

(2010) 07 UK CK 0075
In the Uttarakhand High Court
Case No : Writ Petition No. 1350 of 2006

Anil Kumar Diwaker

APPELLANT

Vs

Principal Judge, Family Court and Another

RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Divorce Rules, 1956 — Rule 5
Hindu Marriage Act, 1955 — Section 13, 19

Citation : AIR 2010 Utt 120 : (2011) 2 UC 1029 : (2010) 2 UD 305

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Mr. M.S. Mangla, the learned Counsel duly assisted by Mr. Lalit Tewari, the learned Counsel for the Petitioner and Mr. Lokendra Dobhal, the learned Counsel for the Respondent No. 2.

2. The opposite party filed a suit for divorce u/s 13 of the Hindu Marriage Act before the Family Court, Dehradun in the year 2001 alleging that she is residing with her parents at Dehradun and that she has separated from her husband Anil Kumar Diwaker since 2001 and that the Petitioner is residing at Meerut. Upon issuance of a notice, the Petitioner filed an objection contending that the suit was not maintainable before the Family Court, Dehradun and that it had no jurisdiction to try the suit for divorce in view of Section 19 of the Hindu Marriage Act. Further objection raised by the Petitioner was that the divorce petition filed by the opposite party was in violation of Rule 5 of the Hindu Marriage Act and the Divorce Rules, 1956. The said application was rejected by the court below by an order dated 08th August, 2006.

3. The Petitioner, being aggrieved by the said order, has filed the present writ petition. An objection was raised by the opposite party with regard to the maintainability of the present writ petition. The learned Counsel for the private Respondent submitted that against an order of the family court, an appeal lies u/

s 19 of the Family Courts Act and, consequently, the present writ petition was not maintainable.

4. No doubt, against an order of the Family Court, an appeal lies u/s 19 of the Family Courts Act as has been held by the Full Bench of the Allahabad High Court in *Smt. Kiran Bala Srivastava v. Jai Prakash Srivastava* 2005 (23) LCD 1, as well as the Division Bench of this Court in *Rahul Samrat Tandon v. Smt. Neeru Tandon* decided on 31st May, 2010 in Appeal from Order No. 113 of 2010. However, the Court is not going to non-suit the Petitioner at this stage since the writ petition has been admitted. This Court is of the opinion that once a writ petition is admitted, the matter must be decided on merits and should not be dismissed on the ground of alternative remedy. Consequently, the submission raised by the learned Counsel for the opposite party is rejected. Now, the question is whether the Family Court, Dehradun has the territorial jurisdiction to entertain the application of the Respondent u/s 13 of the Hindu Marriage Act. Section 19 of the Hindu Marriage Act provides the jurisdiction of the Family Court of Dehradun. For facility, the provision of Section 19 of the Hindu Marriage Act is extracted hereunder:

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

(iii-a) in case the wife is the Petitioner, where she is residing on the date of presentation of the petition, or

(iv) the Petitioner is residing at the time of the presentation of the petition, in a case where the Respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

5. A perusal of the aforesaid provision indicates that a petition could be presented to a District Court within the local limits where the marriage was solemnized or where the Respondent was residing at the time of the presentation of the petition or where parties last resided together. On the basis of this provision, the learned Counsel submitted that at the time when the divorce petition was presented before the Family Court in the year 2001, the Petitioner was residing at Meerut. The Respondent i.e. the Respondent in the suit for divorce was residing at Meerut at the time when the marriage was solemnized and the parties to the marriage also last resided at Meerut when the opposite party left the house of the Petitioner. In the light of this provision, the learned Counsel submitted that the opposite party could not have instituted the suit at the Family

Court, Dehradun.

6. On the other hand, the learned Counsel for the opposite party placed reliance to an amendment made in Section 19 by U.P. Act No. 50 of 2003 by which (iii-a) was added, which provides that where the wife is the Petitioner, the divorce petition could be filed where she is residing on the date of presentation of the divorce petition. The learned Counsel for the opposite party submitted that the Family Court, Dehradun has the jurisdiction to entertain the divorce petition since the opposite party is residing with her parents at Dehradun.

7. In response to the aforesaid, the learned Counsel for the Petitioner submitted that amendment made in Section 19 by U.P. Act No. 50 of 2003 was amended w.e.f. 23rd December, 2003 which was prospective in nature, whereas the suit was filed in the year 2001, when at that time, this provision was not in existence and, consequently, the Family Court, Dehradun had no territorial jurisdiction to entertain the divorce petition in the year 2001. The submission was that the suit for divorce was instituted outside the territorial jurisdiction of the Family Court and was liable to be rejected.

8. Having heard the learned Counsel for the parties at some length, the court is of the opinion that Section 19 of the Hindu Marriage Act gives jurisdiction to the court to entertain the suit for divorce subject to existence of certain conditions. This provision is procedural in nature and is also required to be liberally construed. This provision was amended by Act No. 50 of 2003 which permitted the wife to institute a suit for divorce within the local jurisdiction of a District Court where she was residing on the date of the presentation of the suit. Such amendment would be applicable not from the date of the amendment, but, would apply as if it was in existence from the very inception. This is how an amendment, which has been sought to be incorporated, is required to be construed liberally, otherwise, the purpose behind the amendment would be defeated.

9. The court takes another view of the matter, namely, that if the petition was dismissed on account of lack of territorial jurisdiction or returned to be presented before the appropriate court, nothing would stop the opposite party to present the same petition before the Family Court, Dehradun, in the light of the amendment made in Section 19 by incorporation of Sub-section (iii-a) by Act No. 50 of 2003. By construing the provision harmoniously, the court is of the opinion that the divorce petition filed by the opposite party before the Family Court, Dehradun was maintainable and the court below rightly rejected the application of the Petitioner.

10. The submission of the learned Counsel for the Petitioner that Rule 5 of the Hindu Marriage and the Divorce Rules, 1956 has not been complied with by the opposite party and that the conditions mentioned in Rule 5(a), (b) & (c) has not been indicated in the petition, which are mandatory in nature and which would result in the dismissal of the suit, is again misconceived. Any defect in the suit

can be cured. The Rules are handmaid of justice and if there is a violation of the Rules, the same can be brought to the knowledge of the court and certain directions can be issued to the opposite party to rectify the defect. In my view, the said Rules are not mandatory, but, directory in nature.

11. In the light of the aforesaid, this Court does not find any error in the impugned order. The writ petition fails and is dismissed.