court. He directed the petition to be returned to the petitioner for presenting to the proper Court.

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7. As we shared the doubt expressed by the learned single Judge in his decision reported in : AIR1991 Bom156 regarding the correctness of the proposition in respect of the jurisdiction of the High Court under the Indian Divorce Act as enunciated by the Division Bench of this Court in Dnyaneshwar v. Surekha AIR 1984 Bom 310, we have heard not only the learned counsel appearing for the petitioner-husband, but also Advocate Mr. S. Radhakrishnan and Advocate Mr. G. Rebello on the point. After hearing them and after considering the provisions of the Indian Divorce Act and various other decisions of different Courts, we are of the opinion that the decision of the Division Bench of this Court in Dnyaneshwar's case does not lay down the correct legal position.

8. In Dnyaneshwar's case AIR 1984 Bom 310, the Division Bench referred to the decision of the Karnataka High Court in I. A. Jayaraj v. I.M. Florence : AIR1978 Kant69 and of the Andhra Pradesh High Court in Saroja v. Christie Francis : AIR 1966 AP178 . However, the Division Bench held that the decision does not seem

to make a reference to the requirement of residence within the limits of the jurisdiction of the High Court, probably because that question was not at all relevant for decision of the question which the Special Bench was called upon to deal with. The Division Bench felt that before the Special Bench of the Karnataka High Court, the question as to whether the requirement of residence within the area of the High Court as contemplated under S. 3 either did not fall for consideration or was not raised. As regards the decision of the Andhra Pradesh High Court, the Division Bench felt that it does not appear from the judgment that the question as to how the requirement of residence laid down in the definition of the 'High Court' as well as in the definition of the 'District Court' could affect the question of jurisdiction was considered. The Division Bench observed that undoubtedly, if one goes by the mere words of the section, not much argument is required to be advanced to hold that this section (section 18) contemplates that the petition may be presented either to the District Court or to the High Court. Then the Division Bench referred to the definitions of 'High Court' and 'District Court' as given in the Indian Divorce Act. The Division Bench thereafter making a detailed reference to the various provisions of the Act mainly Ss. 4, 6, 7 and 8 and also to clause 35 of the Letters Patent of 1865, held in para 8 that the question of jurisdiction of the Court where a petition for nullity or for any of the reliefs permissible under the Act could be filed will now have to be determined on the express provisions of the Act. The Bench specifically held that the reference to the High Court under the provisions of Sections 4 and 18 of the Act so far as Maharashtra is concerned, undoubtedly means the High Court for the State of Maharashtra which is the High Court at Bombay. However, the Division Bench felt that that itself is not conclusive because there is a further clause in the definition clause which provides that in the case of any petition under the Act, the High Court means the High Court for the area where the husband and wife reside or last resided. In para 10, after referring to the definition of 'High Court', the Division Bench held that it is not possible to equate the area of the High Court for the entire State to the territorial limits to which the jurisdiction of the High Court extends and necessarily the area must be a smaller concept. The Division Bench observed that when the requirement is that the parties, viz., the husband and wife reside or last resided together in the area of the High Court, it cannot be construed as meaning

that they reside or last resided within the State for which the High Court has been constituted. The Division Bench held that construing the word 'area' in the definition of the 'High Court' as equivalent to the State will mean that even the latter area where the jurisdiction of the District Court is defined will be included in the area of the High Court also. This will obviously bring about uncertainty or a choice where a petition could be filed under the Act and will defeat the very obvious purpose of the enactment, viz., that the power to deal with the matrimonial matters under the Act was intended to be given also to the District Court. Thereafter, the Division Bench held that having regard to the scheme of the Act and having regard to the requirement of residence within the area of the High Court and not within the State, it is obvious that what was intended by the Parliament was a reference to the original civil jurisdiction of the High Court, so far as the High Court was concerned, and the jurisdiction of the District Court, so far as the District Court was concerned. We find it extremely difficult to accept the correctness of this interpretation. We do not find any justification to interpret the words 'High Court' to mean the original civil jurisdiction of the High Court.

9. A bare reading of Section 10 and Sec. 18 of the Indian Divorce Act makes it clear that the petition may be presented either to the District Court or to the High Court. So far as the District Court is concerned, by definition under Section 3(3), it means in the ' case of any petition under the Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or. of whose jurisdiction under the Act, the husband and wife reside or last resided together. Under Sec. 3(1), 'High Court' means with reference to any area, in a State, the High Court for that State and in the case of any petition under the Act, 'High Court' means the High Court for the area where the husband and wife reside or last resided together. In our opinion, looking to the scheme of the Act, the District Court of a particular District will have jurisdiction to entertain the petition under the Act if the husband and wife reside or last resided together in its jurisdiction. Nevertheless, the parties will always be free to approach the High Court instead of the District Court. For example, if the husband and wife reside or last resided together at a place which is within the local limits or jurisdiction of the District Court of Thane, the petition can be entertained either under Section 10 or Section 18 by the District Court at Thane or the High Court of Judicature at Bombay, because in case of a petition under the

Act, by definition, the High Court means the High Court for the area where the husband and wife reside or last resided together. For any place situate in any District in the State of Maharashtra, the High Court will mean the High Court at Bombay as by definition, High Court means with reference to any area in a State, the High Court for that State. To our mind, the fact that this gives concurrent jurisdiction to the High Court as also to the District Court is immaterial. If that is the clear intendment of the statute, there is nothing abnormal in such concurrent jurisdiction. Even under the Code of Criminal Procedure, revisional jurisdiction is vested concurrently in the High Court as well as the Sessions Court. Secondly, the provisions of Ss. 4, 8, 9, 17 and 20 clearly show that basically it is the High Court which is invested with the matrimonial jurisdiction under the Indian Divorce Act. There is further reason to hold that the High Court will always have the jurisdiction under the Act because under Section 19 of the Act, the decree for a declaration that the marriage is null and void can be passed either by the High Court or the District Court on any one of the four specific grounds mentioned therein. However, the proviso to the said section states that nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud. Therefore, it is clear that when the petition is for a decree of nullity of marriage on the ground that the consent of either party was obtained by force or fraud, the petition will have to be necessarily heard by the High Court as the High Court alone has the exclusive jurisdiction in that behalf. If the interpretation put by the Division Bench in Dnyaneshwar's case (supra) is accepted, then it will mean that this ground under the said proviso will be available only to the husband and wife who reside or last resided together within the area under the original jurisdiction of the High Court and the parties staying elsewhere outside the original jurisdiction of the High Court will not be entitled to a decree of nullity on the said ground at all. That the jurisdiction to pass a decree of nullity on the said ground is exclusive with the High Court admits of no doubt. In such a case, it is difficult to comprehend a situation that the statute makes available a particular ground for declaration of nullity of marriage only to a limited class of persons residing in the limits of the original civil jurisdiction of the High Court.

10. We are in respectful agreement with the decision of the Andhra Pradesh High Court in *Saroja v. Christie Francis* : AIR 1966 AP178 laying down the proposition that insofar as dissolution of marriage and nullity of marriage on the specific grounds stated in Section 19 are concerned, both the District Court and the High Court have concurrent jurisdiction and when the case is one for declaration of nullity of marriage on the ground of force or fraud, the exclusive jurisdiction of the High Court is saved is the correct proposition of law. The said proposition has been approved by a Full Bench of the Karnataka High Court in *I.A. Jayaraj v. I.M. Florence*, : AIR1978 Kant69 as also by a Division Bench of the Kerala High Court in *Usha v. Abraham*, : AIR1988 Ker96 .

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11. Order accordingly.

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