

DELHI HIGH COURT  
Mrs. Anoop Beniwal  
v  
Dr. Jagbir Singh Beniwal  
Mahinder Narain  
25 Oct 1989  
CASE NO: No. 905 of 1989.

JUDGMENT TEXT

The plaintiff, Mrs. Anoop Beniwal, has filed this suit for declaration. By this suit, the plaintiff seeks a declaration that her marriage to the defendant, which was solemnized at Delhi on 8-11-1981 in accordance with the Hindu rites, subsists despite a decree of divorce granted by the High Court of Justice, Family Division (Divorce) District Registry, United Kingdom in cause No. 85 D 2539, Jagbir Singh Beniwal v. Anoop Beniwal, which decree, it is contended, is null, void and inoperative.

2. The facts giving rise to this suit, as asserted in the plaint by the plaintiff are that the parties to the suit are Hindus, citizens of India of Indian domicile, and are qualified doctors of medicine. It is stated by the plaintiff that the plaintiff knew the defendant in the Medical College, Rohtak, where both of them were working as colleagues. Subsequently, pursuant to negotiations between the parents of the parties, on 1-2-1981, engagement ceremony was performed. For that purpose, the defendant had come to India, and after the engagement ceremony, left for Iran.

3. The plaintiff asserts that the defendant visited India in October, 1981, and the marriage was performed between the two of them on 8-11-1981. After the marriage, on 4-12-1981 the defendant went alone to Iran. It is further asserted by the plaintiff that she joined the defendant in Iran in November, 1982, apparently, one year after the marriage of the parties. The plaintiff, it is stated, returned to India in February, 1983 and took employment with the Municipal Corporation of Delhi. During February, 1983 till the defendant visited in February, 1985, according to the plaint, the plaintiff and the defendant did not live with each other.

4. The plaintiff asserts that the defendant left Iran in June, 1983, and directly proceeded to the United Kingdom. That the defendant visited Delhi in February, 1985, and took the plaintiff to his parents' place at village Malikpur, District Rohtak, where the plaintiff and the defendant lived together till 4-3-1985.

5. The plaintiff asserts that she reached the United Kingdom in June, 1985 on a visitor's visa, and made contact with the defendant, while she took up residence with a family friend of hers.

6. The plaintiff says that the defendant took advantage of the fact of her presence in England, and filed a petition for divorce under the Matrimonial Causes Act, 1973 of U.K. in the Rotherham County Court U.K., seeking a decree of divorce on the ground of "irretrievable break down of marriage". The plaintiff says that in the petition, as originally filed in England by the respondent on 2-7-1985, the defendant had taken the plea that he was domiciled in England and Wales. The plea of the plaintiff in this suit is that the contentions raised in the said petition were false.

7. The plaintiff says that the divorce petition filed by the defendant in Rotherham County Court was

served upon her on 6-7-1985. The plaintiff says that she returned to India in August, 1985, as leave taken by her was expiring, and she had no money, and was not in good financial position to contest the divorce petition. She was advised to apply for legal aid.

8. The plaintiff states that she resigned her job with the Municipal Corporation. She reached U.K. on 18-10-1986, and made "sustained and serious efforts" to obtain legal aid from the Law Society of U. K. She says that she only got emergency legal aid on 29-12-1986, and her solicitor was able to succeed in engaging one Mr. Simpson, a junior barrister on 4-1-1987, whom the plaintiff could meet only on the morning of 5-1-1987. On 5-1-1987, the defendant herein was permitted by Mr. Justice Baker, who was hearing the matter to amend his petition for divorce by pleading "habitual residence" in England. The allowing of this amendment, the plaintiff contends, caused serious prejudice to her, that due to lack of time, her barrister was not able to obtain instructions to plead her cause. The plaintiff says that her plea for adjournment was turned down by Justice Baker.

9. The plaintiff says that her application for legal aid was rejected by the Law Society of U.K., and the appeal filed against rejection of the legal aid, was also dismissed on 25-3-1987.

10. The plaintiff says that the case was to come up before Mr. Justice Sheldon for trial on 10-4-1987, and she could reach U. K. only on 8-4-1987, and sought an adjournment of trial in person, but her request of adjournment, was turned down by Mr. Justice Sheldon, who according to the plaintiff, was of the view that her pleas regarding the "forum conveniens" had already been considered by Mr. Justice Baker, and after recording evidence passed an order, granting a decree nisi for divorce, holding that the plaintiff had behaved in such a way that the defendant cannot be reasonably expected to live with the plaintiff, and that the marriage had irretrievably broken down. It was also ordered that within six months, the decree nisi will be made absolute if no reasons were shown.

11. The plaintiff says that she was legally advised that she could file an appeal against the order granting decree nisi. She thereafter personally preferred an appeal in the Court of Appeals. Royal Courts of Justice, Strand, London, U.K. on 19-5-1987, both against the order of Mr. Justice Baker dated 5-1-1987 purportedly deciding on the issue of jurisdiction and "forum conveniens", and the order of Mr. Justice Sheldon dated 10-4-1987 granting "decree nisi" for divorce.

12. The plaintiff says that she was told by the court that there was a delay of ten days in filing the appeal, and was called upon to file an affidavit seeking condonation of delay, which she did on 11-6-1987. The application for condonation of delay was heard by the Registrar of the Court of Appeals, who on 15-7-1987 dismissed the same on the ground that order dated 5-1-1987 passed by Mr. Justice Baker was interlocutory order, and no appeal against the same lay, and in any event it is too late to appeal against that order since trial on merits had already taken place, and according to his view, the appeal against the order dated 10-4-1987, granting the decree, was a "hopeless appeal", and as such did not warrant exercise of discretion in the matter of condonation of delay in filing the appeal itself, inasmuch as Mr. Justice Sheldon had given clear finding of fact in favour of the husband, and there was no ground on which the Court of Appeal can interfere, or order a new trial.

13. The plaintiff says that she also filed an appeal against the order of the Registrar, refusing to condone the delay. That appeal was dismissed by Lord Justice Balcom who agreed with the Registrar. This appeal was rejected on 17-12-1987 with costs.

14. The appeal against the order dated 17-12-1987 was thereafter filed by the plaintiff before a Division Bench of the Court of Appeal, consisting of Lord Donaldson (Master of Rolls), Lord Justice of Gliden well, and Lord Justice Straughton. The appeal was got heard in the absence of the plaintiff, and the appeal was rejected ex parte as intimation regarding hearing of the appeal did not reach the plaintiff at her changed address, owing to some "slip on the part of the registry". The plaintiff says that on protest of the matter, the appeal was re-listed before the Master of Rolls and Lord Justice Woolf and Lord Justice Taylor, who also dismissed the appeal "without affording any effective hearing to the petitioner". The plaintiff says that the decree nisi of 10-4-1987 was made absolute despite the plaintiff writing to the High Court that she will be appealing to the Supreme Court of India and the European Court of Human Rights.

15. From the above stated averments, as found in the plaint, it is clear that the plaintiff was in England on 20-6-1985, the proceedings were commenced by the defendant-husband in the courts of England on 2-7-1985, and the plaintiff was served with summons on 6-7-1980. The averments in the plaint show that the entirety of the case which could have been put forward by the plaintiff to the court in England, had been put by her in various communications addressed by her, including the pleas of "forum conveniens", lack of jurisdiction, marriage having been taken place at Delhi, Hindu Marriage Act governing the dissolution of the marriage, that the Matrimonial Causes Act would not give jurisdiction to dissolve the marriage, and others.

16. It seems that the relationship between the plaintiff and the defendant had not been the usual marital family relationship. Taking the assertion of the plaintiff to be true, the husband who is a doctor like the plaintiff, left India soon after the marriage. He left for Iran. In Iran, he stayed without the plaintiff who was living in India. The marriage had taken place on 8-11-1981, and the defendant left for Iran on 4-12-1981. The plaintiff states that she joined the defendant almost in year later in Iran on 26-11-1982, and stayed with him till 4-2-1983. The husband stayed in Iran, according to the plaintiff, till February, 1984. He came to Delhi in February, 1985, and left Delhi on 4-3-1985.

17. During the hearing of this case, I had asked the counsel for the plaintiff specifically, as mentioned in my order dated 25-5-1989, to bring the passport of the plaintiff, Dr. Anoop Beniwal, so that it could be determined for what period she was in Iran with the defendant, and for what period she was in England. The passport was made available in Court on 20-9-1989.

18. On the basis of the passport, a tabular statement has also been given by the plaintiff's counsel on 20-9-1989. The statement is based upon passport No. S.612566, issued to the plaintiff on 1-7-1982, renewed on 16-7-1987, and which is to expire on 30-6-1992.

19. It is clear from what is in the plaint and the entries in the passport that the parties have not lived together as husband and wife since the husband left India on 4-3-1985.

20. According to this passport, Dr. Anoop Beniwal left India on 26-11-1982, and arrived in Iran on 26-11-1982; left Iran on 4-2-1983 and reached India on 4-2-1983. Her stay in Iran was for the period 26-11-1982 to 4-2-1983, 2 months 8 days. During this period the plaintiff stayed with defendant.

21. The said. passport also indicates that Dr. Anoop Beniwal left India on 20-6-1985, and reached England on 20-6-1985. She stayed with a friend and not with her husband in England till 27-8-1985, on which date she left England and reached India on 28-8-1985. Her stay in England was for the period 20-6-1985 till 27-8-1985, two months seven days.

22. Again, Dr. Anoop Beniwal left India on 18-10-1986 and reached England on 18-10-1986 itself. Thereafter she left England on 22-1-1987, and reached India on 23-1-1987. Her stay in England was, during the period 18-10-1986 to 22-1-1987 3 months 4 days.

23. Again, Dr. Anoop Beniwal left India on 8-4-1987 and reached England on 8-4-1987 itself. She left England on 3-11-1988 and arrived in India on 4-11-1988. Her stay in England was for the period 8-4-1987 to 3-11-1988, over six months.

24. Dr. Anoop Beniwal again left India on 23-1-1989 and reached England on 23-1-1989 itself. She has got her stay in England extended up to 31-1-1990, and is currently in England. She continues to stay in England since 23-1-1989.

25. As regards the money received by Dr. Anoop Beniwal, shown in a tabular form, it has been stated that she was issued the following amounts under the Foreign Travel Scheme, and she also returned some money received by her under the Foreign Travel Scheme :

F.T.S. Issues:

F.T.S. issued 8-11-1982 500% (2 months 8 days)

F.T.S. returned 5-04-1983 200%

-do- 8-04-1983 200%

F.T.S. issued 14-06-1985 500% (2 months 7 days)

-do- 13-10-1986 300% (3 months 4 days)

-do- 6-04-1987 500% (over six months)

26. In the petition filed by the husband in England, according to the copy given by the petitioner, this is what he said by way of "Particulars":-

*"1. I married Anup Beniwal on the 8th November, 1981. It was an arranged marriage.*

*2. It became apparent to be very soon after our marriage that we could not live together. We lived together for ten days and then parted.*

*3. Throughout our marriage my wife's attitude has been that she does not wish me to improve myself in any way. In January, 1983, I was working in Iran and my wife came to join me. I was in no position to send her away and we lived together for almost two months. During the whole of this time she made herself as disagreeable as possible. On one occasion*

*in Iran I invited a few friends to dinner after consulting her. Having agreed to prepare dinner for them, she took no steps to prepare any food and refused to cook for them, knowing this would cause me great embarrassment. I had to call my neighbours who did the cooking.*

*4. On another occasion in Iran one of my colleagues Doctor Behl wanted to bring his wife to see me and his wife wished to discuss some problem concerning her pregnancy with my wife. My wife agreed to see her but when they arrived she left the drawing room without talking to them and went to bed. She refused to let my friends stay for the night.*

*5. Whilst in Iran I was preparing for an examination to allow me to come to train in England. My wife repeatedly disturbed me by switching music on in the same room very loudly and made it clear that since she could not pass such an exam she did not wish me to do so either. She repeatedly took my books away from me and when I protested she shouted and screamed at me and created a scene which could be heard by the neighbours.*

*6. Ultimately I prepared for my exam in the house of a colleague Doctor Sangul. She still would not leave me alone and insisted on my going back to her house. My wife slept during the day when I was working and would not let me sleep at night. She switched music on very loudly and continued to create conditions in which I could not work. I lost a considerable amount of weight, my work in the Operating Theatre suffered.*

*7. I returned to India in February, 1985. My wife's brother came to see me and took me to her house. She threatened that her brother would involve me in a criminal case and I would not be able to leave the country until the case was decided. Her family is very rich and powerful and would have the influence to be able to bring such charges. I left India as quickly as I could.*

*8. When I reached England I received a telegram saying that jewels had been stolen from her house and I understood that application would be made for my extradition, which would ruin my career.*

*9. My wife unexpectedly came to England in June 1985 and came to the hospital, threatening that she would create such conditions there that I would not be able to continue working.*

*10. My wife has threatened to come to the hospital again on the 3rd July with the object of making a nuisance of herself, insisting that she comes back to live with me and I fear that my job may be in jeopardy if she does this."\**

27. The contention of the petitioner that what is stated in the "Particulars" would not amount to cruelty, may not find favour with the Indian courts. It appears to me that what is required to be pleaded under Section 13(1)(ia) of the Hindu Marriage Act relating to "cruelty" can be pleaded under the provisions of Section 1(ii)(b) of the Matrimonial Causes Act in England, which is to the effect

*"that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.*

28. *In England, by virtue of the provisions of Section 5(2) of the Domicile and Matrimonial Proceedings*

*Act, 1973, it has been enacted that the English Courts shall have the jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties in the marriage was habitually resident in England and Wales throughout the period of one year ending with that date.*

*29. As noted above, the husband had originally pleaded that he was domiciled in England, but had later on amended the plea, by saying that he was habitually resident of England, which plea was accepted by the court in England. The England Courts have, after considering all the matters which were placed before them, including the representations made from India by the plaintiff and affording personal hearing to the plaintiff, have granted a decree nisi to the husband. The decree nisi terminates the relationship of marriage between the plaintiff and the defendant. The defendant was present in England when the hearing took place on various dates. It would not be right to say that she had not been heard. She may not have been heard to her satisfaction, but that is another matter. All contentions that she had wanted to raise, were before the Court.*

*30. By this suit, the plaintiff wants to reopen the matters which had been concluded by the decree of Court in England.*

*31. Section 123 of the Code of Civil Procedure relates to foreign judgments and decrees when they are conclusive. The said section reads as under:-"*

*13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -*

*(a) where it has not been pronounced by a Court of competent jurisdiction;*

*(b) where it has not been given on the merits of the case;*

*(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;*

*(d) where the proceedings in which the judgment was obtained are opposed to natural justice;*

*(e) where it has been obtained by fraud;*

*(f) where it sustains a claim founded on a breach of any law in force in India.*

*"32. There is no assertion in this plaint that grounds mentioned in Section 13(1)(a) and 13(1)(b) of the Code of Civil Procedure are available to the plaintiff in the instant case.*

*33. The averments regarding the grounds mentioned in Section 13(1)(c) of the Code of Civil Procedure, are mentioned in para 42 of the plaint, which is reproduced as follows :-"*

*The plaintiff submits that, the decree of the foreign court in question is also violative of Sections 13, 19 and 24 of the Hindu Marriage Act, 1955. In view of this and as also the foregoing averments, the plaintiff submits that she is entitled for a declaration that the marriage between the plaintiff and defendant still subsists; that the plaintiff continues to be the lawfully wedded wife, of the defendant; and that the decree of divorce dated 10-10-1988 granted by the court of UK is null and void.*

*"34. For the purpose of grounds mentioned in Section 13(1)(d) of the Code of Civil Procedure, the averments are made in para 40 of the plaint, which read as follows:-"*

The plaintiff further submits that the defendant abused the process of law; had by wilfully misrepresenting facts had commenced divorce proceedings in the court of U.K. (which on facts of the present case did not have jurisdiction), that too on a ground which is not available to him under the Hindu Marriage Act 1955, and has obtained a "Divorce" based on no evidence; after denying the plaintiff a reasonable opportunity to be heard. The plaintiff considering her normal place of residence; her financial means the restrictions imposed by law in reaching/residing the place of litigation, the expenses involved in obtaining competent legal assistance and also effectively taking part in the litigation, restrictions on release foreign exchange by the Government of India, has been a victim of denial of natural justice. The plaintiff submits further that legal costs of litigation in U.K. is also phenomenally high and is beyond the reach of an average citizen, legal fees and even costs of obtaining copies of court proceedings costs thousands/several hundreds of pounds.

*"35. As regards the competency of the Court in England to pass a decree of divorce, as has been mentioned above, it has to be noted that the Court in England entertained the petition for divorce filed by the husband by virtue of Section 5(2) of the Domicile and Matrimonial Proceedings Act, 1973, which enables one of the parties to a marriage who was habitually resident in England Wales throughout the period of one year ending with the date of presentation of the petition. On account of the above said provisions, I am of the view that the Courts in England were competent to entertain the petition filed by the husband, which led to the passing of the decree of divorce in favour of the husband. I have also seen, and am in agreement with a judgment of the Family Division of the High Court of Justice, London in case No. 226 of 1983 - Kapur v. Kapur, decided by Bush, J. on 13-4-1984. In that case, Bush, J. referred to Shah v. Barnet London Borough Council, 1982; Conflict of Laws by Dicey and Morris, 10th Ed. Vol. 1, p.144; Inland Revenue Commissioners v. Lysaght, 1928 AC 234; and Levene's case, 1928 AC 217; and observed that "habitual residence" is "voluntary residence for a settled purpose". Bush, J. came to the conclusion that presence in England while studying in the "Lixcon's Inn" for the Barristers Examination was habitual residence in England, though the Home Office in England had admitted him to England on the terms that"*

he does not enter employment, paid or unpaid, and does not engage in any business or profession".

36. In the instant case, the respondent, a doctor, is pursuing" higher studies  
".

*37. From the papers filed by the plaintiff in this case, it is apparent that after the petition was filed, the matter was actually set down as a contested matter for trial. The husband gave evidence in support of his petition, which evidence was recorded by Mr. Justice Sheldon, and he preferred the evidence of the husband to the evidence tendered by the wife, the plaintiff herein, and he found,"\**

I am satisfied that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with her. There is no doubt that the marriage has broken down, and the husband is entitled to decree nisi

*" The case before Mr. Justice Sheldon was, therefore, tried, and the judgment given, a decree nisi passed, which was made decree absolute, and was given on the merits of the case.*

*38. Section 1 of the Matrimonial Causes Act, 1973, is so far as is relevant, reads as under:-"*

1.- (1) Subject to S.3 below, a petition for divorce may be presented to the Court by either party to a marriage on the ground that the marriage has broken down irretrievably.

(2) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts, that is to say-

(a) xx xx xx xx xx xx

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

xx xx xx xx xx xx xx xx".

39. It is to be noted that in the Matrimonial Causes Act, no ground is stated as "cruelty". The harsh and accusatory nature of the word "cruelty" seems to have been deliberately avoided by the Parliament in England, and instead it has enacted that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.

40. Under the provisions of S.13(1)(ia) of the Hindu Marriage Act, a party to a marriage is essential to a decree of divorce on the ground that the other party after solemnization of the marriage, has treated the petitioner with cruelty. This provision covers the same ground, as is covered by the provisions of S.1(1)(2)(b) of the Matrimonial Causes Act, 1973. The Matrimonial Causes Act having taken away the accusatory nature of the assertion, which is required to be made under the provisions of the Hindu Marriage Act. It is, therefore, not possible to say that the Court in England has refused to recognise the law of India.

41. It is also not possible for me to say that the proceedings in England having been entertained by a Court who was not competent to entertain the same according to the laws of England, or that it entertained the same on an incorrect view of the international law.

42. Factually the plaintiff herein and the respondent in the proceedings in England, did have the opportunity to defend the suit filed against her. She led evidence in those proceedings. She just happens to have failed to have a decision in her favour. An opportunity of hearing having been granted, it is not right to assert that the proceedings in England were opposed to natural justice. Nor is it proper to say that the judgment by a Court of England has not been given on the merits of the case. In my view, the assertions made in the "particulars" annexed to the petition, it has been shown to me, and reproduced hereabove, could be made under S.13(1)(ia) of the Hindu Marriage Act regarding treatment of the petitioner with cruelty. The claim in the proceedings in England cannot, therefore, be said to be founded on the breach of law in force in India.

43. There is no assertion that the judgment has been obtained by fraud.

44. As regards S.19 of the Act, that relates to jurisdiction, and it confers jurisdiction to courts with respect to marriages solemnized in India, to the place where the marriage was solemnized where the respondent at the time of representation of the petition, resides, or the parties to the marriage last resided together.



45. The petition in England was served on the plaintiff in England on 6-7-1985. The respondent was residing in England at that time, and, therefore, S.19 could not be said to be violated as the plaintiff was at that time in England according to her case, for the purpose of joining the husband. Instead, the petition was served upon her. The requirement under S.19 of the Hindu Marriage Act is not permanent residence, but residence, and residence in England with the intention to join the husband, was residence within the meaning of S.19 of the Hindu Marriage Act.

46. As far as S.24 of the Hindu Marriage Act is concerned, it relates to the maintenance pendente lite and expenses of proceedings. There is no assertion in the plaint that the petition for maintenance or expenses for litigation were asked for from the husband, and refused. What was available in England to the plaintiff was to ask for and seek legal aid. The legal aid was sought, and as asserted in the plaint before me, the legal aid was refused.

47. In the aforesaid circumstances, it is not possible to hold that there is breach of Ss. 13, 19 and 24 of the Hindu Marriage Act, as asserted in para 42 of the plaint. As there was no refusal to recognise the law in India, and the judgment does not sustain the claim founded on a breach of law in force in India, in my view, the conditions postulated under S.13 of the Code of Civil Procedure are not fulfilled, and the plaintiff does not have any cause of action to challenge the conclusiveness of the judgment of the Court in England, by which a decree of divorce has been granted by the High Court of Justice, Family Division (Divorce) District Registry, United Kingdom in cause No. 85D, captioned Jagbir Singh Beniwal v. Anoop Beniwal, in favour of the defendant, and in view of the fact that the said decree of divorce dated 10-10-1988 does not suffer on account of any of the exceptions which are made in S.13 of the Code of Civil Procedure. There is no cause of action available with the plaintiff to institute this suit.

48. Inasmuch as the plaint does not disclose any cause of action against the defendant, I have no alternative, but to reject the plaint. Ordered accordingly.

Suit dismissed.