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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 8th July, 2022.***

+ **CS(OS) 13/2022**

DAMINI MANCHANDA

..... Plaintiff

Through: Ms. Preeti Singh with Mr. Sunklan
Porwal, Ms. Saumya Dwivedi and
Ms. Kumkum Mandhanya,
Advocates.

versus

AVINASH BHAMBHANI

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

I.A. 566/2022 (O-XXXIX R-1 & 2 of CPC)

1. The present application was filed on behalf of the plaintiff seeking interim order restraining the defendant from proceeding with the divorce petition filed by him before the Superior Court of Justice, Ontario, Toronto, Canada (Canadian Court).

2. It is the case of the plaintiff that the plaintiff has filed a divorce petition against the defendant before the Family Court, Saket, New Delhi on 16th December, 2020, which has been pending for over a year and the defendant has avoided service in the said matter. In order to harass the plaintiff, the defendant filed a divorce case in Canada on 13th December,

2021.

3. The aforesaid application came up before the Predecessor Bench on 12th January, 2022, when summons in the suit and notice in the present application were issued to the defendant. However, no ex parte interim injunction was granted at that stage.

4. The relevant observations by the Court on 12th January, 2022 are set out below:

“8. Ms. Preeti Singh, learned counsel for the plaintiff, has submitted that urgent interim directions are required to be issued in this case. It is submitted that the parties stand in the relationship of husband and wife. Due to matrimonial disputes, the plaintiff had instituted proceedings for divorce by filing a case on 16th December, 2020 against the defendant, which is pending before the Family Court, Saket, New Delhi. Though summons were issued in that suit on 25th February, 2021, apparently, the defendant had not yet appeared before the learned Family Court either himself or through a pleader. It is further submitted that the defendant was, at that time, residing in India and also responded to a legal notice issued by the plaintiff, on 10th February, 2021 through a lawyer whose office is also in New Delhi. In that reply, the address of the defendant was affirmed to be E-28, Neb Valley, Sainik Farms, New Delhi-110068. It is submitted that, however, in September, 2021, the defendant shifted with his children to Toronto, Canada. Thereafter, on 13th December, 2021, he is stated to have filed a divorce case against the plaintiff in a court there.

9. Learned counsel for the plaintiff submits that permitting the continuation of the suit filed by the defendant before the Superior Court of Justice, Ontario, Toronto, Canada, would only lead to multiplicity of the proceedings as well as ambiguity. The learned counsel submitted that prejudice was being caused to the plaintiff inasmuch as she had opted for the jurisdiction of the Indian court first and it was only a year later that defendant had instituted the divorce proceedings in Canada. The learned counsel stressed that the larger issue was ambiguity inasmuch as the two courts could render

conflicting decisions. Reliance has been placed on the judgment of this court in **Harmeeta Singh v. Rajat Taneja**, 2003 SCC OnLine Del 60 to submit that this Court had the jurisdiction to stay the proceedings before the court in Canada.

10. Having heard learned counsel in detail and considered the material placed on the record, this Court is of the view that no prima facie case has been disclosed for this Court to exercise its discretion in her favour to restrain the defendant from continuing with the divorce proceedings pending before the Superior Court of Justice, Ontario, Toronto, Canada.

*11. It is to be noticed that though it was submitted by the learned counsel for the plaintiff that the parties are Indians and were married as per Hindu rites, at the time the plaintiff chose to file the divorce petition, she was residing in Canada i.e., 1166, Mcbride Avenue, Mississauga Onatrol, L5C 1M8, Canada. Interestingly, in the 'Memo of Parties', while the plaintiff is described as 'D/o Om Prakash Manchanda, R/o. E-28, Neb Valley, Neb Sarai, Sainik Farm, New Delhi-110068', it is also stated as "presently residing at 1166, Mcbride Avenue, Mississauga Onatrol, L5C 1M8, Canada". Despite the averments in the plaint that the defendant has left for Canada and was presently residing there, the plaintiff has given the Delhi address i.e., E-28, Neb Valley, Sainik Farms, New Delhi-110068, again adding, presently at 2913-233 WEBB DR, Mississauga on L5B 0E8, Canada. In other words, presently both parties are residing in Canada and none of them is in India. Unlike in the case of **Harmeeta Singh (supra)**, where the appellant Harmeeta Singh was found to have no possibility of attending the hearing in the USA on account of Visa problems, no such situation prevails here. The plaintiff is well situated to take care of her interests.*

12. No ground is made out for grant of interim injunction at this stage."

5. The aforesaid order was taken up in an appeal by the plaintiff.
6. The Division Bench vide order dated 18th January, 2022 was pleased

to dismiss the appeal filed on behalf of the plaintiff against order dated 12th January, 2022. The extract of the observations made by the Division Bench are set out hereinafter:

“3. It appears that the parties are having a matrimonial dispute. The appellant-wife first instituted the divorce proceeding before the Family Court, Saket, New Delhi. That proceeding was instituted on 16.12.2020.

4. The case of the appellant is that the respondent failed to appear before the Family Court and proceeded to Canada with the children, and, thereafter instituted the divorce proceedings in the Canadian court as aforesaid. In the aforesaid background, the appellant/plaintiff sought anti suit injunction against the respondent/defendant from proceeding with the divorce proceedings in Canada.

5. The learned Single Judge has noticed that both the parties are residing in Canada. Even in the divorce petition filed by the appellant/plaintiff, she has disclosed that at the time of filing of the same, she was residing in Canada. In response to our query, learned counsel for the appellant states that the parties were in Canada since the year 2018. It appears that they came to India for some time. Thereafter, both have returned to Canada.

6. In the aforesaid background, the learned Single Judge has not considered it appropriate to pass an ex parte, ad interim order of injunction to restrain the respondent/defendant from proceeding with his divorce petition.

7. The submission of learned counsel for the appellant is that the respondent/defendant may, in the meantime, obtain a decree for divorce from the Canadian court.

8. We have heard learned counsel for the appellant and perused the impugned order, as well as the documents placed on record, and we

are not inclined to interfere with the impugned order, since the same is an ex parte, ad interim order. The application seeking injunction against the respondent/defendant i.e., LA. No. 566/2022 is still pending consideration, and has not yet been disposed of.

9. *The submission that the Canadian Court may proceed to decide the divorce petition filed before it does not impress us, for the reason, that both the parties have filed their respective petitions for divorce. It is not that the appellant is opposing grant of divorce, and wishes to preserve the matrimonial relationship.*

10. *The submission that the appellant-wife may lose out in the matter of grant of maintenance and permanent alimony, also does not impress us, since those are aspects, which are to be considered by the competent courts- whether in Canada or in India.”*

7. Subsequently, an application for early hearing, being I.A. No.9507/2022, was filed on behalf of the plaintiff. Annexed thereto, was a ‘Case Conference Brief’ (Brief) filed on behalf of the defendant before the Canadian Court. Paragraph 8 of the said Brief is set out below:

*“8. On January 12, 2022, Justice Asha Menon made a decision in the High Court of Delhi. This decision is attached at **Tab A**. At para 10, her honour states: " ... this Court is of the view that no prima facie case has been disclosed for this Court to exercise its discretion in her favour to restrain the defendant from continuing with the divorce proceedings pending before the Superior Court of Justice, Ontario, Toronto, Canada." Justice Menon did not find grounds to grant an injunction against the Applicant continuing litigation in Ontario. The Indian court did not assume jurisdiction of this matter, and Her Honour further comments that both parties reside in Canada and are well situated to take care of their interests there.”*

8. A perusal of the aforesaid paragraph clearly suggests that the defendant is well aware of the present proceedings and despite that, he has deliberately chosen not to appear before this Court.

9. Along with the said aforesaid Brief, opinion of the Indian advocate of

the defendant has been attached, wherein it has been stated that the application filed on behalf of the plaintiff seeking to restrain the defendant from proceeding further in the divorce case in Canada was dismissed. The relevant part of the opinion is extracted below:

“A perusal of both the orders reveal that the Ld. Single Judge as well as the Ld. Division Bench of the Hon'ble Delhi High Court noticed the pendency of the divorce proceedings initiated by Mrs. Damini Manchanda and keeping in view of the fact that the Divorce Proceedings were pending, the Applications filed by Mrs. Damini Manchanda seeking to restrain Mr. Avinash Bhambhani from proceeding with his case in Canada was dismissed.”

10. This is clearly an erroneous statement issued by the advocate of the defendant. Records of the case show that though the Court did not grant *ex-parte* ad interim injunction on 12th January, 2022, the application was not dismissed by this Court and notice was issued to the defendant. In fact, this very application is now being considered by me. Even the Division Bench of this Court while dismissing the appeal filed on behalf of the plaintiff had made the following observations:

“11. Therefore, we dismiss this appeal. However, we make it clear that the observations made by us aforesaid, have been made only for the purpose of dealing with the present appeal, and the same shall not come in the way of the appellant in pursuing her suit and LA. No. 566/2022, and the learned Single Judge would not be influenced by our observations while deciding, either the interim application or the suit.”

11. In the abovesaid legal opinion, the above paragraph from the order of the Division Bench has been selectively quoted in a manner to justify the legal opinion. The underlined portions of the order have been significantly omitted in the legal opinion. This Court is shocked that a counsel practicing

in India has given such an opinion which is completely contrary to the record of the case and that too by misquoting and selectively quoting the observations made by the Division Bench of this Court.

12. Counsel for the plaintiff has relied upon the judgment of the Supreme Court in *Madhavendra L Bhatnagar V. Bhavna Lall*, (2021) 2 SCC 775 to submit that the Indian Courts can pass an anti-suit injunction order against the defendant pursuing matrimonial proceedings before a Foreign Court when matrimonial proceedings have also been filed before competent courts in India.

13. The relevant observations of the Supreme Court in the aforesaid judgment are set out below:

“6. In view of this observation, the appellant apprehends that some drastic order is likely to be passed by the Superior Court of Arizona at the instance of respondent–wife. Notably, the respondent is bent upon precipitating the matter before the court at Arizona, despite the appellant having resorted to proceedings for divorce as well as custody of the minor child in India before the Court at Bhopal in the State of Madhya Pradesh. Those proceedings are still pending, where the respondent has had entered appearance after the subject application was moved by the appellant.”

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10. Accordingly, we have no hesitation in setting aside the impugned decisions and to grant interim relief as prayed in the application filed before the Court at Bhopal as reproduced above, including to restrain the respondent from proceeding with the pending suit instituted by her in the Superior Court of Arizona or to file any other proceedings, including interim application(s) in any proceedings hereafter (except in the proceedings pending in Court at Bhopal) until further orders to be passed by the Court at Bhopal.

11. During the hearing, a disconcerting aspect has been brought to our notice by the counsel for the appellant. In the communication or

response given by the respondent in reference to the service of notice issued by this court in the present appeal, it has been asserted by the respondent that her Attorney in India had advised her that the appeal pending before this court will not succeed at all. We fail to understand as to how an advocate appearing in the matter or instructing the litigant who is party before the Supreme Court of India would be in a position to prejudge the outcome of the proceedings or if we may say so speculate about the outcome thereof. Prima facie, this, in our opinion, is bordering on professional misconduct and needs to be proceeded with.”

14. The above quoted observations of the Supreme Court would be fully applicable in the present case. In the present case also, the defendant, while avoiding service in the divorce proceedings filed in India and in the present suit, has precipitated the divorce case before the Canadian Courts. Further, in the present case also, the defendant has filed a legal opinion before the Canadian Courts, which is ex facie erroneous and contrary to the records of the present case.

15. It is also clear from the Brief filed on behalf of the plaintiff that the defendant is well aware of the present proceedings and despite that, has chosen not to appear before this Court. As per the record of the Registry, summons in the suit and notice in the application have also been issued to the defendant through email and WhatsApp. An affidavit of service has also been filed on behalf of the plaintiff stating that the summons as well as the notice in the application has been sent to the defendant by way of email.

16. In the present case, the divorce petition in India was filed on behalf of the plaintiff on 16th December, 2020 and notice was issued to the defendant on 25th February, 2021. At that point of time, the defendant was residing in India. It has been stated on behalf of the defendant in the Brief that the

defendant left India for Canada along with the children only in September, 2021 and immediately thereupon, filed a divorce petition in Canada.

17. The notice was served on the defendant at the same address that was given in the reply dated 10th February, 2021 sent on behalf of the defendant's advocate to a legal notice sent by the plaintiff's advocate. However, the defendant managed to avoid service in the divorce petition before the Saket Court, New Delhi. Defendant has not been appearing for the divorce petition filed on behalf of the plaintiff in India.

18. It is clear from the above, that the defendant has deliberately avoided service in the divorce petition in order to file divorce case before the Canadian Courts. Perhaps, the defendant believed that the matrimonial laws in Canada would be more advantageous to him as compared to the Indian law.

19. Admittedly, the plaintiff and the defendant were married as per Hindu rites and ceremonies in New Delhi on 21st December, 2002 and continued to reside in Delhi till April, 2018. Therefore, it cannot be denied that the Family Courts in Delhi would have the jurisdiction to entertain the divorce case.

20. The Court takes a serious view of the matter that the defendant has deliberately avoided service in the divorce proceedings in India, but continues to pursue the divorce case filed by him before the Canadian Court. Despite service in the present matter and being aware of the present proceedings, the defendant refuses to appear before this Court.

21. The supreme court in *Modi Entertainment Network and Another V. W.S.G. Cricket Pte. Ltd.*, (2003) 4 SCC 341, has laid down, inter alia, the following principles for grant of anti-suit injunction:

*“24. 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.”*

22. Applying the aforesaid principles to the facts of the present case, the defendant is amenable to jurisdiction of this court. Further, in my view, ends of justice will be defeated if the anti-suit injunction is not granted. The defendant has deliberately chosen not to appear in the present proceedings as well as the divorce proceedings filed on behalf of the plaintiff in India and at the same time pursuing the divorce proceedings before the Canadian Courts.

23. A *prima facie* case is made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendant. The multiplicity of divorce proceedings before the Courts in India and Canada could result in conflicting decisions.

24. Accordingly, an interim injunction is passed against the defendant restraining the defendant from proceeding with the divorce suit filed by him before the Superior Court of Justice, Ontario, Toronto, Canada.

25. Accordingly, the application stands disposed of.

I.A. 7958/2022 (u/S 151 of CPC)

26. In view of the orders passed above, no orders are required to be passed in the present application.

27. The aforesaid application stands disposed of.

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28. In view of the discussion above, the defendant is deemed to be served. Since he has failed to enter appearance, he is proceeded against ex-parte.

29. List before the Joint Registrar for further proceedings on 12th September, 2022.

JULY 8, 2022

at

AMIT BANSAL, J.

