Foreign Decrees and Orders

Presented by :

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Narasimha Rao v. Y. Venkatalakshmi (1991) 2 SCALE 1: (1991) 3 SCC 451

Can a divorce decree passed by Foreign Court be recognized in India ?

The parties were married in Tirupati, in 1975. They were separated in 1978. The appellant husband had obtained a decree for dissolution of marriage from the Circuit Court of ST. Louis County, Missouri, U.S.A., in 1980. The wife's participation in the proceedings before the American Court seem to be confined to her replies that she was not submitting to its jurisdiction. Throughout the proceedings, she remain *ex parte* and the American Court passed a decree of divorce in her absence.

Thereafter, the husband remarried in India. The wife (first wife) filed a criminal complaint charging him of bigamy. The trial Court dismissed her case in view of the divorce he had obtained.

If the Indian courts recognize the foreign decree, the second marriage of the appellant would be valid in India, if not the husband would be liable for bigamy under the IPC. Besides, non-recognition of the decree would mean that the appellant and the respondent would continue to have the legal status of husband and wife in India while under the Missouri laws laws in the U.S.A., they would be divorced.

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Making a beginning in this direction, the court held that the relevant provisions of Section 13 of the Civil Procedure Code, 1908, are capable of being interpreted in a manner which will secure certainty in conformity with public policy, justice, equity and good conscience.

The rules so evolved will protect the sanctity of the institution of marriage and unity of family, which are the cornerstones of our societal life, the court remarked.

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The Court analyzed each clause of the section to substance its view.

Clause (a) which refers to a court of competent jurisdiction, should be interpreted to mean only the court which the law under which the parties were married so recognizes unless both parties voluntarily and unconditionally concede to the jurisdiction of any other Court.

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On Clause (c), the court opined that a judgment founded on a ground not recognized by the law applicable, the Hindu Marriage Act in this case, is a judgment in defiance of the law and will therefore not be enforceable under Clause (f). Irretrievable breakdown of the marriage, is not a ground recognized under the law governing the parties, viz., the Hindu Marriage Act.

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As regards the requirement of compliance of principles of natural justice laid down in Clause (d), the court held that this principle has to be extended beyond mere compliance with technical rules of procedure.

The Court must ensure an effective contest .

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As regards Clause (b), merits of the case should mean that the decision should be based on a ground available under the law in which the parties were married; besides, the decision should be the result of proper contest.

Also the decree had been obtained by misrepresenting that he was a resident of Missouri; whereas the record showed that he was only a bird of passage and was ordinarily a resident of Louisiana.

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He had, if at all, only technically satisfied the requirement of ninety days residence for purposes of invoking jurisdiction.

Thus jurisdiction of forum as well as ground on which the decree was passed not being in accordance with the law under which the parties were married, the decree of the foreign court could not be recognized.

Satya v. Teja Singh
AIR 1975 SC 105

The Appellant wife and the respondent husband, who were Indian citizens domiciled in India, were married according to Hindu rites and had two children.

After about four years, the husband left for the United States for higher studies. Five years later, the wife moved an application for maintenance for herself and her children, under Section 488 of the (then) Cr. P.C.

Satya v. Teja Singh
AIR 1975 SC 105

The husband was represented by his counsel who stated that the marriage had been dissolved by a decree of divorce by a Nevada Court.

The Court held that to give jurisdiction to a court the residence in the foreign jurisdiction must answer a qualitative as well as quantitative test.

Satya v. Teja Singh
AIR 1975 SC 105

The respondent went to Nevada forum hunting, found a convenient jurisdiction which would easily grant a divorce to him and left it even before the ink on his domiciliary assertion was dry.

Thus, the decree of the Nevada Court lacks jurisdiction. It can receive no recognition in our Courts.

Satya v. Teja Singh
AIR 1975 SC 105

The case was disposed of on the ground that the husband had played a fraud on the foreign court by representing incorrect facts for invoking jurisdiction.

The decree was, accordingly, not recognized as valid in India.

Satya v. Teja Singh
AIR 1975 SC 105

Unhappily, the marriage between the appellant and the respondent has to limp.

They will be treated as divorced in Nevada but their bond of matrimony will remain unsnapped in India, the country of the domicile.

Minoti Anand v. Subhash Anand AIR 2009 Bom 65

In case of foreign marriage the Family Court has no jurisdiction to grant Interim Relief under Hindu Marriage Act.

The Petitioner and the 1st Respondent married each other in Japan on 5th November 1972. The marriage was solemnized in Somiyadri Temple, Osaka, Japan.

It was performed by a Japanese Priest in the temple as per Japanese rites. The marriage was then registered under the Foreign Marriage Act, 1969.

Minoti Anand v. Subhash Anand AIR 2009 Bom 65

The Respondent No.1 filed M.J. Petition No.A 1931 of 2003 under Section 13(1)(ia) of the Hindu Marriage Act, 1955. He also filed an application under Section 27 of the Hindu Marriage Act for the disposal of property.

Minoti Anand v. Subhash Anand – AIR 2009 Bom.65

Decree subject to the father-in-law depositing rupees one lakh in a bank, within a month and permitting the wife to withdraw Rs.50,000/-. Dissatisfied, the wife filed an appeal before the Supreme Court.

Justice Sahai suggested the need for enacting a law to deal with situations where NRIs marry in India and desert their wives.

Minoti Anand

A reference was made to the Foreign Judgment (Reciprocal Enforcement) Act, 1993 under Section 1 of which the UK issued Reciprocal Enforcement of Judgment (India) Order, 1958, and the Indian and Colonial Divorce Jurisdiction Act, 1940. The Court suggested legislation incorporating the following provisions :

(a) no marriage between an NRI and an Indian woman solemnized in India may be annulled by a foreign court;

Minoti Anand

(b) provision for adequate alimony to the wife in the property of the husband, both in India an abroad;

(c) decree of Indian Courts should be executable in foreign courts, both on principle of comity and by entering into reciprocal agreement like Sec.44A CPC which makes foreign decrees executable.

Kirti Sharma v. Civil Judge, Senior Division, Etah – AIR 2005 All 197

Issue: Whether an injunction restraining a spouse to remarry can be issued in view of the fact that the Hindu Marriage Act, 1955, makes no provision for it ?

Fact : The plaintiff filed a suit for restitution of conjugal rights u/s. 9 of the Hindu Marriage Act, along with an application for interim injunction restraining the defendant (wife) from contracting second marriage)

Kirti Sharma v. Civil Judge, Senior Division, Etah – AIR 2005 All 197

"No doubt Hindu Marriage Act is a Special Act but if it is silent on the issue of injunction, the place can be occupied by general legislation especially so to restrain a party from performing a void act."

Lily Thomas v. Union of India
AIR 2000 SC 1650

The cumulative effect of *Sarla Mudgal* and *Lily Thomas* is that upon conversion to Islam, the first marriage solemnized under monogamous law is not affected, and the second marriage after conversion to a religion which permits polygamy is void and punishable under Sec.17 of the Hindu Marriage Act and Sec.494 of the Penal Code.

Lily Thomas v. Union of India
AIR 2000 SC 1650

However, provision on the lines of Sections 4 and 52 of the Parsi Marriage and Divorce Act, 1936, and Section 43 of the Special Marriage Act, 1954 explicitly providing that such second marriage would be void, needs to be incorporated in the Hindu Marriage Act. The Hindu Marriage Act is silent on the status of the second wife of a man who converts and re-marries during the subsistence of his first Hindu marriage.

Lily Thomas v. Union of India
AIR 2000 SC 1650

A marriage celebrated under one personal law cannot be dissolved by the application of another personal law.

A Hindu Marriage can be dissolved on any of the grounds specified in the Act. Until the marriage is so dissolved none can marry again. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage.

Lily Thomas v. Union of India
AIR 2000 SC 1650

Consequently, the second marriage of the apostate would be a marriage in violation of the provisions of the Act, and an illegal marriage *qua* his wife who married him under the Act and continues to be a Hindu.

The real reason for the voidness of the second marriage is the subsistence of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-by to the substance of the matter and acting against the spirit an statute if the second marriage of the convert is held legal.

Lily Thomas v. Union of India
AIR 2000 SC 1650

Such a marriage is violative of the principles of justice, equity and good conscience.

Under the Hindu personal law, a marriage continued to subsist even after one of the spouses converted to Islam;

the second marriage of the apostate would be a marriage in violation of the provisions of the Act and illegal marriage *qua* his wife who married him under the Hindu law and continues to be a Hindu; and

the second marriage of a Hindu husband after his conversion to Islam is void in terms of S.494 of the Indian Penal Code and the apostate husband would be guilty of the offence of bigamy.

Bhuvan Mohan Singh Vs. Meena & Ors.
[AIR 2014 SC 2875]

"A Family Court Judge should remember that the procrastination is the greatest assassin of the Lis before it not only gives rise to more family problems but gradually builds unthinkable and ever lasting bitterness. It leads to the court refrigeration of the hidden feelings, if still left. The delineation of the Lis by the family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the Lis before him pertains to emotional fragmentation and delay can feed it to grow."

Bhuvan Mohan Singh Vs. Meena & Ors.
[AIR 2014 SC 2875]

- Hon. Shri. Justice Dipak Misra;

"The Family Judge is expected to be sensitive to the issues, for he is dealing with extremely delicate and sensitive issues pertaining to the marriage and issues ancillary thereto. We do not mean that the Family Courts should show undue haste or impatience, but there is a distinction between impatience and to be wisely anxious and conscious about dealing with a situation."

Procedural Flexibility – Section 10

- Section 10(1) – Family Court deemed to be a civil court and have all the powers of such court.
- Section 10(2) – The provisions of Cr. P. C. to be applied to Maintenance Application under Chapter IX of Cr. P. C.
- Section 10(3) – of importance – gives complete liberty and power to the Family Court to lay down its own procedure with a view to arrive at settlement or at the truth of the facts. This provision overrides Sub-Section 1 & 2 and gives lot of flexibility to the Family Court.

Exemption from the Evidence Act – Sec.14.

- Section 14 confers sweeping powers on Family Court to receive as evidence any Report, Statement, Document , Information or Matter , irrespective of the fact whether it is otherwise relevant or admissible under Evidence Act.
- The object is to assist the Court to deal with the dispute effectively and completely without being constrained by technicalities.

Recording of Evidence

- Section 15 - provides not for ad-verbatim recording of evidence but only a Memorandum of the substance of what the witness deposes.
- Such Memorandum to be signed by the witness to create confidence in his mind.
- Section 16 – permits evidence of formal character to be given on Affidavit.

Overriding effect of the Act – Sec. 20

- Section 20 mandates that the provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law.
- **The object of all these provisions is to enable the Family Court to adopt pragmatic approach to achieve the desired results.**

Judgment

- Section 17 – also expects that Judgment of the Family Court should be very concise with points for determination, reasons thereof and the decision.

- The object is to get rid of procedural technicalities in order to provide justice as expeditiously as possible.

Your Judgment / Order should solve their problems; not your success as a Judge.

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Higher Judiciary says,

- Act gives larger discretion and procedural latitude which has to be exercised for benefit of the litigants.
- The guiding principle for using the discretion can be Article 15 (3) of the Constitution which validates special provisions for women and children.
- Family Court Judges need special orientation to evolve this framework .

Higher Judiciary says,

- In the decision of petition under the Hindu Marriage Act, a human approach is essential. Whether a petition is defended or not, a decree can not be passed ex-party on the ground that respondent is not opposing the same. This is clear from the provisions of Sec. 23.

Higher Judiciary says,

- Judges presiding over Family Courts have a special mandate to alleviate the sufferings of litigants and bring speedy justice to them .
- Matrimonial litigation causes extreme emotional trauma, hence Judges have to be sensitive to the needs of the litigants and be lenient with respect to procedural technicalities.
- The over arching aim should be to create the atmosphere which is most conducive to an amicable resolution of the dispute while protecting the rights of the weaker parties.

Lord Denning

Lord Denning while disposing of a matrimonial appeal has observed,

"the Presiding Judge of a matrimonial court should not act like a microscope but should act as a stethoscope so that the Judge could feel the rival matrimonial parties and try to reconcile them for a happy family life."

Approach of Judges in Family Court.

- The success of the Act depends entirely on the approach of the Family Court Judges and Counselors .
- Act is a procedural Statute which carves out a separate innovative adjudication forum for Family disputes.
- It aims at de-formalization of legal structures.
- To usher in new dynamic approach to ensure gender justice.

Ideology underlying the Act

To create a women –friendly adjudicating Spaces, away from formal structures of civil and criminal courts.

Since adversarial procedures adopted by civil courts are dilatory confrontational, new litigation fora was created which was to be less formidable in its appearance, inquisitorial in its approach and more accessible to women, which would tilt balance in their favor

A conscious shift away from dependency over mainstream lawyers to an increased dependency on Counselors.

The presence of Counselors within Premises was intended to enhance negotiating power of women.

Appearance of lawyers restricted. Their presence was to be sought as *amicus curie* only to assist the judge in complex legal matters.

Romila Shroff V/S Jaidev Shroff II (2000)DMC600FB

- “Litigation before family courts is a radical departure from the accepted form of trial in a civil court.

It is a mixture of inquisitorial trial, participatory form of grievance redressal, and non- adversarial trial.

The court is left to device its own practice which can be a judicious mixture of all three.”

Capt. Ramesh Chandra Kaushal v. Veena Kaushal. AIR 1978 S.C. 1807

- The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.


Thank
You