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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 254/2021**

NAINA SURAT RAWAT Plaintiff

Through: Mr. Ashish Deep Verma, Mr. Vijay
Singh and Ms. Kanya Ritu Verma,
Advocates

versus

.MUKUL GOYAL Defendants

Through: Ms. Neelima Tripathi, Sr. Advocate
and Ms. Swati Bhushan Sharma,
Advocates

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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15.07.2021

(Through video conferencing)

IA No. 6602/2021

Qua this application filed by the applicant/plaintiff seeking exemption from Court fees within a period of six weeks which was allowed vide order dated 27.5.2021 subject to just exceptions, at the outset, an objection was raised on behalf of the defendant by learned senior counsel for the defendant that the Court Fees has still not been deposited qua which learned counsel for the plaintiff submits that in terms of an Administrative Rule dated 1.4.2021 in cases filed before the E Court it was incumbent for the litigant to pay the Court Fees himself/herself and thus the counsel could not deposit the Court Fee though it had been informed by the Registry it could be so allowed to be deposited if permitted by the Court.

Inter alia, it has been submitted that the applicant/plaintiff could not



deposit the Court Fees herself due to financial indigence.

Taking into account the urgency in the matter that a financial statement is stated to be required to be submitted by the applicant/plaintiff pursuant to proceedings in the Family Court at London which proceedings are listed for the date 20.8.2021, in the interest of justice, counsel for the plaintiff has been allowed to deposit the Court Fee today on behalf of the plaintiff which has since been deposited.

In view thereof, IA 6602/2021 stands disposed of and calls for no further action.

IA No. 6603/2021 (under Order XXXIX Rule 1 & 2 CPC)

1. IA No. 6603/2021 is an application filed by the plaintiff/applicant under Order XXXIX Rule 1 & 2 of the CPC seeking an anti-suit injunction against the divorce petition filed by the defendant against her at the Family Court, East London and seeks a restraint against him from proceeding in the said proceedings.
2. During the course of submissions made on the date 27.5.2021, vide order dated 27.05.2021 an opportunity had been granted to the defendant to file the written statement within 30 days which has not been filed so far. The reply to IA No. 6603/2021, the application under Order XXXIX Rule 1 & 2 of the CPC for which time was sought on behalf of the defendant to file the reply, has also not been filed. The said proceedings of the date 27.5.2021 however indicate that it had been observed therein to the effect ***“Presently, the plaintiff is in U.K. on a destitute visa.”***
3. The matter has been assigned to this Court today.
4. On behalf of the defendant, it was urged that there was no



urgency in the matter in as much as the proceedings before the Family Court at London are fixed for 20.8.2021 in the divorce proceedings that have been filed by the defendant which aspect was however refuted on behalf of the applicant/plaintiff by learned counsel for the applicant submitting to the effect that vide communication dated 30.4.2021 in case No.ZZ21D25295 the applicant/plaintiff was called upon to file her standard form financial statement with the Court, i.e., the Family Court at East London giving full details of her property and income and was also called upon to sign and swear the statement of truth contained within that document by the date 16.7.2021, ie. tomorrow and also to comply with other compliances as mentioned in the said letter by the date 6.8.2021 apart from the proceedings being pending before the Family Court at London for 20.8.2021. It was thus submitted on behalf of the applicant/plaintiff that in the event the anti-suit injunction, as prayed by the applicant/plaintiff, was not granted and she was made to submit her financial statement for the date 16.7.2021, she would be presumed to have joined the proceedings and conceded to the jurisdiction of the Family Court at London which would thus be gravely prejudicial to her rights. The contents of the said communication dated 30.4.2021 read to the effect:

“

***Notice of a First appointment In the Family Court at East
London***

Case Number ZZ21D25295

Applicant Mukul Goyal

Respondent Naina Surat Rawat



The marriage of Mukul Goyal and Naina Surat Rawat

Take Notice that

By 16th July 2021 you must file a standard form of financial statement with the Court which gives full details of your property and income. You must sign and swear the statement of truth contained within that document. At the same time each party must exchange a copy of the statement with the [legal representative of the] other party. You will therefore need to contact the other party [or their legal representative] not later than the above date and agree when the exchange shall take place. The exchange may be carried out by post. You must use the appropriate standard form of statement (Form E, E1 or E2) which you may obtain from the Court office.

By 6th August 2021 you must file with the Court and the [legal representative of the] other party :

- *a concise statement of the apparent issues between yourself yourself and the other party;*
- *a chronology;*
- *a questionnaire setting out the further information and documents you require from the other party, or a statement that no information or documents are required;*
- *a Notice in Form G.*

The First Appointment will be heard remotely by

The District Judge in chambers at the Family Court at East London, 6th and 7th Floors, 11 Westferry Circus, Entrance in Columbus Courtyard, London, E14 4HD

On 20th August 2021

At 12:00 pm

The probable length of the hearing is 1 hour

No parties are to attend court. *All parties to these proceedings are to e-mail with their contact details at eastlondonfamilyhearings@justice.gov.uk 48 hours before the hearing.*



Warning Notices

- 1. the next hearing will be a remote hearing by Cloud Video Platform (CVP)/Teams which will be in private. No person apart from the parties and their legal representatives may be present at the time of the hearing.***
- 2. All attendees at the hearing are warned that they must not in any way record the hearing as pursuant to S9 Contempt of Court Act 1981 such action will be a contempt of court which may be punishable by fine or imprisonment.***

You and your legal representative, if you have one, must participate in the appointment. At the appointment you must provide the Court with a written estimate (in Form H) of any legal costs which you have incurred. Non-compliance may render you liable to costs penalties.

Dated: 30th April 2021.”

5. It was submitted on behalf of the plaintiff as averred in the plaint that the marriage between the parties to the suit was solemnized on 4.2.2020 according to Hindu rites and customs at Dehradun and that thereafter the applicant/plaintiff and the defendant resided at Delhi but that the plaintiff/applicant had been tormented by the defendant's parents and sisters and that the defendant left his parental house at Delhi and flew back to London on 16.2.2020 and had asked the plaintiff/applicant to leave the matrimonial home within a couple of days and to live with her parents at Navi Mumbai from 18.2.2020. The plaintiff/applicant has further submitted that thereafter she got busy in preparing her application for spouse visa so that she could live with the defendant at London at the earliest, but that due to the lockdown announced in India due to the ongoing COVID-19 crisis her application could not be disposed of and that she got her Visa for U.K. on 27.7.2020 and planned



to go to the U.K. to live with her spouse, i.e., the defendant and arrived in London on 3.8.2020 with dreams of starting her happy married life with the defendant.

6. The plaintiff alleges that in around two weeks of her arrival at London she was shocked to see polyamorous behaviours of Katherine and Erol living in the apartment of the defendant and it was also indicated that Erol was also bisexual and polyamorous which was a complete shock for the plaintiff and that the inexplicable mentally traumatic incidents of polyamorous behaviours between the defendant, i.e., her spouse, Katherine and Erol disturbed her and caused her great discomfort but to her dismay the defendant threatened her to adapt with this lifestyle or to go back to her parental home.
7. Inter alia, the plaintiff has also submitted that the defendant had also become more violent explaining to the plaintiff that Erol had disapproved the plaintiff and that the defendant continued to shout at her and pressurized her to go back to India as she was unable to adapt to the bisexual behaviour and polyamorous culture and that the defendant also became violent and tore the plaintiff's jumpsuit and broke her mobile phones, laptops and I pads and made his interactions with the plaintiff very transactional while he continued to enjoy with his polyamorous cohabitant partners Erol and Katherine.
8. The plaintiff and the defendant are stated to have returned to their matrimonial home on 30.10.2020 whereupon the plaintiff was mentally and physically harassed by the defendant and his parental family and sisters and on 11.11.2020, the defendant and his family members forcibly booked the plaintiff's flight for her parental home at Navi



Mumbai, but on 16.11.2020 the plaintiff left her matrimonial home and took refuge at her cousin's place and reached her parental home on 18.11.2020 and made a detailed complaint on 19.11.2020 to the Mumbai Police against the defendant and his parents for severe mental, physical and emotional harassment meted out to her. The plaintiff submits that despite the same, the defendant managed to escape to London in November, 2020 and the parents of the defendant even fraudulently published a public notice on 22.11.2020 in the National Daily Sunday Express, Mumbai Edition, stating that they had disowned the defendant and the plaintiff with an intent to escape from their liabilities towards the plaintiff and to plead their innocence and of their being senior citizens.

9. The plaintiff has further submitted that FIR bearing No. 252/2020 was registered by the Mumbai Police on 25.11.2020. The plaintiff was called upon also to appear in a legal case against the defendant and his parents filed by the plaintiff seeking maintenance under Section 125 of the Cr.P.C. bearing Crl.M.A. No. 752/2020 and on 16.12.2020 summons were issued by the Magisterial Court for the defendant and his parents in a legal case filed by the plaintiff against them for domestic violence under Section 12 of the Domestic Violence Act bearing Crl.M.A. No. 751/2020 which cases qua maintenance and domestic violence are pending adjudication before the Magistrate's Court at Panvel, Navi Mumbai.
10. The plaintiff further submits that writ petition (criminal) bearing No. 422/2020 filed by the parents of the defendant seeking quashing of the FIR was dismissed by the Hon'ble Apex Court vide an order dated 4.1.2021.



11. A Look Out Circular (LOC) is stated to have been issued against the defendant who did not join the investigation of the case. The plaintiff has thus submitted that the criminal charges and maintenance proceedings are pending adjudication in the Indian Courts and that the defendant has unscrupulously evaded from the said proceedings in India. The anticipatory bail application of the parents of the defendant is stated to have been rejected vide order dated 16.1.2021 in FIR 252/2020 by the Sessions Court at Panvel. An FIR, is submitted, to have also been got registered on the complaint of the complainant by the Mumbai Police against the defendant and his parents under Section 3(1)(r)(s) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. Inter alia, the plaintiff has submitted that in January-February, 2021, the defendant whilst at London after legally losing all claims, emotionally manipulated the plaintiff to return her back to London by stating that his state of affairs in the past was because of him being under depression and under the influence of Erol and Katherine and that he currently suffered from suicidal tendencies and had even ordered poison given his loneliness and had assured the plaintiff that Erol had left for Dubai and that they could live happily together.
12. The plaintiff has submitted that on the assurances given by the defendant on Valentine's day i.e. 14.2.2021 again in good faith she flew back to London wherein the defendant cohabitated with her and manipulated her that everything would be fine and made her do objectionable acts in bed and made video recordings of the same and manipulated her to sort out the differences and communicated to the counsel that he would be a good husband and would fulfil his



responsibilities but he did not stand to those assurances and started to create nuisances, intimidated the plaintiff with lizards and snakes, broke crockery, monitor, laptops and destroyed grocery. The plaintiff has further submitted that on 10.3.2021 the defendant conveyed to her that his bisexual polyamorous cohabitant of 13 years Erol had been threatening and pressurizing him to take a divorce from the plaintiff and that the defendant further threatened the plaintiff to leave him so that the defendant could continue to stay with his partner Erol or else to face dire consequences.

13. The plaintiff has submitted that due to the sudden change in the behaviour of the defendant because of his polyamorous cohabitant of 13 years Erol as also Erol's protest against the stay of plaintiff, as a consequence thereof she suffered a state of shock having been deceived in the name of love and marriage by the defendant.
14. Plaintiff has submitted that on 12.3.2021 pursuant to an unscrupulous conspiracy she was arrested on a false complaint filed by the defendant stating that she had threatened the defendant that she would tell his employer that he had abused her and thereafter whilst she was in the police custody, the defendant shifted few of her belongings to a London hotel and when the plaintiff was released from the police custody as the defendant's complaint was ascertained to be manifestly false and was closed with a no further action report for lack of evidence by the Officer In Charge, the plaintiff was informed that she had become homeless as she had been thrown out of the defendant's house and a few of her belongings were put at a London Hotel where she was thrown to live.
15. The plaintiff has further submitted that the High Commission of India



came to her rescue and the plaintiff was asked by the High Commission to share a detailed statement with them as it was decided by the High Commission that they would officially take the matter of the plaintiff's arrest with the UK Government, Foreign Commonwealth and Development Office (FCDO).

16. The plaintiff has further contended that on 19.3.2021, the UK Government agency came to her rescue as their assistance was requested and the Officer In charge, London Police, who interviewed the plaintiff on 12.3.2021 concluded that the plaintiff herself was infact a vulnerable victim of domestic violence suffering in silence in a foreign land at the hands of the defendant. The plaintiff has further submitted that on her arrest in a false complaint on 12.3.2021, the defendant had filed an application seeking adjournment in the maintenance case CrI.M.A.No. 752/2020 before the Court of the Magistrate on 20.3.2021 stating that the plaintiff was living in London for more than a month under his dependence.
17. It is further submitted by the plaintiff that since 22.3.2021, a non-profit organization identified by the UK Government agency namely 'Refuge' which provides support to high risk victims of domestic violence or other gender based violence in the UK has been providing support to the plaintiff and since then Ms.Helen Brooks, an Independent Gender Based Violence Advocate (IGVA, from Refuge), had been supporting the plaintiff and has registered the plaintiff with a GP for her mental health treatment as she continues to suffer from trauma, depression, anxiety, panic attacks, shame suicidal intents due to the abuse suffered at the hands of defendant who ultimately dumped her out of the defendant-



Erol's house in a well-planned manner to stay committed towards his bisexual polyamorous cohabitant of 13 years, Erol who disapproved of the plaintiff's stay in the house.

18. Inter alia, the plaintiff submitted that on 2.5.2021, the defendant through his counsel served a notice to the effect:

“ Notice of First Appointment before FAMILY COURT AT EAST LONDON, U.K. Case No. ZZ21D25295 in the matter of MUKUL GOYAL Vs. Naina Surat Rawat

From NAVEEN SHARMA ADVOCATE

<naveensharma.advocate@gmail.com>

To <p14nainar@iima.ac.in>, <vijay@vidhisastras.com>

Date 2021-05-02 22:40

NOTICE-Family Court at East London.pdf(~541 KB)

SUB: In RE Notice of First Appointment before FAMILY COURT AT EAST LONDON, U.K. Case No. ZZ21D25295 in the matter of MUKUL GOYAL Vs. Naina Surat Rawat

You are intimated to TAKE NOTICE of the First Appointment before FAMILY COURT AT EAST LONDON to be heard remotely by (Video Conferencing/Virtual Mode) the District Judge in Chambers at Family Court at East London on 20th August, 2021 (20.08.2021) at 12.00 p.m. WHEREFOR the Respondent Naina Surat Rawat is required to :-

1) File a standard form of Financial Statement with the Court which gives full details of property and income by 16th of July, 2021 (16.07.2021);

2) File with the Court and legal representative of the applicant the following by 6th of August, 2021 (06.08.2021):-

(a) A concise statement of apparent issues between yourself and the other party;

(b) A chronology;



(c) A questionnaire setting out the further information and documents you require from the other party or a statement that no information or documents are required;

(d) A Notice in Form G;

The PDF file copy of the Notice as issued under the seal of the Family Court is enclosed for perusal.

Kindly acknowledge receipt.

A copy this email is also directed to the local counsel of the respondent above named as addressee for due communication thereof to the respondent as her legal counsel/agent. Also a copy of the text of this mail as well as the PDF file of Notice is also sent via whatsapp to the said legal counsel on his Whatsapp Cellphone no. +91 8130441280”

and on 11.5.2021 a reply was sent by the plaintiff’s counsel on whatsapp and Email.

19. The plaintiff has thus submitted that she is entitled to the decree of anti-suit injunction against the defendant so as to restrain him to institute further proceedings in any foreign Court.
20. Through the application IA No. 6603/2021 under Order XXXIX Rule 1 & 2 of the CPC the plaintiff has submitted that the plaintiff having been married to the defendant in India as per Hindu Rites is governed by the statutory laws of India, i.e., the Hindu Marriage Act, 1955, and both the plaintiff and the defendant are amenable to the personal jurisdiction of the Courts in India and that if the defendant succeeds in getting the divorce decree and financial costs orders in his favour from any foreign Court, the ends of justice will be defeated and that injustice would be perpetuated against her despite the factum that the defendant would settle with his bisexual polyamorous cohabitants of 13 years Erol. The



plaintiff has further submitted that it would even be convenient and less expensive in terms of costs for the defendant to contest the litigation in India where there are already proceedings against him.

21. The plaintiff has thus sought the grant of an *ex-parte* anti suit injunction against the divorce petition along with financial cost application filed by the defendant in London in the interest of justice.

22. On behalf of the plaintiff, reliance was placed on a catena of verdicts as under:

(1) Y. NARASIMHA RAO AND ORS. VS. Y. VENKATA LAKSHMI AND ORS.; MANU/SC/0603/1991 with reliance on observations to the effect;

“ 13. From the aforesaid discussion the following rule can be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

.....
.....

14. Since with regard to the jurisdiction of the forum as well as the ground on which it is passed the foreign decree in the present case is not in accordance with the Act under which the parties were married, and the respondent had not submitted to the jurisdiction of the court or consented to its passing, it cannot be recognised by the courts in this country and is, therefore, unenforceable.”



(2) ARUNIMA NAVEEN TAKIAR VS NAVEEN TAKIAR ON 29 JANUARY 2019 ; BOMBAY HIGH COURT NOTICE OF MOTION NO.28 OF 2015 IN SUIT NO.880 OF 2014, on the observations therein to the effect;

“ 38. In my view, the provisions of section 1(2) of the Hindu Marriage Act, 1955 has to be read with section 19 of the Hindu Marriage Act, 1955 which clearly provides for jurisdiction of the Court where the petition under the said Act shall be presented. Section nms28-15.doc 19(i) clearly provides that such proceedings have to be presented before the District Court within whose limits the marriage was solemnized. Admittedly in this case, the marriage was solemnized in Mumbai and thus merely because the defendant is having domiciled of U.K. whether by birth or by choice or otherwise would be no significance and would not divest the jurisdiction of the Court provided under section 19 of the Hindu Marriage Act, 1955 for the purpose of filing the proceedings under the provisions of the Hindu Marriage Act, 1955.

.....

.....

49. This Court also considered that the reliefs have been sought by the defendant in the Family Court, UK against the plaintiff not under the provisions of the Hindu Marriage Act, either on the question of jurisdiction or on the question of grounds for dissolution but under the English Personal law, one that does not govern the marriage of the plaintiff and the defendant. Considering these facts, this Court after recording the detailed reasons, had granted ad- interim injunction in terms of prayer clause.....”

(3) HARMEETA SINGH VS.RAJAT TANEJA; MANU/DE/0010/2003, on the observations therein to the effect;

11. the Apex Court declined to give its imprimatur to a foreign decree which did not take into consideration the provisions of the Hindu Marriage Act under which the parties were married.....

12. On the contrary, however, Courts in India would undoubtedly have jurisdiction over the disputes between the present spouses since the marriage was performed in New Delhi. Having financial as well as family support in this country it would be comparatively easy for the Defendant



(Husband) to initiate divorce proceedings in this country. The plaintiff (Wife) would not be in a position to challenge the jurisdiction of Matrimonial Courts in New Delhi. The forum of convenience, which is a concept well recognized and implemented in the United States of America, would thus be New Delhi. The plaintiff (Wife) has not submitted to the jurisdiction of the Courts in the United States of America. In the context of their residing together as husband and wife, the plaintiff's stay in the United States of America could well be viewed as transient, temporary and casual.

.....
13. *It is in the above circumstances, till the next date of hearing, I restrain the Defendant (Husband) from continuing with the proceedings in the United States of America arising out of File No. 2-3-06139-1SEA pending in the Superior Court of Washington County of King, Judge / Commissioner Richard D. Eadi / Richard A. Jones. I further direct the Defendant to place a copy of this Judgment before the Judge of the Superior Court of Washington County of King for his worthy perusal."*

(4)PRITAM ASHOK SADAPHULE VS. HIMA CHUGH;
MANU/DE/0946/2013, on the observations therein to the effect;

“ 11.....

“ 13. From the aforesaid discussion the following rule can be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the ground on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.”



.....

12. *It is admitted position that both the parties are Indians and marriage between them was solemnised at New Delhi according to Hindu rites and ceremonies and both are governed by Hindu Marriage Act, 1955. Their marriage has been dissolved by Ilford County Court in UK on the ground of having been broken down irretrievably which is not a ground for divorce under the Hindu Marriage Act. The Supreme Court in Y. Narasimha Rao and Ors vs. Y. Venkata Lakshmi and Anr. (supra) has already held that foreign decree of divorce granted on a ground which is not recognized in India.*

13.

14. *that decree of dissolution of marriage granted by the Ilford County Court, Essex, UK cannot be recognised as the facts of the case fall within the purview of the exceptions of Section 13 of CPC.*”

(5) NEERAJA SARAPH VS. JAYANT V. SARAPH AND ORS.;
MANU/SC/0862/1994, on the observations therein to the effect;

“ 5. *But feasibility of a legislation safeguarding interest of women may be examined by incorporating such provisions as-*

(1) no marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;
(2) provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad. (3) the decree granted by Indian courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements like Section 44A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.””

(6) PADMINI HINDUPUR VS. ABHIJIT S BELLUR ON 24.02.2015:
DELHI HIGH COURT CS(OS) 2916/2014, on the observations therein to the effect;

“ 28. *The plaintiff has not submitted herself to the jurisdiction of the Court at Maryland; she is a resident of Delhi; parties had moved*



together to their matrimonial home in Arlington, Virginia. They never stayed in Maryland; this is also not the argument of the learned senior counsel for the defendant. It would be a forum of inconvenience for the plaintiff to submit herself to the Court at Maryland.

29.

30.

31. The plaintiff is entitled to the relief as prayed for. Proceedings before the Maryland Court at USA fixed for 27.02.2015 will be deferred till further orders.”

(7) MODI ENTERTAINMENT NETWORK AND ORS. VS.W.S.G. CRICKET PTE. LTD.; MANU/SC/0039/2003, on the observations therein to the effect;

28. From the above discussion the following principles emerge: (1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:-

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity -- respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained -- must be borne in mind;

(8) NIDHI PRAKASH VS. RAJNEESH VARMA ON 02.12.2013; DELHI HIGH COURT CS(OS) 2386/2013, on the observations therein to the effect;

“ The parties were married in India as per the Hindu Marriage Act, 1955. The Plaintiff in the absence of a valid visa is not in a position to travel to USA. Further the Court at Texas is a forum non-convenience to the Plaintiff. In view thereof, I am of the considered opinion that the Plaintiff has made out a prima facie case in her favour for grant of ad-interim ex-parte anti suit injunction. The balance of convenience also lies in favour of the Plaintiff and in case no injunction is granted, she will suffer irreparable loss. Consequently the Defendant, his attorney, representatives etc. are restrained from further proceeding with the petition filed before the Court of Harris



County, Texas in Court File No. 201363296 till the next date of hearing.”

(9) VIKAS AGGARWAL VS. ANUBHA; MANU/SC/0316/2002

“ 3.The learned Single Judge of Delhi High Court passed an interim order on 5.11.1999 in the following terms:-

"For the present in the interest of justice, and since no permanent prejudice is likely to be caused to the Defendants if the hearing in divorce case pending in the Superior Court, State of Connecticut, U.S.A. is deferred for a short period, I restrain the Defendant from proceeding further in the Superior Court, State at Connecticut, U.S.A. for a period of thirty days from today."

23.It has been submitted on behalf of the plaintiff that in as much as the marriage of the plaintiff with the defendant had taken place in India and that the matrimonial home of the plaintiff and the defendant was in India, and that the plaintiff was in U.K. presently not due to her own will but because of the emotional black mail committed by the defendant on her calling her to come to London and further attempts of mediation having been effected between either side whereafter the plaintiff had also been continuously harassed during the period that she had stayed with the defendant and as a consequence of which she was now under the protective coverage of High Commission of India and was also being imparted treatment her stay at London is not because of her own choice. It has thus been submitted on behalf of the plaintiff that the verdicts relied upon on behalf of the plaintiff clearly state that the decree of divorce, if any, granted by a foreign Court in relation to a marriage performed in India according to Hindu rites and customs where the



matrimonial home of the parties was in India, would be a nullity in the eyes of law. It was also submitted on behalf of the plaintiff specifically placing reliance on the verdict of this Court in *Padmini Hindupur v. Abhijit S. Bellur*; CS(OS) 2916/2014, an adjudications in relation to an IA bearing No. 18648/2014 (u/O XXXIX Rule 1&2 of the CPC) , where the plaintiff wife in that case had sought an anti-suit injunction against the defendant her husband who had set a divorce proceedings at Arlington, Virginia with specific reliance placed on behalf of the plaintiff on the observations laid down in paragraphs 25, 26, 27, 28,29, 30,31 which read to the effect;

“ 25. The principles and guidelines laid down by the courts for grant of an anti-suit injunction were considered by the Supreme Court in Modi Entertainment Networks (supra) Para 28 had delineated the following principles which emerged as under:-

“28. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of the following aspects:-

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity -- respect for the court in which the commencement or continuance of action/proceeding is sought to be restrained -- must be borne in mind;

(2) in a case where more forums than one are available, the Court in exercise of its discretion to grant anti-suit injunction will examine as to which is the appropriate forum (Forum conveniens) having regard to the convenience of the parties and may grant anti-suit injunction in regard to proceedings which are oppressive or vexations or in a forum non-



conveniens;

(3) Where jurisdiction of a court is invoked on the basis of jurisdiction clause in a contract, the recitals therein in regard to exclusive or nonexclusive jurisdiction of the court of choice of the parties are not determinative but are relevant factors and when a question arises as to the nature of jurisdiction agreed to between the parties the court has to decide the same on a true interpretation of the contract on the facts and in the circumstances of each case;

(4) a court of natural jurisdiction will not normally grant anti-suit injunction against a defendant before it where parties have agreed to submit to the exclusive jurisdiction of a court including a foreign court, a forum of their choice in regard to the commencement or continuance of proceedings in the court of choice, save in an exceptional case for good and sufficient reasons, with a view to prevent injustice in circumstances such as which permit a contracting party to be relieved of the burden of the contract; or since the date of the contract the circumstances or subsequent events have made it impossible for the party seeking injunction to prosecute the case in the court of choice because the essence of the jurisdiction of the court does not exist or because of a vis major or force majeure and the like;

(5) where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just an alternative forum;

(6) a party to the contract containing jurisdiction clause cannot normally be prevented from approaching the court of choice of the parties as it would amount to aiding breach of the contract; yet when one of the parties to the jurisdiction clause approaches the court of choice in which exclusive or



nonexclusive jurisdiction is created, the proceedings in that court cannot per se be treated as vexatious or oppressive nor can the court be said to be forum non-conveniens; and (7) the burden of establishing that the forum of the choice is a forum nonconveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.

26. This case was dealing with a commercial arbitration where there was a written contract between the parties. However, the principles and discretion to be exercised by the Court while considering a prayer for grant of an anti-suit injunction remain the same. One aspect is that if the injunction is declined, the ends of justice would be defeated and injustice would be perpetuated; another aspect is the aspect of forum conveniens; in case there is more than one forum available, the Court in the exercise of its discretion while granting an anti-suit injunction will examine as to which is the most appropriate forum (forum conveniens) having regard to the convenience of the parties; it may grant anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a forum non-conveniens.

27. The Apex Court in Modi Entertainment Networks had reiterated that the Courts in India like Court in England are courts of law and equity. The principles governing the grant of anti-suit injunction being essentially an equitable relief; the Courts in India have the powers to issue anti-suit injunction to a party over whom it has personal jurisdiction in an appropriate case; this is because the Courts of equity exercise jurisdiction in personam; this power has to be exercised sparingly where such an injunction is sought and if not granted, it would amount to the defeat of ends of justice and injustice would be perpetuated. This coupled with the fact that the Delhi Court would be the Court of forum conveniens as admittedly the plaintiff has never not even for single day resided in Maryland, USA and the fact that even her two short periods of stay in USA and she in the last period i.e. between 11.06.2013 to 03.08.2013 was met with non-cooperation from the husband who had not even met her in that period having disregarded all her communications; he having surrendered the lease of their house on 3.6.2014 and having moved on to a job without any information to the plaintiff and thereafter



having set up a plea that he is a resident of Maryland only for the purpose of obtaining a relief appears to be a litigation which is both prejudicial and vexatious to the interest of the plaintiff.

28. The plaintiff has not submitted herself to the jurisdiction of the Court at Maryland; she is a resident of Delhi; parties had moved together to their matrimonial home in Arlington, Virginia. They never stayed in Maryland; this is also not the argument of the learned senior counsel for the defendant. It would be a forum of inconvenience for the plaintiff to submit herself to the Court at Maryland. She having lodged her protest by her communication dated 11.08.2013 which clearly finds mention in para 18 of the plaint, there is also no suppression or concealment of facts as has been argued by the learned senior counsel for the defendant. The plaintiff is entitled to the equitable relief as prayed for and if the proceedings are permitted to be continued in Maryland, it would be a proceeding without hearing the plaintiff and would undoubtedly prejudice her interest.

29. Nothing also prohibits the defendant from coming to India. At the outset, all efforts were made for reconciliation and the parties were asked to explore the possibility of settlement. Learned senior counsel for the defendant had taken time to take instructions from his client as to whether his client would be willing to come to India to mediate. The answer was in the negative. Even if the defendant is under an H-1 Visa, it does not necessarily means that he is prevented from travelling to India. This has been categorically put to the learned senior counsel for the defendant to which there was no evident answer.

30. List on 21.5.2015.

31. The plaintiff is entitled to the relief as prayed for. Proceedings before the Maryland Court at USA fixed for 27.02.2015 will be deferred till further orders.”

24. On behalf of the defendant, though the written statement and reply have not been filed, the learned senior counsel for the defendant sought to distinguish the judgments relied upon on behalf of the plaintiff submitting inter alia to the effect that the final relief sought for in the



writ petition cannot be granted as an interim measure and that the grant of an anti-suit injunction is not a matter of routine where the Courts have concurrent jurisdiction in as much as the cases of injunction are basically governed by the doctrine of equity, the Courts should be very cautious and careful in granting an order for an anti-suit injunction which should be granted with circumspection and not as a matter of routine as such orders involve a Court infringing jurisdiction of another Court which is not entertained very easily especially when it restrains the litigants from instituting or continuing a case in a foreign Court and that even in terms of Section 41 of the Specific Relief Act, 1963 an injunction ought not to be granted to restrain any person from prosecuting a judicial proceeding pending at the institution of a suit for which the injunction is sought unless such restraint is necessary to prevent a multiplicity of proceedings and that a foreign Court cannot be presumed to be exercising its jurisdiction wrongly, and that in the circumstances of the instant case, the proceedings at the Family Court at London cannot be said to be oppressive or vexatious.

25. On behalf of the defendant it has further been submitted placing reliance on the principles of anti-suit injunction defined in ***Modi Entertainment Network And Ors. VS. W.S.G. Cricket PTE. LTD*** ; MANU/SC/0039/2003, which principles were referred to in ***Padmini Hindupur V. Abhijit S. Bellur***; CS(OS) 2916/2014, submitting to the effect whilst placing reliance on paragraph 28 thereof to the effect:

(5) Where parties have agreed, under a non-exclusive jurisdiction clause, to approach a neutral foreign forum and be governed by the law applicable to it for the resolution of their disputes arising under the contract, ordinarily no anti-suit injunction will be granted in



regard to proceedings in such a forum conveniens and favoured forum as it shall be presumed that the parties have thought over their convenience and all other relevant factors before submitting to non-exclusive jurisdiction of the court of their choice which cannot be treated just an alternative forum.”

submitting thus to the effect that in exercise of its discretion to grant anti-suit injunction the appropriate Forum (Forum Conveniens) having regard to the convenience of the parties has to be considered and that though the Court may grant an anti-suit injunction in regard to proceedings which are oppressive or vexatious or in a Forum non-conveniens, the burden of establishing that the forum of a choice is a Forum non-conveniens or the proceedings therein are oppressive or vexatious would be on the parties so contending to aver and it would be for such party to prove the same.

26. It has been submitted on behalf of the defendant that in the instant case, however, the applicant is presently residing in the United Kingdom of her own choice and has restricted the defendant's entry into India by filing several complaints and also getting a Look Out Circular issued since 14.2.2020 and that the actions of the plaintiff are clearly oppressive to him are prejudicial and caused hardships to the defendant who now has to seek Psychiatric help in order to continue living.
27. On behalf of the defendant, it has further been submitted that because of the pandemic restrictions, monetary constraints, pending LOC arrest and pending criminal proceedings he is unable to travel to India and if he was compelled to do so, he would become jobless.
28. On behalf of the defendant it has been further submitted that the



defendant had even provided hotel accommodation to the plaintiff at London and that the plaintiff has also got the **ILR VISA**, i.e., a **Destitute Domestic Violence VISA** and because of the same as per the rules of the Government of U.K. the ILR status **Indefinite Leave to Remain** is automatic and the plaintiff has already stayed beyond the validity period qua which the counsel for the plaintiff submits that the plaintiff had so continued to stay because of the medical treatment being imparted to her in relation to which aspect it has been submitted on behalf of the defendant that the continuous stay on the Indefinite Leave status as a destitute, was a deliberate act of the plaintiff in order to obtain permanent residency in U.K..

29. On behalf of the plaintiff, it was urged by the learned counsel for the plaintiff that the *bona fides* of the plaintiff would be brought forth through the factum that she had a return ticket to return to India and that she had left Mumbai for Heathrow, London on 14.2.2021 and her return ticket was scheduled for 25.2.2021 from Heathrow to reach Mumbai on 26.2.2021 which indicated her *bona fides* that she had no intent to continue to reside in London qua which it was submitted on behalf of the defendant that however, the plaintiff continued to so reside at London, in relation to which it was submitted on behalf of the plaintiff that she so continued to reside because she was arrested qua which it was submitted on behalf of the defendant that the plaintiff was arrested only on 12th March, 2021 in relation to which it was submitted by counsel for plaintiff that the plaintiff continued to reside in London despite her return ticket for the date 25.2.2021 in view of the attempts of the settlement being conducted by the counsel of either side.



30. Apparently, thus in the facts and circumstances of the instant case, the presence of the applicant at London from 26.2.2021 at least till her date of arrest on 12th March, 2021 has essentially to be termed to be willful of her own accord. The factum that the plaintiff is presently being provided the medical assistance at London and is also being provided the accommodation and stay by ‘Refuge’ at London under the aegis of the Indian High Commission, apparently makes it apparent that in the facts and circumstances of the instant case it cannot be contended by the plaintiff that it would be inconvenient for her to attend the proceedings in the London Court.

In the circumstances the application IA No.6603/2021 under Order XXXIX Rule 1&2 of the CPC is declined.

Nothing stated herein shall however tantamount to an expression on the merits or demerits of the case.

The matter be placed before the Hon’ble Roster Bench on 22.7.2021.

ANU MALHOTRA, J

JULY 15, 2021/SV