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

*Judgment Reserved on: January 21, 2014*
% *Judgment Delivered on: March 12, 2014*

\+ **RFA(OS) 12/2014**

PONTY SINGH ..... Appellant
Represented by: Ms.Geeta Luthra, Sr.Advocate instructed by Mr.Sanjeev Sahay and Ms.Megha Katari, Advocates

versus

ANU SINGH BHATIA ..... Respondent
Represented by: Mr.A.S.Chandhiok, Sr.Advocate instructed by Mr.P.Banerjee, Ms.Princy and Ms.Harleen Singh, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**
**HON'BLE MR. JUSTICE JAYANT NATH**

**PRADEEP NANDRAJOG, J.**

1. Vide impugned order dated January 06, 2014 the learned Single Judge has dismissed CS (OS) 820/2012 opining it to be infructuous for the reason in the suit filed by the appellant, in which his wife was a defendant, prayer made was to restrain the wife from initiating any proceedings against the appellant in Singapore. Before summons in the anti suit injunction filed by the appellant was served upon the respondent she had already initiated divorce proceedings in a Court at Singapore and had obtained a Mareva injunction freezing bank accounts of the appellant. The learned Single Judge noted that in spite of said fact being in the knowledge of the appellant he did not bother to amend the plaint to pray that his wife be restrained from

continuing with the divorce proceedings she had initiated in Singapore. The learned Single Judge has also noted the contentions of the respondent that in the plaint instituted in India the relief prayed for was on the principle invoking Forum non- convenience i.e. that Courts in India would be the proper and convenient Forum to resolve the dispute between the parties and Courts at Singapore would be a Forum of inconvenience, and that on said ground appellant had moved the Court at Singapore and thus the Court in India should not decide said issue. But we find no conclusive finding returned by the learned Single Judge with reference to said argument. Of course, the learned Single Judge has taken the view that whether or not the Court at Singapore was the proper and convenient Forum had to be decided by the Court at Singapore because appellant had submitted to the jurisdiction of the Court at Singapore. The impugned judgment would reveal that backdrop facts with contentions advanced have been noted till paragraph 15 of the impugned decision and the reason for dismissing the suit is in paras 16 to 18 of the impugned decision which read as under:-

> *"16. After giving my thoughtful consideration to the entire submissions made from both the sides I have come to the conclusion that not only the plaintiff is not entitled to any interim relief but even his suit itself is liable to be dismissed as being infructuous. As noticed already, when the suit was filed the plaintiff had claimed only the relief that the defendant should be restrained from initiating any legal proceedings against him in Singapore or any other foreign country for the dissolution of their marriage. However, after the institution of the suit the plaintiff claimed to have come to know that the defendant had already initiated proceedings against him in a Singapore Court for the dissolution of their marriage and also for maintenance and the Singapore Court had also issued a Mareva injunction freezing all his bank accounts. Though, in the plaint the plaintiff had pleaded that in case any legal proceedings are instituted by the defendant*

*against him he would seek amendment in the plaint and claim appropriate relief in respect of those proceedings but the plaintiff did not seek any amendment of the plaint. Undisputedly, after having come to know about the initiation of divorce proceedings in Singapore by the defendant he had approached that Court for vacation of the Mareva injunction as also for stay of the divorce proceedings by taking shelter under the principle of forum non-conveniens. That step taken by the plaintiff shows that he was no more interested in getting relief from this Court in respect of the proceedings initiated by his wife in Singapore. It was rightly contended by the learned Senior counsel for the defendant that after having approached the Singapore Court before the filing of the second stay application in the present suit he should now await the decision of the Singapore Court on his prayer for stay of those proceedings on the principle of forum non-conveniens. The plaintiff in these circumstances had disentitled himself to get any relief in the present suit in respect of the proceedings initiated against him by his wife in Singapore Court. This suit is certainly now an infructuous suit and considering the fact that the plaintiff himself has chosen not to seek even amendment in the plaint for claiming the relief of injunction against the defendant restraining her from continuing with the proceedings in the Singapore Court the suit cannot be continued by this Court even in view of the provisions of Order VII Rule 7 CPC relied upon by the learned senior counsel for the plaintiff.*

*17. I am also of the view that learned senior counsel for the defendant was right in placing reliance on a judgment of the Hon'ble Supreme Court in "Shipping Corporation of India Ltd. vs. Machado Brothers and Others" (2004) 11 SCC 168 wherein the Supreme Court held that Courts should not continue to deal with infructuous litigation.*

*18. I, therefore dismiss the suit itself as having become infructuous and the two stay application also stand dismissed with the dismissal of the suit and the stay applications the interim order passed in the matter stand vacated. However the proceedings already initiated against the plaintiff for contempt of court would continue and only in respect of those*

*proceedings the matter shall be placed before the Court on 16th January, 2014. ''*

2. The relevant facts would be that appellant and respondent were married at New Delhi as per Sikh rites and customs on December 20, 1999. At that time appellant was residing in London. After marriage the respondent also moved to the United Kingdom where the two resided as husband and wife till the year 2005 when both, on obtaining permanent residence in the United Kingdom, acquired British citizenship on or around November 2005. Baby Zoya was born as a British citizen to them. In August 2005 appellant got a job at Hongkong and after a few months the respondent with the baby joined the appellant at Hongkong where the two resided till when in or around April 2008 the appellant along with his wife and child moved to Singapore; holding a permanent resident card. A second child baby Anaya Singh was born as a British citizen in June 2008. Since April 2008 the family lived in Singapore.

3. On February 04, 2012, by a return ticket booked by the appellant with the date of return being March 16, 2012, the respondent and her children came to New Delhi along with the appellant. Whereas the respondent and the children returned to Singapore on March 16, 2012, the appellant continued to reside at Delhi and on March 27, 2012; making a brief visit in between to Singapore and he instituted the suit pleading that he and the respondent were married as per the Sikh rites and customs at New Delhi on December 20, 1999. He pleaded that two children named Zoya and Ananya Singh were born. He pleaded that the parties had taken British citizenship and had moved to Hongkong and then to Singapore. He pleaded that the respondent had become alcoholic and was cruel towards him. He pleaded that on March 14, 2012 he had sought divorce on grounds of cruelty from his

wife. He pleaded that Courts in India could grant him the decree because the parties were married in Delhi; and we need to highlight that the appellant did not plead in the suit that he had invoked jurisdiction of the Court at Delhi to annulled their marriage on the basis of domicile. He pleaded that to amicably resolve the disputes the parties came to India on February 04, 2012 but could not resolve their disputes and thus the appellant had to file the petition seeking divorce. The appellant pleaded that he apprehended that the respondent would initiate proceedings in Singapore. After pleading as aforesaid till para 21 of the plaint, in paras 22 and 25 appellant pleaded as under:-

> *"22. Plaintiff vacated his house in Singapore and came to Delhi with the intention to stay in Delhi. The defendant was aware of the said fact that the plaintiff has already vacated the premises at Singapore and had leased it to a third party and is in the process of shifting to Delhi. The plaintiff has now learnt that despite the knowledge of the said facts and the pendency of the Divorce Petition the defendant has deliberately left for Singapore. The plaintiff apprehends that the defendant will initiate proceedings for dissolution of marriage in Singapore. The defendant has threatened to initiate proceedings in Singapore on 25.03.2012. In view of these threats, plaintiff is constrained to file the present suit inter-alia praying that defendant be restrained from initiating any proceedings in Singapore in relation to their marriage, maintenance, alimony or any other country as the plaintiff and the defendant are governed by the Hindu Marriage Act, 1955 in which there are provisions for all matrimonial reliefs.*
>
> *23. After the filing of the Divorce Petition on 14.3.2012, the plaintiff called the defendant at Singapore from India and tried to again resolve the disputes. Plaintiff requested the defendant to come back to India with the children so that the disputes can be amicably resolved. Plaintiff assured the defendant that he will look after her and the children's financial needs, even though the defendant is already having sufficient financial*

*means. In fact plaintiff has always looked after the children's financial needs or requirements. Despite all these requests and entreaties the defendant has threatened to initiate the proceedings in Singapore and has refused to come to India. Defendant does not have any permanent place to reside in Singapore and has now shifted to a rented accommodation.*

*24. If any proceedings are initiated by the defendant in Singapore or elsewhere the same will not be conclusive and binding on Indian Courts and the Indian Legal System in view of Section 13 of the CPC which is reproduced here;*

> *"13. When foreign judgment not conclusive.*
>
> *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 the international law or a refusal to recognize the law of India in cases in which such law is applicable;*
>
> *(d) where the proceedings in which the judgment was obtained are proposed 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."*

*The law with regard to Anti Suit Injunction has been well laid down by the Hon'ble Supreme Court in AIR 2003 SC 1177 Modi Rubber Entertainment Network Vs. WSF Cricket Pvt. Ltd., the relevant portion of para 24 is reproduced hereinbelow:-*

> *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 non-exclusive 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 greed 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 non-exclusive 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 non- conveniens or the proceedings therein are oppressive or vexatious would be on the party so contending to aver and prove the same.*
>
> *25. A bare reading of the said judgment reflects that it is applicable on all four corners to the facts and circumstances of the present case. Hence the plaintiff is entitled for the relief of anti-suit injunction as India is the forum of convenience and appropriate legal and territorial jurisdiction."*

4. From a perusal of the plaint it is apparent that the fulcrum of the claim was the pleadings in paragraph 24 i.e. that divorce if any obtained by the respondent in Singapore will not be conclusive and binding on Indian Courts. Secondly, the anti suit injunction claim would be maintainable on the principles of Forum non-conveniens as declared by the Supreme Court in *Modi Rubber Entertainment Network* case (supra).

5. After the suit had been filed by the appellant, unknown to her, since she was yet to be served with summons in the suit, respondent sued for divorce in Singapore and on March 30, 2012 obtained a Mareva injunction in her favour pertaining to bank accounts of the appellant and on April 10, 2012 the appellant filed an application in the Court at Singapore pleading :-

> "*That the divorce action and any other proceedings commence by the plaintiff for ancillary relief under Divorce Suit No.1364 of 2012/V, Summons No.5048 of 2012/Q and MSS 1566 of 2012 be stayed on the ground of Forum non-conveniens;"*

6. It needs to be highlighted that appellant did not challenge the jurisdiction of the Court at Singapore to entertain respondent's petition

seeking decree for divorce on the ground that since parties were not domiciled in Singapore the Court at Singapore had no territorial jurisdiction to entertain the claim predicated on the personal matrimonial laws of the parties.

7. Arguing the appeal, learned Senior Counsel for the appellant argued that domicile is a mixed question of law and fact as observed by the Supreme Court in the decision reported as 2013 (7) SCC 426 *Sunder Gopal vs.Sunder Rajni*. It was argued that notwithstanding parties acquiring citizenship in United Kingdom, their movement first to Hongkong and then to Singapore was occasioned by the job requirement of the appellant. Appellant's intention not to lose domicile of origin i.e. India where he was born is evidenced by the fact that in the last four years he visited India 32 times and had been residing in India since February 2012. His permanent ancestral home was in India. It was urged that domicile by choice could be acquired not alone by the fact of fixed habitation in another country but as a matter of intention. With respect to the argument that the appellant had submitted to the jurisdiction of the Court at Singapore, it was urged that merely by filing a reply to question the jurisdiction of a Court, as held in the decision reported as 1991 (3) SCC 451 *Y.Narashima Rao vs. Venkatalakshmi* it cannot be said that he had consented to the jurisdiction of the Court concerned.

8. The provisions of Order 12 Rule 7 of the Singapore Rules are as under:-

> *"7. (1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any such irregularity as is mentioned in Rule 6 or on any other ground shall enter an appearance and within the time limited for serving a defence apply to the Court for –*

*(a) an order setting aside the writ or service of the writ on him;*

*(b) an order declaring that the writ has not been duly served on him;*

*(c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction;*

*(d) the discharge of any order extending the validity of the writ for the purpose of service;*

*(e) the protection or release of any property of the defendant seized or threatened with seizure in the proceeding;*

*(f) the discharge of any order made to prevent any dealing with any property of the defendant;*

*(g) a declaration that in the circumstances of the case the Court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action; or*

*(h) such other relief as may be appropriate.*

*(2) A defendant who wishes to contend that the Court should not assume jurisdiction over the action on the ground that Singapore is not the proper forum for the dispute shall enter an appearance and, within the time limited for serving defence, apply to Court for an order staying the proceedings.*

*(3) An application under paragraph (1) or (2) must be made by summons supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit must be served with the summons.*

*(4) Upon the hearing of an application under paragraph (1) or (2), the Court may take such order as it thinks fit and may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a*

*preliminary issue.*

*(5) A defendant who makes an application under paragraph (1) shall not be treated as having submitted to the jurisdiction of the Court by reason of his having entered an appearance and if the Court makes no order on the application or dismisses it, paragraph (6) shall apply as if the defendant had not made any such application.*

*(6) Except where the defendant makes an application in accordance with paragraph (1), the appearance by a defendant shall, unless the appearance is withdrawn by leave of the Court under Order 21, Rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings."*

9. A perusal of sub-Rule (1) and sub-Rule (2) would reveal that if jurisdiction of the Court has to be questioned, the application has to be filed by invoking sub-Rule (1) and where the defendant wishes to contend that the Court should not assume jurisdiction over the action on the ground that Singapore is not the proper Forum for dispute, an application has to be made to the Court for an orders staying the proceedings.

10. Concededly, in the application filed by the appellant before the Court at Singapore he has invoked sub-Rule (2) and not sub-Rule (1). As noted hereinabove, appellant has prayed for the proceedings for divorce initiated by the respondent to be stayed on the grounds of Forum non-convenience. The appellant has not whispered a word that Courts at Singapore do not have any jurisdiction.

11. A perusal of appellant's claim in the suit before the learned Single Judge would reveal that the fulcrum of the Anti Suit injunction prayed for is that Courts at Singapore would not be the proper Forum of convenience. The copious extracts of law declared by the Supreme Court in *Modi Rubber*

*Entertainment Network* case (supra) in the plaint which we have extracted hereinabove are also indicative of the fact that injunction sought for by the appellant before the learned Single Judge was premised on the plea that the Forum at Singapore would be inconvenient for the parties. The appellant did not plead that parties domicile was not in Singapore.

12. We do not wish to burden ourselves with the law on the subject of domicile. It is true that domicile of origin, domicile by operation of law and domicile by choice are distinct and that domicile of origin prevails until not only another domicile is acquired but it must manifest intention of abandoning the domicile of domicile; but there must be pleadings to said effect. As was observed in the decision reported as (1868) LR 1 Sc. & Dly. 307 (at 322) *Bell Vs. Kennedy*, domicile is a mixed question of law and fact and there is perhaps no chapter in the law that has from such extensive discussion received less satisfactory settlement. There is no doubt attributable to the nature of the subject, including as it does, inquiry into the animus of persons who have either died without leaving any clear record of their intentions, but allowing them to be collected by inference from acts often equivocal; or who, being alive and interested, have a natural tendency to their bygone feelings a tone and colour suggested by their present inclination. We reiterate. Appellant's case for Anti Suit injunction is premised on the principle of Forum non-convenience. The appellant has moved for stay of proceedings initiated by the respondent in Singapore not by challenging the jurisdiction of the Court at Singapore under sub-Rule (1) of Order 7 of the Singapore Court Rules but by pleading Forum non-convenience and hence a stay of proceedings by invoking sub-Rule (2) of Order 7 of the Singapore Court Rules.

13. The learned Single Judge has correctly opined that having submitted

to the jurisdiction of the Court at Singapore the appellant must await decision of his application filed in the Court of Singapore.

14. Before bringing the curtains down we cannot but overlook the fact that prima facie the appellant has tricked his wife and has made false pleadings in the suit filed by him. His plea that the parties voluntarily returned to India so that in India they could find a solution to their matrimonial problems is false for the reason the parties came to India from Singapore on a return ticket. Whereas the wife with her children spent some time with her parents in India, the appellant use the time to fly back to Singapore and surreptitiously surrender possession of the matrimonial home in Singapore. Learned Counsel for the appellant could not explain as to why the parties with their children came to India with a return ticket to Singapore, if appellant's plea was that the family returned to India permanently with the hope that in India, probably with the intervention of relatives and friends, they could amicably resolve their disputes in India. The purchase of a return ticket cannot be overlooked. It assumes importance to note that as the respondent and the children, using the return ticket flew back to Singapore, the appellant played his cards by filing a petition for divorce on March 16, 2012, though the date typed in the petition is February 13, 2012. The appellant who had got drafted the petition seeking divorce on cruelty waited till his wife and children returned to Singapore. To the horror of the respondent as she reached Singapore on March 16, 2012 and proceeded to her matrimonial house she found that possession had been surrendered and somebody else was living there. She relied that she was tricked into coming to India and she took recourse to proceedings in the Court at Singapore. The pleadings of the appellant in para 22 of the suit that the house was vacated in Singapore because parties intended to stay in

Delhi, is ex facie false because the same fails to explain as to why parties came to Delhi from Singapore on a return ticket.

15. Since the appellant has not questioned the jurisdiction of the Courts at Singapore on any plea of domicile, we refrain from going in the issue. We reiterate. Appellant has invoked the principle of Forum non-convenience. He has submitted to the jurisdiction of the Court at Singapore and has pleaded that divorce proceedings initiated by his wife should be stayed on the principle of Forum non-convenience. As per Rules of the Court in Singapore, having submitted to the jurisdiction of the Court at Singapore, the appellant has no option but to litigate on the plea of Forum convenience at Singapore.

16. The appeal is dismissed for the reasons mentioned above.

17. Parties shall bear their own costs.

**(PRADEEP NANDRAJOG)**
**JUDGE**

**(JAYANT NATH)**
**JUDGE**

**MARCH 12, 2014**
***Mamta/skb***