

(1935) 04 AHC CK 0021
In the Allahabad High Court

Lieut. Basil Douglas Hope Dunbar

APPELLANT

Vs

Mrs. Evelyn Diana Hope Dunbar and Another

RESPONDENT

Date of Decision : 05-04-1935

Acts Referred:

Indian and Colonial Divorce (Jurisdiction) Act, 1926 — Section 1(1)(c)

Citation : AIR 1935 All 763

Hon'ble Judges : Thom, J

Bench : Division Bench

Judgement

Thom, J.—This is a petition by Lt, Basil Douglas Hope-Dunbar of the Cameron Highlanders against Mrs. Evelyn Diana Hope-Dunbar. his wife, and Captain J.W.T. Woolridge of the Indian Army Service Corps. The petition is presented under the Indian and Colonial Divorce Jurisdiction Act of 1926. In the petition the petitioner prays for dissolution of his marriage with the respondent on the ground of her adultery with the co-respondent. In para. 17 of his petition the petitioner avers that the respondent committed adultery with the co-respondent in July, August and September 1933, at Bombay in October 1933 and in Bareilly between the last week of December 1933 and the first week of January 1934. The respondent, has taken a preliminary objection to this petition. She has contended that this. Court should refuse to entertain the petition upon the ground that it is not in, the interests of justice that the1 petition be adjudicated upon by a Court in India and that no sufficient cause has been shown for the presentation of the petition in a, Court in India. The relevant section of the Indian Divorce and Colonial Jurisdiction Act is Section 1, Sub-section (1)(c) and (d). These sub-sections are in the following terms:

(c) No such Court shall grant any relief under this Act except in oases where the petitioner resides in India at the time of presenting the petition, and the place where the parties to the marriage last resided together was in India, or make any decree or dissolution of marriage except where either the marriage was solemnized in India or the adultery or crime complained of was committed in

India; (d) any such Court may refuse to entertain a petition in such a case if the petitioner is unable to show that by reason of official duty, poverty or any other sufficient cause he or she is prevented from taking proceedings in the Court of the country in which he or she is domiciled, and the Court shall so refuse if it is not satisfied that in the interests of justice it is desirable that the suit should be determined in India.

2. The petition was filed in November 1934. On 19th December the petitioner left with his regiment for Khartum where he at present resides. The adultery alleged is averred by the petitioner to have taken place at various places in India. It follows therefore that the conditions set forth in Section 1, Sub-section (1)(c) are present in this case. Learned Counsel for the respondent has contended that the Court ought, in the exercise of its discretion, to refuse to entertain the petition upon the ground that the petitioner had failed to show¹ that by reason, of official duty, poverty or other sufficient cause he was prevented from taking proceedings in the Court of the country in which he was domiciled. Further, learned Counsel invited the Court to dismiss the petition upon the ground that, upon a consideration of the entire facts and circumstances, it was not in the interests of justice that the petition should be entertained by this Court. As already observed, the petitioner resides at Khartum. Learned Counsel for the petitioner has stated that he has been informed by his client that there is a possibility of his return to India upon his transfer from the Cameron Highlanders to the Indian Army. It appears that the application for transfer to the Indian Army was made by the petitioner shortly before he left India in December 1934. The petitioner however is unable to say definitely whether his transfer will be effected or whether in fact he will return to India on service within any reasonable time.

3. The petitioner has failed to show that the exigencies of the service would prevent him securing the necessary leave to enable him to go to Scotland if he so desired to be present at the prosecution of his suit in the Court of Session there. It is common knowledge that regimental officers are granted special leave for purposes of prosecuting suits for the dissolution of their marriages and in any event as was pointed out by learned Counsel for the respondent the evidence of the petitioner could very easily be taken upon commission. This is common practice and one to which in cases, such as the present, there is no real objection. Learned Counsel for the petitioner has contended that it is in the interests of justice that his client should be present in Court to give evidence. Undoubtedly that would be more satisfactory from his point of view. On the other hand, the evidence which he will be able to give will be evidence which can easily and appropriately be recorded on commission. Learned Counsel for the petitioner has further pointed out that all the material witnesses apart from the parties are resident in India. It is true that they do not reside within the jurisdiction of this Court, but learned Counsel has stated that there would be no difficulty in securing the attendance of these witnesses in this Court should this Court entertain the petition. This fact undoubtedly is a weighty consideration, but, on the other hand, the evidence of such witnesses in divorce case is recorded on

commission frequently and no difficulty presents itself to the recording of the evidence of the petitioner's witnesses in the present instance.

4. The respondent resides in England. She would not have come to India at all had she not been married to the petitioner. She has no intention of returning to India. Now it is quite certain that in the interests of justice her evidence should be recorded, in the Court which decides the petitioner's suit for the dissolution of his marriage. She undoubtedly will be the most important witness in the case. It is not only desirable but essential in the interests of justice that the Court should have the opportunity of hearing the witness give her evidence and observing her demeanour in the witness box. If this Court entertains the petition then the respondent would have to journey to India to give evidence. On the other hand, if the Court refused to entertain the petition, the petitioner will either have to give his evidence on commission or journey to Scotland to give his evidence. The evidence of the other witnesses in India would be recorded upon commission. Upon a consideration of the entire circumstances it is in the interests of justice that the petitioner's action for the dissolution of his marriage with the respondent should be taken in the Court of their domicile. The general principle, is that consistorial causes should be entertained only in the Court of the parties' domicile. There are many reasons for this principle. These are patent and need not be enumerated here. This Court will always be slow to entertain petitions for the dissolution of marriages by persons who are not domiciled and resident in India. Only in exceptional circumstances will the Court exercise its jurisdiction in such cases. The Court before it does so must be clearly of the opinion upon the facts before it that because of the reasons referred to in Section 1, Sub-section (1)(d), Indian and Colonial Divorce Jurisdiction Act, the petitioner cannot effectively prosecute his suit for divorce in the Court of his domicile. Further the Court, before it will entertain such a petition, must be satisfied that the interests of justice imperatively demand that the suit should be decided in India.

5. The petitioner and the respondent are domiciled in Scotland. The petitioner has completely failed to show that poverty or official duty or any other sufficient cause prevents him from proceeding to Scotland to prosecute his suit there. Further the petitioner has failed to satisfy me that it is in the interests of justice that the suit should be decided in India. In these circumstances the petition is dismissed. The respondent is entitled to costs. I assess these costs at Rupees 500. The co-respondent who is represented is also entitled to costs. I allow to him Rs. 200 as costs subject to his filing a fee certificate within one week.