



CR-6274-2025 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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**CR-6274-2025 (O&M)  
Reserved on :-09.09.2025  
Pronounced on :- 11.09.2025**

Nidhi Makhija

...Petitioner

VERSUS

Arun Dhawan

...Respondent

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Aman Bahri, Advocate  
Mr. Shubham Pathania and Mr. Shivansh Sood, Advocates  
For the petitioners.

Mr. Kanwaljit Singh, Sr. Advocate with  
Mr. K.S.Rupal, Advocate for the respondent.

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**MANDEEP PANNU J.**

1. The present civil revision petition has been filed by the petitioner–wife, assailing the order dated 13.05.2025 passed by the learned Additional District Judge, Chandigarh, in HMA Case No. 667 of 01.08.2023, whereby the application moved by the petitioner under Order 7 Rule 11 CPC for rejection of the divorce petition instituted by the respondent–husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter, “the HMA”) was dismissed.

**Brief Facts**

2. The marriage between the parties was solemnized on 14.10.1995 at Chandigarh, according to Hindu rites and ceremonies. The marriage was duly registered with the Registrar of Marriages, Chandigarh, on 25.10.1995. Immediately after the marriage, both the parties left for Thailand and thereafter shifted to Hong Kong in the year 2001, where they have been permanently residing and have established their matrimonial home. Both spouses possess permanent



residency cards of Hong Kong since 2001 and have two daughters, who were born in Hong Kong and also hold permanent residency there. The parties continue to reside abroad. The petitioner and her daughters are residing in Hong Kong, while the respondent is presently residing in Bangkok, Thailand, having also applied for Portuguese residency in 2022.

3. The respondent–husband filed a petition for divorce under Section 13 of the HMA at Chandigarh on the ground of cruelty. The petitioner–wife was served at her mother’s residence in Chandigarh when she had come to perform the last rites of her deceased father. The petitioner thereupon filed an application under Order 7 Rule 11 CPC on 15.01.2024, seeking rejection of the divorce petition on the ground of lack of territorial and inherent jurisdiction, contending that since both parties have acquired a domicile of choice abroad, the provisions of the HMA are inapplicable.

4. The learned Additional District Judge, Chandigarh, vide impugned order dated 13.05.2025, dismissed the said application holding that the Chandigarh Court has jurisdiction as the marriage was solemnized and registered in Chandigarh, and both parties continue to be the Indian citizens holding Indian passports and Aadhaar cards.

#### **Contentions of the Petitioner**

5. Learned counsel for the petitioner–wife contends that the parties have been permanently residing outside India since 2001, having acquired Hong Kong permanent residency and a domicile of choice abroad. He further contends that under Section 1 of the HMA, the Act applies only to Hindus domiciled in India, and since both parties have abandoned their Indian domicile, the Act is not applicable. The alleged acts of cruelty, matrimonial residence, and marital assets



are all located in Hong Kong, and therefore, India is a forum non conveniens. The respondent has sought to mislead the Court by asserting that Hong Kong proceedings were stayed pending Indian litigation, whereas, in fact, the Hong Kong Court has only stayed proceedings till determination of the forum summons in Hong Kong. Service of summons upon the petitioner in India was defective, being in violation of the Hague Convention. The respondent's filing of divorce proceedings at Chandigarh is a classic case of forum shopping, intended to deprive the petitioner of rights available under Hong Kong law, particularly the principle of equal sharing of matrimonial assets. Reliance has been placed upon *Sondur Gopal Vs. Sondur Rajini 2013(7) SCC 426*, where it was held that domicile of choice is acquired when a person abandons domicile of origin and establishes permanent residence abroad with an intention to remain there indefinitely. She submits that residence in abroad when coupled with the education of the children and permanent residency is sufficient to show abandonment of domicile of origin.

#### **Contentions of the Respondent**

6. Per contra, learned Senior counsel for the respondent-husband submits that both parties are Hindus, governed by the HMA, and continue to hold Indian passports, Aadhaar cards, PAN cards, and Indian citizenship. The parties' residence and property remains in India. Further the counsel for respondent contends that merely acquiring permanent residency abroad or temporarily working abroad does not amount to acquiring Domicile of Choice. The marriage was solemnized and registered at Chandigarh, which confers jurisdiction under Section 19 of the HMA. Under Section 9 CPC read with Section 21 of the HMA, civil courts in India possess jurisdiction unless expressly barred. There is no such bar in the present case. The petition filed in Hong Kong by the petitioner-wife is



subsequent to the filing of the Indian petition and amounts to a counter-blast. Proceedings there have already been stayed. Reliance has been placed on *Rupak Rathi v. Anita Chaudhary, 2014(2) RCR (Civil) 697*, wherein it was held that a foreign decree of divorce based on irretrievable breakdown of marriage is not valid in India. Further reliance has been placed on *Rachna Nazar v. Vishal Kaul, 2019(4) RCR (Civil) 318*, where territorial jurisdiction was upheld for Indian courts despite parties being employed abroad, since employment abroad was considered temporary. Additionally, reference is made to the judgment of the Bombay High Court in the case of *Sondur Rajini Vs., Sondur Gopal [2006(3) RCR (Civil) 502]*, holding that where parties of Indian origin had acquired Swedish citizenship but continued to be domiciled in India, the Indian Courts retained jurisdiction under the HMA.

#### **Consideration by this Court**

7. This Court has carefully perused the record and heard the rival contentions. The present controversy pertains to whether the Courts at Chandigarh, India, have jurisdiction to entertain and try the divorce petition filed by the husband under the Hindu Marriage Act, 1955, or whether the parties can be said to have abandoned their Indian domicile and acquired a domicile of choice in Hong Kong, thereby ousting the jurisdiction of the Indian Courts

8. The primary objection raised by the petitioner–wife is that both parties have acquired a domicile of choice in Hong Kong, thereby ousting the applicability of the HMA by virtue of Section 1 thereof, since both parties reside in Hong Kong, the children study there and they have secured permanent residency status.



9. However, the reliance placed by the petitioner on the doctrine of domicile of choice, while legally sound in abstract, cannot override the clear statutory scheme of Section 19 HMA. Moreover, the petitioner and her daughters continue to hold Indian passports and Indian citizenship. Until such time as citizenship and nationality are formally renounced, they remain subject to Indian matrimonial law.

10. Reliance was placed on *Sondur Gopal Vs. Sondur Rajini 2013(7) SCC 426*, the Hon'ble Supreme Court while affirming that Hindu Marriage Act applies to parties of Indian origin, clearly reiterated that domicile of origin prevails until domicile of choice is conclusively established. The Hon'ble Court explained that acquiring permanent residency or nationality abroad may be an indication of intention, but the essential factor is proof of abandoning domicile of origin. The Hon'ble Court further stressed that mere long residence or citizenship is not enough; there must be clear evidence that the person intends never to return to India. The husband in that case had taken concrete steps such as tenancy agreements, enrolment of children in schools abroad, and permanent residency applications, yet the Court observed that domicile of origin is not easily displaced.

11. The Bombay High Court in *Sondur Rajini Vs., Sondur Gopal [2006(3) RCR (Civil) 502]* held that Indian courts retain jurisdiction even if one acquires foreign citizenship, since domicile of origin is not abandoned unless a clear intention is proved. Hon'ble Supreme Court in *Sondur Gopal Vs. Sondur Rajini 2013(7) SCC 426* while discussing domicile of choice reaffirmed the principle that domicile of origin prevails unless a clear intention to abandon it is established. Thus, far from helping the wife, this judgment strengthens the



husband's case because it places the burden on her to prove that both parties have abandoned Indian domicile, which prima facie she has failed to establish.

12. It is a well settled legal principle that Domicile of Origin is acquired at birth and continues until a new domicile is acquired. Whereas, Domicile of Choice can only be established when (a) there is actual residence in a foreign country, coupled with (b) an intention to permanently or indefinitely reside there. A strong presumption exists against the abandonment of domicile of origin, and the burden of proof lies heavily on the party alleging change.

13. Likewise, in *Rachna Nazar's case (supra)*, this Court emphasized that mere employment abroad or residence abroad does not extinguish the jurisdiction of Indian courts when the marriage was solemnized in India and the parties continued to retain Indian nationality.

14. As regards the plea of forum non conveniens, while it may be true that the parties have resided abroad since 2001, the principle is not absolute and cannot be invoked to oust the jurisdiction of a competent Indian Court under the HMA. The fact that the petitioner may face inconvenience in defending proceedings in India is not, by itself, sufficient to negate statutory jurisdiction. The reliance placed on Hong Kong proceedings also cannot defeat the jurisdiction of an Indian Court, particularly when the marriage was solemnized and registered in India under Hindu law.

15. The reliance of the respondent on *Rupak Rathi's case (supra)* further strengthens the proposition that foreign divorce decrees granted on grounds not recognized under the HMA are not enforceable in India. This underscores that Indian matrimonial law retains primacy for Hindu marriages solemnized in India.



16. In view of the above-mentioned legal principles the parties are still Indian citizens, no foreign citizenship has been acquired. Their domicile of origin (India) continues as there is no concrete proof of intention to abandon India permanently. The wife has her residence in India. She was served with summons in India and appeared before the Indian court. Merely because she later filed a petition in Hong Kong, after the divorce petition was already instituted in Chandigarh, does not divest Indian courts of jurisdiction. The education of the children in Bangkok or temporary residence abroad does not establish permanent intention to abandon India.

17. It is an undisputed position that the marriage was solemnized and registered at Chandigarh according to Hindu Rites. Section 19 of the HMA specifically provides that a petition under the Act may be presented to the District Court within the local limits of whose jurisdiction the marriage was solemnized. On this count alone, jurisdiction vests with the Chandigarh Court.

### **Conclusion**

18. In sum, while the petitioner and her children may have acquired permanent residency in Hong Kong and while their matrimonial home, assets, and employment are situated abroad, the legal position remains that:

1. The marriage was solemnized and registered in Chandigarh.
2. Both parties are Indian citizens, Hindus by religion, holding Indian passports.
3. Jurisdiction is expressly conferred upon Indian courts under Section 19 HMA.
4. Foreign residence or acquisition of foreign permanent residency does not oust the jurisdiction of Indian courts nor displace domicile of



origin unless accompanied by a formal renunciation of Indian citizenship.

5. Recognition of any foreign decree would be subject to compliance with the conditions laid down in *Y. Narasimha Rao v. Y. Venkata Lakshmi (supra)*. Therein, it was also established that the fundamental principle of matrimonial disputes arising from marriages conducted in India must be governed by the law under which the marriage was performed. The Hon'ble Supreme Court held "*the only law applicable to matrimonial disputes is the one under which the parties are married and no other law.*"

19. In light of the above discussion, this Court finds no illegality or perversity in the order dated 13.05.2025 passed by the learned Additional District Judge, Chandigarh. The marriage having been solemnized and registered in Chandigarh, the District Court at Chandigarh possesses jurisdiction under Section 19 of the HMA. The fact that the parties subsequently shifted abroad and acquired permanent residency elsewhere does not divest Indian courts of jurisdiction, so as the parties continue to be Indian citizens and the marriage was conducted under Hindu law in India.

20. The objection regarding domicile of choice abroad and forum non conveniens cannot override the statutory provisions of the HMA, nor can they negate the jurisdiction expressly conferred by Section 19. The contention regarding defective service under the Hague Convention is also untenable in the face of admitted receipt of summons by the petitioner.

21. Accordingly, this Court holds that the divorce petition instituted by the respondent–husband at Chandigarh is maintainable in law, and the learned



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Additional District Judge, Chandigarh, rightly dismissed the petitioner's application under Order 7 Rule 11 CPC.

22. The present revision petition is devoid of merit and is hereby dismissed.

23. Pending application(s), if any, also stand disposed of.

September 11, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No