

Sharmishtha Vs. Sujoy Mitra

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Court : Delhi

Decided On : Aug-04-2008

Reported in : II(2008)DMC633

Judge : Shiv Narayan Dhingra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 13 and 14

Appeal No. : C.R.P. 120 of 2008

Appellant : Sharmishtha

Respondent : Sujoy Mitra

Advocate for Def. : S. Chatterjee, Adv.

Advocate for Pet/Ap. : Rajiv Bansal and; Manu Beri, Advs

Disposition : Petition dismissed

Judgement :

ORDER

Shiv Narayan Dhingra, J.

CM No. 10900/2008 (exemption)

Allowed subject to all just exceptions.

Application stands disposed of.

Caveat No. 161/2008

Notice. Notice is accepted by Mr. S. Chatterjee, Advocate on behalf of the respondent.

Caveat stands disposed of.

C.R.P. 120/2008

1. The respondent/husband in this case was living with the petitioner in USA. Some differences arose between the parties while they were living in USA and respondent filed a petition for divorce in Pennsylvania. The petitioner had accepted the notice and appeared before the Court in Pennsylvania and a decree of divorce was granted. After the divorce was granted by Court in USA, the husband filed another divorce petition in Delhi. The respondent made an application that the second divorce petition was not maintainable, in view of the husband already having obtained divorce, which got dismissed by impugned order.

2. It is submitted by Counsel for the respondent that a decree of divorce obtained from a foreign country is required to be confirmed by the Courts in India. There is no such requirement of a foreign decree to be confirmed by the Court in this country. The only requirement is that the decree obtained from foreign country must satisfy the requirements of Section 13 of CPC. Sections 13 and 14, CPC read 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) 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 recognize 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.

In the present case, the petitioner (wife) submitted to the jurisdiction of State of Pennsylvania, USA and decree of divorce was granted after appearance of the wife. In the present petition, wife is acknowledging that the decree of divorce granted by the State of Pennsylvania was a valid decree.

3. Counsel for the petitioner (wife) appearing states that wife again reiterates the fact that the decree of divorce obtained by husband in USA was obtained after her submitting to the jurisdiction of foreign Court and was a valid decree and she had no intention to challenge the status of the husband as that of a divorcee.

4. I consider that in view of above legal position and submissions, this petition is liable to be allowed. The suit for divorce filed before the Trial Court is liable to be dismissed and is hereby dismissed.