IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-486-2025
Date of decision: 01.05.2025

VAISHALI KASSOWAL

...Appellant

Versus

KARANBIR SINGH KASSOWAL

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vinay Kumar Mahajan, Advocate for the appellant.

Respondent (ex-parte)

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SURESHWAR THAKUR, J. (ORAL)

1. A Hindu marriage petition bearing HMA/3412/2022 was instituted by the present appellant before the Addl. Principal Judge, Family Court, Faridabad. In the said petition a decree became espoused for annulling the marital union which was entered into between the present appellant and the respondent, thus in terms of Hindu rites and rituals.

2. The said petition was filed, on 31.08.2022 and after the proceedings on the said petition lasting upto almost 2½ years, an issue became raised by the respondent, in the said petition appertaining to the maintainability of the said petition. The issue relating to the maintainability of the petition became grooved in the factum, that the said petition was mis-constituted, on the ground, that it was laid before the Court which neither

could assume any valid adjudicatory jurisdiction nor could pass a valid verdict thereons.

3. The said issue was decided in favour of the respondent in the said petition and in the operative paragraph 12 of the impugned order rendered on 17.12.2024, paragraph whereof becomes extracted hereinafter, it was declared that the Addl. Principal Judge, Family Court, Faridabad, has no territorial jurisdiction to entertain the Hindu marriage petition. Consequently, the said petition was ordered to be returned to the petitioner for the same becoming filed before the Court concerned, which could assume thereons valid adjudicatory jurisdiction.

> *"12. In view of the above discussion, this court is of considered opinion that the present Court has no territorial jurisdiction to entertain the present petition. Accordingly, the* ***present petition*** *is hereby ordered to be* ***returned to the petitioner*** *against proper receipt and identification for presentation to the court of competent jurisdiction* ***after retaining the copy of the petition****. File be consigned to records after due compliance."*

4. The petitioner in the said petition becomes aggrieved from the said order and is led to challenge the same through hers instituting the instant appeal before this Court.

5. The contest which has emerged inter se the parties at contest does not relate vis-a-vis the assumption of jurisdiction over the Hindu marriage petition, thus within the respective domains of Section 19 (i to iii) of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act of 1955'), provisions whereof become extracted hereinafter. However, the contest as appertains to the adjudicatory competence of the learned trial Judge, rather relates to the applicability vis-a-vis the Hindu marriage

petition qua Section 19 (iiia) of the Act of 1955, provisions whereof also becomes extracted hereinafter.

> *"[**19. Court to which petition shall be presented**.—Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:*
> *(i) the marriage was solemnized, or*
> *(ii) the respondent, at the time of the presentation of the petition, resides, or*
> *(iii) the parties to the marriage last resided together, or*
> *[(iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]"*

6. The learned counsel for the appellant, has vigorously argued before this Court, that since the requirement as expostulated therein, appertaining to the present appellant, becoming therebys, enjoined to be residing, thus on the date of presentation of the petition, rather at Faridabad, but cannot be interpreted in a rigid manner, so as to now defeat, the elongated spell of the proceedings which became embarked upon the Hindu marriage petition.

7. Moreover, he argues that the coinage "*where she is residing on the date of presentation of the petition*" is required to be imparted a most flexible interpretation, to the extent, that even if at the relevant time, the present appellant was under a study visa, thus residing at Canada. Resultantly therebys the issuance of the study visa, to the present appellant and which became availed by her, when thus did not display any intention on the part of the present appellant, to permanently reside at Canada, whereas, the intention of the legislature in employing the said coinages in the (supra) provisions, but naturally, is that, there was a requirement of manifestations of an intention, on the part of the appellant to permanently

reside at Canada. Therefore, it is argued that given the employment of the said interpretation to the (supra) coinage, therebys the petitioner was not required to be declared to be not maintainable, through applying thereons the mandate as enclosed in the (supra) provisions.

8. For the reasons to be assigned hereinafter this Court, does not agree with the (supra) arguments, addressed before this Court by the learned counsel for the appellant. Initially for the reason that even though an elongated spell of almost 2½ years became spent in the proceedings which became embarked upon by the learned trial Court below, upon the Hindu marriage petition and though therebys there may be consent on the part of the respondent in the said petition qua the assumption of jurisdiction over the said petition by the learned trial Court below. However, unless the jurisdiction which became assumed by the learned Court over the Hindu marriage petition, thus was a statutorily well assumed jurisdiction, therebys there could not be any conferment of jurisdiction even by the consent of any of the litigating parties.

9. Secondarily, for the reason that the (supra) provisions, as cast in the statute, are to the considered mind of this Court, required to be imparted a *stricto sensu* construction. The reason being that, in other statutes, rather contra to the coinages used in the instant statute i.e. "*where she is residing on the date of presentation of the petition*", thus the thereins used coinages, hence for conferring jurisdiction upon the Courts concerned, normally is/are the litigant(s) concerned, "ordinary residing", thus within the territorial limits of the Court concerned, which he/she so prefers to make redressal motions. Resultantly, to the said coinage construction theretos, becomes

employed, that even transitory residences of the petitioner, at the relevant time rather not restraining the Courts concerned, to assume adjudicatory jurisdiction over the relevant motions.

10. Therefore, when the coinage used in Section 19(iiia) of the Act of 1955, does not state that the "ordinary residence" of the litigant concerned, is the pre requisite for conferring adjudicatory jurisdiction over the present petition. Resultantly when therebys there is ouster of any transitory residence of the litigant concerned, thus at the relevant time, rather within the territorial jurisdiction of the Court which she preferred for conferring jurisdiction.

11. Moreover, when the statutory requirement envisaged therein, as is evident from the coinages which exist therein i.e. "*where she is residing on the date of presentation of the petition*" but is qua, the litigant concerned, permanently/ actually/ physically residing within the territorial jurisdiction of the Family Court concerned, thus necessarily at the time of presentation of the petition. As such, the intention of the legislature in incorporating the said coinage in Section 19(iiia) of the Act of 1955, was manifestive to the extent, that only when at the time of the presentation of the petition by the wife, she was physically and actually residing within the territorial limits of the jurisdiction of the Court concerned, therebys alone there could be assumption of valid adjudicatory jurisdiction upon the apposite petition. Since at the relevant time she was not actually and physically residing within the territorial jurisdiction of the Family Court concerned, therebys there was no well conferred adjudicatory jurisdiction over the apposite petition vis-a-vis the Family Court concerned.

12. For all the reasons (supra) this Court does not find any merit in the instant appeal and the same is dismissed, besides the impugned order dated 17.12.2024 passed by the Addl. Principal Judge, Family Court, Faridabad, is affirmed and maintained. However, the appellant is directed to file a petition before the Family Court concerned, where she is physically and actually residing at the time when she presents the said petition. On the filing of the said petition, it is directed that the learned trial Judge concerned, shall make a most expeditious decision thereons, as almost 2½ years became consumed in the earlier instituted Hindu marriage petition.

(SURESHWAR THAKUR)
JUDGE

01.05.2025 **(VIKAS SURI)**
Ithlesh **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable: Yes/No