IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1342 OF 2013

KISHOREKUMAR
MOHAN KALE **...APPELLANT(S)**

VERSUS

KASHMIRA KALE **...RESPONDENT(S)**

O R D E R

1. The present appeal arises out of judgment and order dated 4th March 2010, passed by the High Court of Judicature at Bombay in Writ Petition No.1242 of 2020 whereby the order of the Family Court, Pune dated 14th September 2009 holding that the Pune Court has jurisdiction to try the divorce petition filed by the appellant-husband, was set aside.

2. The facts giving rise to the present appeal are as follows:

   2.1. The appellant-husband and respondent-wife got married on 25th December 2005 in Mumbai, India, according to Hindu rites and rituals. At the time of their marriage, both parties were residing in the United States of America[1].

[1] Hereinafter, "US".

2.2. The appellant-husband is an Indian citizen, holding a green card in the US.

2.3. The appellant-husband left for the US on 14th January 2006 and the respondent-wife joined him on 22nd January 2006.

2.4. In December 2007, both parties came to India for a few weeks. They stayed together for one night at their home in Pune, after which the respondent-wife went to Mumbai to stay with her parents. The appellant-husband left for the US on 17th January 2008, and the respondent-wife joined him on 27th February 2008, whereafter they lived together until September 2008.

2.5. The respondent-wife filed for divorce in the US on 25th September, 2008 before the Circuit Court for the County of Oakland. The appellant-husband was served on 27th September 2008 and he replied to her divorce petition on 3rd October 2008 and filed a written statement on 13th October 2008 contending that the Circuit Court has no jurisdiction to try the divorce complaint as the parties are governed by the Hindu Marriage Act, 1955[2]. A notice of pretrial and notice of hearing, both dated 2nd December 2008,

[2] Hereinafter, "HMA".

were sent to the appellant-husband. However, after sending his written submission through post, the appellant-husband never appeared in person before the Court.

2.6. In the meantime, the appellant-husband returned to India and filed a divorce petition on 24th October 2008, before the Family Court, Pune under Section 13(1)(i)(a) of the HMA. He claimed jurisdiction before the Pune Court on the ground that the parties' residence at Pune constituted their matrimonial home, as they had resided there during their visits to India.

2.7. The Circuit Court for the County of Oakland, Family Division, vide its judgment dated 13th February 2009, dissolved the marriage and granted a decree of divorce, holding that there had been a breakdown of the marriage and that no reasonable likelihood of its preservation remained. The Court held that neither party was entitled to spousal support. The respondent-wife was awarded all property in her name, possession, and/or control, including checking and savings accounts at Bank of America and all personal property in her possession. The appellant-husband was directed to pay the

respondent-wife a sum of $42,119/76 as her share of funds transferred by him from the parties' Charter One account to India between May 2006 and June 2008, which totalled $187,000/-. The appellant-husband was awarded the remaining balance in the joint Charter One accounts along with his personal possessions, including his car and furniture. He was further directed to pay a sum of $2,000/- to the respondent-wife towards attorney's fees.

2.8. The respondent-wife preferred an application being PA No.1020 of 08 before the Family Court, Pune contesting the jurisdiction of the Pune Court and the maintainability of the divorce petition filed under the HMA.

2.9. The Family Court, Pune, vide order dated 14th September 2009, rejected the respondent-wife's application and held that the Pune Court has jurisdiction. It was held that the US decree of divorce was granted on the ground of breakdown of marriage, which is not a recognised ground under the HMA. Since the marriage was solemnised according to Hindu rites and rituals in India, the HMA would apply to the parties even if they had settled abroad thereafter. The Court further observed

that the appellant-husband had never submitted to the jurisdiction of the Circuit Court in the US and had not participated in those proceedings. It found that the matrimonial home was at Aungh, Pune, as the parties had stayed there during their visits to India, even if briefly, and that it was the place where they last resided together in India.

2.10. The respondent-wife filed Writ Petition No.1242 of 2010 before the High Court against the order dated 14th September 2009 on the ground that the parties are domiciled in the US and their marriage does not fall under the ambit of the HMA.

2.11. The High Court allowed the respondent-wife's writ petition, holding that both parties are domiciled in the US and not in India, and that the HMA is therefore inapplicable to them. The High Court observed that the parties last resided together in Oakland, Michigan, US, and accordingly held that the Circuit Court for the County of Oakland had jurisdiction over the matter. It noted that the said Court had granted the divorce on merits, equitably dividing the parties' properties and deciding on spousal support. The order of the Family Court, Pune, concluding that the parties had last resided

together in Pune, thereby conferring jurisdiction on the Pune Court, was set aside.

2.12. Aggrieved, the appellant-husband is before us.

3. We have heard learned counsels for the parties.

4. The appellant-husband submits that the Indian Courts have jurisdiction to grant a decree of divorce as the marriage was solemnised in India and both parties are Indian citizens, and therefore, the HMA would apply. It is further submitted that the decree of divorce granted by the US Court was an ex-parte order, inasmuch as the appellant-husband only sent his written statement by post, raising specific objections to the jurisdiction of the US Court, and did not participate further in those proceedings. It is accordingly submitted that the foreign decree granting divorce is not binding on the parties.

5. On the other hand, the respondent-wife submits that both parties were domiciled in the US after the solemnisation of their marriage and co-habited there until September 2008, which was their last joint place of residence. It is further submitted that the decree of divorce granted by the US Courts is conclusive as per Section 13 of the Code of Civil Procedure, 1908[3].

[3] Hereinafter, "CPC".

6. We have perused the documents on record and given our thoughtful consideration to the submissions made. It is evident that this is a case of irretrievable breakdown of marriage, with the respondent-wife having pursued a decree of divorce in the US and the appellant-husband pursuing one in India. There is clearly no dispute between the parties that the marriage has irretrievably broken down and that there is no prospect of reconciliation. In this background, two questions fall for consideration: first, whether the foreign decree of divorce is conclusive and binding on the parties; and second, whether, in the facts and circumstances of this case, it is appropriate for this Court to exercise its jurisdiction under Article 142 of the Constitution of India.

7. The parties were married as per Hindu rites and rituals at Chembur, Mumbai, India. As such, the law applicable to their marriage, and consequently to any proceedings for divorce, would be the HMA. It is evident that both parties spent the greater part of their time, post-marriage, in the US. However, the appellant-husband had a family residence at Aungh, Pune, and when the parties returned to India to visit, they would reside there, however briefly.

8. In ***Y.Narasimha Rao v. Y.Venkata Lakshmi***[4], this Court interpreted Section 13 of the CPC and laid down the conditions under which a foreign decree of divorce would be recognised. The Court held that such a decree would be recognised only where: (i) the relief has been granted on a ground available under the matrimonial law governing the parties; (ii) the opposite party had voluntarily and effectively submitted to the jurisdiction of the foreign forum and contested the claim on a valid ground available under the applicable matrimonial law; or (iii) the opposite party had consented to the grant of the relief. The Court further held that the principles of natural justice must be satisfied, and that mere service of summons upon the opposite party in a foreign proceeding is not sufficient and the opposite party must have had a meaningful opportunity to and must have effectively participated in and contested those proceedings.

9. In the present case, the US Court granted a decree of divorce on the ground of irretrievable breakdown of marriage. This ground is not recognised under the HMA, which is the matrimonial law applicable to the parties. Further, while the appellant-husband was duly served, he only filed a written statement by post expressly contesting

[4] (1991) 3 SCC 451.

the jurisdiction of the US Court, and did not participate in those proceedings any further. It cannot therefore be said that he voluntarily or effectively submitted to the jurisdiction of the foreign forum, or that he was afforded a meaningful opportunity to contest the matter. The foreign decree accordingly does not satisfy the conditions laid down in ***Y. Narasimha Rao*** (supra), and the principles of natural justice cannot be said to have been complied with.

10. In light of the foregoing, we find that the foreign decree is not conclusive and cannot be sustained as a valid decree of divorce between the parties. Consequently, the question of which Court, whether the Family Court, Pune or the Circuit Court for the County of Oakland, had jurisdiction to entertain the divorce proceedings, need not be conclusively decided in the present proceedings. We do, however, find it necessary to bring a quietus to this matter. The parties have been separated since 2008, nearly eighteen years now, and it is manifest that no matrimonial bond subsists between them. In such circumstances, this Court finds it appropriate to exercise its jurisdiction under Article 142 of the Constitution of India, and to grant the parties a decree of divorce on the ground of irretrievable breakdown of marriage.

11. The appeal is accordingly allowed, on the above terms. The impugned order and judgment of the High Court dated 4th March 2010 is set aside. The Registry to draw up a decree of divorce accordingly. The petition for divorce instituted at Pune shall stand closed and disposed off in view of the decree granted by this Court.

12. Pending applications, if any, to stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI
JANUARY 15, 2026