

(2012) 07 KAR CK 0009

In the Karnataka High Court

Case No : Regular First Appeal No. 702 of 2002

Smt. Hemavathi Shivashankar

APPELLANT

Vs

Dr. Tumkur S. Shivashankar and Smt. Thiptur Nagaraj Usha

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13, 13 (1), 13 (a), 13 (b), 13 (c)

Citation : (2013) 1 KarLJ 231

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K.K. Vasanth, for the Appellant; G.R. Gurumath, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy

1. Heard the learned Counsel for the parties. The parties are referred to by their rank before the trial court for the sake of convenience. This is an appeal by the plaintiff. It was the case of the plaintiff that she was married to the first defendant at Somwarpet, Kodagu District on 16.5.1966 as per customary Hindu rites. The first defendant was a medical practitioner and was employed on various assignments, which required him to travel abroad. In the year 1969, he visited England on an assignment, where he had worked up to the year 1971. Thereafter, he had returned to India. He had again left for the United States Of America (Hereinafter referred to as the "USA", for brevity) in the year 1972 on a temporary assignment. The plaintiff had joined him in the USA and three children were born to the plaintiff and the first defendant, namely, Shashikumar, who was 13, Skanda, who was 7 and Shanmuga, who was 5, as on the date of the suit. The plaintiff was the only child to her parents. Her father had died early and her mother had inherited extensive Coffee estates and other properties at Somwarpet and other places.

It was the plaintiff's case that the first defendant was keen that the properties

be sold and the plaintiff should encash the same, so that it could be better enjoyed by them. But the plaintiff and her mother were opposed to the idea and this led to discord between the plaintiff and her husband. It was the allegation of the plaintiff that from the year 1980, she and her children were neglected by the first defendant, who was displaying bad temper at all times and had remained withdrawn from the plaintiff. The relationship further degenerated and the plaintiff was physically abused and was even locked out of the house. It is the plaintiff's case that in this background, she was advised by a well-wisher in USA, to go to India with the children. When the plaintiff demanded money for her support and maintenance, the first defendant refused to provide the same. The first defendant had compelled the plaintiff to go to India along with one A.C. Basavaraj, though the plaintiff was reluctant to do so. However, the plaintiff did come to India on 5.6.1981. On 6.7.1981, the first defendant had sent a telegram informing her that he would be coming to Bangalore along with the children on 8.7.1981. The two children, Skanda and Shanmuga were accordingly brought to Bangalore by the first defendant. After leaving the two children at Bangalore, the first defendant left for the USA on 19.7.1981. Thereafter, the plaintiff's best efforts to get back to the USA, along with the children, were in vain as the first defendant had refused to provide the air fare.

It transpires that on 5.2.1982, the third son Shanmuga was run over by a bus in Somwarpet and suffered multiple fractures and he was hospitalised. Hence, the plaintiff was not in a position to go back to USA until the injured boy was discharged from the hospital.

It was the plaintiff's case that in the month of July 1982, she had received a notice containing a divorce petition lodged by the first defendant, but she was unable to go to the USA and answer the notice and she was unable to take further steps as the first defendant did not provide any further financial support nor was he ready to sponsor her visit to USA, which the American Consulate at Chennai required. However, on 22.11.1982, the plaintiff managed to go back to the USA, but she was not allowed to enter her home by the first defendant and she had to seek refuge in a Community Welfare Centre. It is later that she learnt that the first defendant had instituted proceedings for judicial separation before the Twenty-Sixth Judicial District Court, Bossier Parish, Louisiana and that an ex-parte order had been passed on 28.1.1982, granting judicial separation. It was the plaintiff's case that though the plaintiff had made an attempt to resist the divorce petition that followed, a decree of divorce was granted as on 3.12.1982. The plaintiff had questioned the binding effect of the said divorce decree on the ground that the plaintiff and the first defendant were lingayaths and were governed by the Hindu Marriage Act, 1955 (Hereinafter referred to as the "1955 Act" for brevity) and the American court being a foreign court, had no jurisdiction as regards the matrimonial affairs of the parties, as they continued to be Indian citizens on the date of decree of divorce granted by the American court and hence, it would not bind the parties. Further, the first defendant had taken advantage of the absence of the plaintiff from USA and his sending her to India

was with an ulterior motive of obtaining such decree of divorce without resistance from the plaintiff and therefore, he had practised fraud on the American Court. Since the decree had been rendered without recognition of the law of India, which was applicable to the parties and since the proceedings of a foreign court were not in conformity with the Hindu Law, the same was opposed to natural justice and was invalid in terms of Section 13 of the Code of Civil Procedure, 1908 (Hereinafter referred to as the "CPC" for brevity).

It was further alleged by the plaintiff that in January 1983, the first defendant is said to have visited India and had contracted a marriage with the second defendant as per Hindu customary rites, as evidenced by a marriage certificate, which has been produced, which further fortifies the fact that the first defendant continued to be governed by the Hindu law and therefore, the marital status of the plaintiff was not dissolved in the eye of law and hence, the purported marriage of the first defendant with the second defendant was void. In this regard, the plaintiff had also instituted a criminal case alleging an offence of bigamy against the first defendant and it is in this background that the suit was filed, which was subsequently amended to incorporate the subsequent events, with a prayer for a declaration that the marriage of the first defendant with the second defendant was void and to declare that the judgment and decree dated 3.12.1982 granted by the Twenty-Sixth Judicial District Court, Bossier Parish, Louisiana, USA against the plaintiff, as being null and void and not binding on her.

It is seen from the record that there are written statements filed by the second defendant dated 4.10.1983 and 26.10.1990 and an additional written statement dated 22.7.1986. The first written statement dated 4.10.1983 is signed by the second defendant, though only on the last page of the written statement and the additional written statement dated 22.7.1986 and the written statement dated 26.10.1990 are signed by the power of attorney holder of the defendants. Therefore, there are no pleadings on behalf of the first defendant. It is to be observed that the judgment of the court below proceeds on the footing that the written statements had been filed by the first defendant. In any event, the written statements are to the following effect:

The plaint averments at Paragraphs 2, 3 and 4 were denied while blaming the mother of the plaintiff for having set up the plaintiff to file a suit, as she was opposed to the first defendant going abroad to further his career. It was further denied that the first defendant had forced the plaintiff to leave USA and to go to India. It was alleged that the plaintiff had voluntarily left for India, since she was eager to join her mother and since the children were of tender age and since the first defendant was not in a position to care for their needs, he was compelled to bring them to India, as the plaintiff did not choose to return to USA, immediately. It was further denied that the foreign court had no jurisdiction in respect of the matrimonial affairs of Hindus. It was contended that the domicile of the parties at the relevant time, applied in the matter of their judicial separation and the divorce. The same are conclusive and binding on the plaintiff, as the domicile of

the plaintiff and the first defendant was within the jurisdiction of the said US Court.

The first defendant admits that in the year 1972, the plaintiff and the first defendant were living in the USA and their three children were born there and that the first defendant had been granted citizenship in the year 1983 and till then, the plaintiff and defendant no. 1 had been granted Immigration Visas and they were Green Card holders. The first defendant had joined the US Air Force service during the year 1979, preceding which, he had worked in various hospitals. From 1979 to 1984, for a period of five years, he was within the jurisdiction of the Twenty-Sixth Judicial District Court, Bossier, Louisiana. Since the plaintiff and the first defendant had their residence and were living along with their family, consisting of their three sons till 1981 when the plaintiff came to India supposedly for a short visit and thereafter refused to join the first defendant, inspite of several requests made, and the plaintiff having been served with a notice of the divorce petition in July 1982, she did come back to US and contest the divorce proceedings. Though the plaintiff claimed that there was an ex-parte decree of divorce against her, that with the written statement being filed and the defendant no. 2 having produced documents to substantiate the fact that the plaintiff had tendered evidence before the US Court and had cross-examined the first defendant in the divorce proceedings and it was only thereafter that the decree of divorce having been granted as on 3.12.1982, the plaintiff belatedly claimed that the decree of divorce was null and void. Therefore, the allegation that the first defendant had taken advantage of the absence of the plaintiff from America to obtain divorce and that he had practised fraud on the court was unfounded. The contention that the proceedings of the American Court were not binding on the parties is not tenable in the light of the plaintiff having contested the proceedings. Added to this, consequent to the grant of divorce, the plaintiff had approached the very courts in the US seeking partition of the community property apart from other reliefs such as child support, custody of the children and alimony. Hence, the plaintiff was precluded from questioning the validity of the decree of divorce. The marriage of the first defendant with the second defendant is admitted and it is claimed that it is a valid marriage in the light of the marriage between the plaintiff and the first defendant having been dissolved by the decree of divorce granted by the US Court, which was valid and binding.

2. On the basis of those pleadings, the trial court had framed the following issues and additional issues:

1. Whether the plaintiff proves that the defendant has obtained a decree of divorce against her by practicing fraud etc., as contended in her plaint and hence it is not binding on her?
2. Whether the decree of divorce passed by a foreign court not binding on the plaintiff?
3. Whether the plaintiff is estopped from challenging the said decree as

contended in para 9 of the written statement?

4. Whether the marriage of the first defendant with the second defendant is void?

5. Whether the suit is valued property and court fee paid is correct?

(decided on 20.8.1985)

6. Whether the plaintiff proves that she is entitled to the reliefs claimed?

7. What order and relief?

Additional Issues : 1.7.1986:

8. Whether the plaintiff is entitled to the decree that the decree No. 57688 dated 3.12.1982 of the 26th Judicial District Court, Bossier Parish, Louisiana is null and void and not binding on her?

Additional Issues: 26.2.1991

9. Whether the defendants prove that the suit of the plaintiff is barred by principles of Res Judicata?

10. Whether the defendants prove that the conduct of the plaintiff to waiver and relinquishment of right to question the validity of the decree of divorce?

Issue nos. 1, 2, 4 and 8 are answered in the negative and issue nos. 3, 9 and 10 are answered in the affirmative.

3. The court below has considered issue no. 1, 2, 8 and 9 together and had formed an opinion that Section 13(1), (a), (b) and (c) of the CPC were not applicable since the plaintiff had failed to demonstrate that the decree of divorce was inconsistent with the private international law or in recognition of Indian law in a case where such law was applicable and since it was not the case of the plaintiff that she had no notice of the proceedings before the foreign court and she herself had appeared before that court and had pleaded her case, which was subsequently negated by the foreign court on the ground that she was guilty of deserting defendant no. 1 continuously for a period of six months after the order of judicial separation was passed and since she was not in a position to satisfy the requirement, that she had rejoined her husband during the period of six months after the order of judicial separation. There was justification in the foreign court having applied the law of that State of USA. Therefore, it was the opinion of the trial court that the judgment passed by the American Court was in order and that it was final. Insofar as the contention that the judgment of the foreign court suffered from an infirmity as it was in breach of the Indian law, since under the Indian law, after an order of judicial separation is passed, the decree of divorce can be granted only after the expiry of two years from the date of order of judicial separation. Therefore, it was opposed to Section 13 of the 1955 Act and would attract Section 13(f) of the CPC. The trial court has opined that Section 19 of the 1955 Act provides that a petition for divorce could be instituted where the parties last resided together and since they were ordinarily

residing within the jurisdiction of the foreign court, the petition having been filed therein, did enable the first defendant to invoke the jurisdiction of the American Court and since the plaintiff has not raised the issue of jurisdiction, that contention was not available to the plaintiff. Further, the trial court has formed an opinion that since the decree of divorce is final and binding on the plaintiff, the present suit filed by the plaintiff was barred by the doctrine of res judicata and has further answered issue no. 3, while assigning the reason that since the plaintiff did not join defendant no. 1 within six months from the date of the order of judicial separation and though she had a right of appeal, did not seek to question the decree, on the other hand, had proceeded to seek for maintenance pursuant to the decree of divorce and it was possible only if she had conceded the position that the marriage stood dissolved. The court has also taken exception to the plaintiff not having examined herself in the case and therefore, has opined that the plaintiff was estopped from challenging the decree granted by a foreign court. In answering issue no. 4, the court below has held that once the decree of the foreign court is upheld, the marriage of defendant no. 1 with defendant no. 2 would not be invalid or illegal and further has answered issue no. 2, holding that since the plaintiff did not question the validity of the judgment passed by the American Court by way of an appeal, she has waived her right to question the same and has also expressed that if the status of the plaintiff in the USA is that of a divorced wife of defendant no. 1, other countries must also recognise the same. On the other hand, if the trial court were to decree the suit of the plaintiff, conversely, the American Court would not recognise the same. This would lead to utter confusion and therefore, has expressed that it is not a fit case where discretion could be exercised in favour of the plaintiff and has accordingly, dismissed the suit. It is that which is under challenge in the present appeal.

4. The learned Counsel for the appellant would submit that having regard to the facts and circumstances, the court below has failed to address the scope and effect of Section 13 of the CPC, when it was apparent that the case of the plaintiff could not have been negated on the footing that the first defendant had obtained a decree of divorce granted by a US Civil Court, when the sequence of events would indicate that the decree passed by the said court was in violation of the principles of natural justice and was vitiated by the conduct of the first defendant bordering on fraud and that the said decree was in breach of the personal law governing the parties and in force in India. It was also vitiated for an incorrect application of the international law and the blatant refusal to recognise the personal law applicable to the parties, which rendered the US Court incompetent to dissolve the marriage of the parties, as it had no jurisdiction insofar as the matrimonial relationship was concerned, which was governed exclusively by the provisions of the 1955 Act.

It is contended that the Court below has overlooked the glaring circumstance that the foreign court has assumed jurisdiction only on the basis of the temporary residence of the parties within its jurisdiction. Assuming that the

foreign court could exercise jurisdiction on the basis of such domicile, it could not have been exercised to dissolve a marriage governed by the provisions of the 1955 Act, which does not contemplate the exercise of jurisdiction under its provisions by a court outside the territory of India. It is therefore contended that the decree of divorce by the foreign court is void, as it is rendered by a Court, which did not have jurisdiction.

It is contended that the reasoning of the court below that the plaintiff had submitted to the jurisdiction of a foreign court and therefore, was estopped from challenging the binding effect of the decree of divorce granted by a foreign court, is an incorrect premise. The order of judicial separation was granted *ex parte*. Notwithstanding that a curator was appointed on behalf of the plaintiff herein before the foreign court, the question of initial want of jurisdiction was not raised nor was present to the mind of the court at that point of time. Though the plaintiff had received the notice of those proceedings it was at a point of time when the plaintiff had to deal with several situations, namely, that she was then back in India and was not enabled to return to America for want of sufficient funds, which again, was a circumstance engineered by the first defendant and the fact that one of her sons was seriously injured and hospitalised and she could not leave his bedside. The plaintiff however, had appeared before the American Court only at the final stage of consideration of the petition for divorce pursuant to the non-compliance with the condition imposed in the order of judicial separation, where she was required to join the society of the first defendant, failing which, he was entitled to a decree of divorce by virtue of such default and it is that circumstance which has weighed uppermost with the foreign court and the court has proceeded to negate any other contention that was raised, including the protest of the plaintiff that the personal law applicable could not be enforced before the foreign court. Therefore, the decree of the foreign court was opposed to the principles of natural justice as there was no adequate hearing on the primary issue of jurisdiction at the appropriate time and the application of the local American law in accordance with the settled principles therein has, however, resulted in a miscarriage of justice against the plaintiff, who was entitled to protection of her personal law as an Indian citizen at that point of time. The said decree of divorce therefore, could not be said to be a decision which has decided all the issues that would arise between the parties and hence, the court below was in error in holding that the suit was barred by *res judicata*.

The decree of the foreign court is also not binding even if it is held that the plaintiff had acquiesced and submitted to the jurisdiction of the foreign court. Though the ground of divorce was available under the 1955 Act, there being a variation thereof, in the manner in which, divorce could follow an order of judicial separation, as is evident. Insofar as the American Law that has been applied only required a lesser period should elapse from the date of order of judicial separation before the decree of divorce could be granted, clearly in variance with Section 13 of the 1955 Act, which requires 24 months to elapse before a decree of divorce could be granted. Therefore, when the decree of divorce is clearly in

violation of the law as applicable in India, the same would clearly be opposed to Section 13 of the CPC.

It is further contended that insofar as the subsequent conduct of the plaintiff pursuant to the grant of decree of divorce by the foreign court in having approached the very court for further reliefs, such as, enhancement of child support and other reliefs, would not by itself clothe a decree, which was void in the eye of the Indian law, with validity.

The learned Counsel would place reliance on the following authorities in support of his contentions and would seek that the suit be decreed as prayed for.

1. Sankaran Govindan Vs. Lakshmi Bharathi and Others,
2. Smt. Satya Vs. Shri Teja Singh,
3. Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another,
4. M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd.,
5. Deva Prasad Reddy Vs. Kamini Reddy and Another,
6. Anubha Vs. Vikas Aggarwal,

The learned Counsel for the respondents, on the other hand, seeks to justify the judgment of the court below. He would submit that the plaintiff's allegations as to the conduct of the first defendant have not been established, as found by the court below. The primary contention that the decree of divorce obtained by the first defendant as being null and void on the several grounds urged are not tenable. He would contend that the assertion as to the decree of divorce having been granted by a foreign court, which did not have jurisdiction over the matrimonial relationship of the plaintiff and the first defendant is an incorrect premise. It is well settled, as spelt out by the apex court that it is not unknown to the rule of private international law that Indian citizens living abroad, even temporarily, are enabled to invoke the law of a foreign country, which confers jurisdiction on the court, over the parties by virtue of their domicile, as was the case insofar as the parties to the present proceedings are concerned. It is not in dispute that the plaintiff and the first defendant were residing as husband and wife within the jurisdiction of the Twenty-Sixth Judicial District Court, Bossier Parish, Louisiana and the law of that State in the USA did provide that a person could petition the court for judicial separation and divorce, by virtue of his residence within the jurisdiction of that court. Secondly, the ground on which the relief of judicial separation and divorce were claimed, was that of desertion, by the plaintiff of defendant no. 1. This is a ground, which is also available under the 1955 Act, which is the personal law of the parties. Therefore, there is no inconsistency insofar as the law applicable or the ground on which such relief was sought before the foreign court. The variance in the procedural particulars as to the period prescribed from the date of order of judicial separation, in order to enable a party to seek a decree of divorce, are clearly procedural. As long as the

substantive law or the ground on which the divorce was sought was in consonance with the Indian law, it cannot be said that there was want of jurisdiction or the relief granted by the foreign court was without recognition of the Indian law.

It is further contended that the claim of the plaintiff as to there being want of notice insofar as the proceedings for judicial separation and divorce is concerned, is incorrect. It is not denied by the plaintiff that she was absent from the USA and was in India, at the relevant point of time. Even then she had been represented by a Curator before the foreign court. The contention of the plaintiff that she was deliberately prevented from returning to US, since the first defendant failed to provide the necessary funds, is also not a tenable contention, as it is the plaintiff's own case that she, along with her mother, had inherited vast properties and therefore, was well provided for in her own right and ultimately, she has returned to the US, apparently at her own cost. This would belie the allegation that the plaintiff was prevented at the relevant point of time from returning to the US and contesting the proceedings for judicial separation. In any event, the plaintiff had, in fact, participated in the proceedings for divorce and had effectively cross-examined the first defendant and had also tendered evidence before the foreign court. More significantly, after the grant of decree of divorce on 3.12.1982, the petitioner did not choose to challenge the same by way of an appeal before a higher court in the US, which she was entitled to do. On the other hand, there were several proceedings whereby the plaintiff had sought for division of the properties belonging to the first defendant in the USA, as also the relief of enhancement of child support and for alimony. These proceedings were clearly initiated, on the footing that there was a divorce, by which the marriage of the plaintiff and the first defendant stood dissolved and such petitions were filed over a period of several years between 1983 and 1988. Further, in the year 1990, the plaintiff had chosen to file a petition to annul the judgment of the District Court and on dismissal of the same, an appeal was filed before the Court of Appeal, Second Circuit, State of Louisiana. That appeal was disposed of by a judgment dated 28.2.2001 and the Court of Appeal has observed as follows:-

Alternatively, and assuming arguendo that Hema was improperly determined to be an absentee and that, resultantly, service of process on the curator ad hoc was, therefore, invalid, we believe that Hema acquiesced in the Separation Judgment and is precluded from attacking its validity.

Hema argues that the Separation Judgment should be annulled pursuant to La. C.C.P. art. 2002, which states, in pertinent part, as follows:

A. A final judgment shall be annulled if it is rendered:

(2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid judgment by default has not been taken.

However, such an attack pursuant to art. 2002, is limited pursuant to La. C.C.P. art. 2003, which states as follows:

A defendant who voluntarily acquiesced in the judgment, or who was present in the parish at the time of its execution and did not attempt to enjoin its enforcement, may not annul the judgment on any of the grounds enumerated in Article 2002.

We acknowledge that Hema's actions soon after the Separation Judgment was rendered would indicate that initially Hema may not have totally acquiesced in the Separation Judgment. Although she never previously filed any pleading attacking the validity of the Separation Judgment, she did verbally voice her objection to the separation during the trial of the divorce proceedings. On March 3, 1983 she filed her Petition for Custody, Child Support and Alimony, wherein she admits the existence of the Separation Judgment, but claims that she had no knowledge of the Separation Proceedings until after the Separation Judgment was rendered.

Nonetheless, the pleadings filed by Hema following the finality of the couple's divorce, indicates ultimately her voluntary acquiescence in the Separation Judgment. We note that in that same March 3rd pleading, Hema claimed a one-half interest to the community property belonging to the couple, which community property regime was terminated retroactive to the date of filing of the Separation Proceedings upon the finality of the Separation Judgment. Her allegation specifically acknowledges that her claim arose as of November 4, 1981 - the date Shiva commenced the Separation Proceedings. Obviously, this claim for relief would indicate that Hema is availing herself of the Separation Judgment, which gave her the right to make such a demand upon the dissolution of the community property regime. On the same date, Hema filed a Petition for Partition of Community Property, wherein she notices the Separation Judgment and acknowledges its effect on the community property regime, seeking the partition of all community property affected by the judgment. Again, she availed herself of the Separation Judgment. Then, on or about June 6, 1984, Hema filed her Petition for Rule to Show Cause to Increase Child Support and for Additional Relief, which "additional relief" included a claim for an accounting of all property that had previously belonged to the community, but which had become jointly owned as an ultimate result of the Separation Judgment. Again, she specifically acknowledges November 4, 1981 as the date upon which the community property regime terminated. Finally, in the years following the divorce, Hema filed various proceedings relating to the custody and support of the couple's children, which we believe further evidence her acquiescence in the Separation Judgment. See, *Bergman v. Bergman*, 425 So. 2d 831, 833 (La. App. 5th Cir. 1982) (a wife's attack of five-year-old divorce judgment was null, because she had acquiesced in the judgment when she asserted its validity in a Pennsylvania court, and recognized her status as a tenant in common with her previous husband).

Resultantly, we conclude that even if Hema intended to attack the validity of the Separation Judgment for a vice of form pursuant to La. C.C.P. art. 2002 (A)(2), such a claim is precluded by her subsequent voluntary acquiescence in the judgment.

Finally, Shiva argues that Hema's claim is barred by the one year prescriptive period set forth in La. C.C.P. art. 2004, because her claim is better characterized as an action for annulment based on a vice of substance (i.e., the misrepresentation by Shiva of her absence). We note that the one-year period is peremptory and dates from the discovery of the alleged fraud or ill practice. Here, Hema was aware of the Separation Judgment, at least by 1982. However, based on our findings as discussed, this issue need not be reached.

CONCLUSION

Therefore, for the foregoing reasons, we affirm the judgment of the trial court and assess all costs of the appeal to Hema.

Therefore, the learned Counsel would submit that even if the foreign court did lack jurisdiction, by her participation and acquiescence, pursuant to the decree of divorce and having proceeded to seek further reliefs on the basis of such divorce, was estopped from denying the validity and binding nature of the decree of divorce and therefore, the learned Counsel would submit that the reasons assigned by the trial court in dismissing the suit, cannot be faulted. If the position that there was a valid decree of divorce is accepted, the subsequent marriage of defendants 1 and 2 is valid in law. Therefore, the plaintiff was not entitled to any relief as held by the court below. The learned Counsel would place reliance on the following judgments :

1. V.S. Subramania Iyer vs. Ramasami Pillai - AIR (38) 1951 Mad 531,
2. Smt. Satya Vs. Shri Teja Singh,
3. Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another,
4. Nemi Chand Vs. Onkar Lal,
5. In the light of the above, the points that arise for consideration before this Court are the following :-

(a) Whether the District Court of Bossier Parish in the State of Louisiana, USA, had jurisdiction to entertain the proceedings for judicial separation and divorce at the instance of defendant no. 1, who was married to the plaintiff, according to Hindu religious rites in India, and were governed by the Hindu Marriage Act, 1955, and continued to be Indian citizens at the relevant point of time, though residing within the jurisdiction of that court, for several years prior to the institution of the proceedings?

(b) Whether the decree of divorce granted by the foreign court was in violation of the several clauses of Section 13 of the CPC?

(c) Whether the plaintiff was estopped from questioning the decree of divorce before the Court of the City Civil and Sessions Judge, Bangalore, by virtue of the implied acceptance of the decree of divorce in the plaintiff having approached the American Courts for further reliefs such as partition, child custody, child support and alimony pursuant to the decree of divorce and in view of the judgment rendered in an appeal filed by the plaintiff, before the Court of Appeal in the USA?

6. To answer the first point for consideration, it would be useful to keep in view the settled legal position applicable to cases, such as the present one, having due regard to the facts and circumstances. The discussion on the legal provisions involved by the apex Court in the case of Smt. Satya Vs. Shri Teja Singh, may be usefully noticed.

The facts leading up to that case were as follows :-

Satya, the appellant married Teja Singh in the year 1955 according to Hindu rites. Both were Indian citizens and were domiciled in India at the time of their marriage. The marriage was performed at Jullundur in the State of Punjab. Two children were born to them, a boy in the year 1956 and a girl in 1958. In January 1959, Teja Singh, who was a Forest Range Officer at Gurdaspur left for the United States of America for higher studies. He spent a year in a New York University and then joined the Utah State University, where he studied for about four years for a Doctorate. On completion of his studies, he secured a job in Utah and during the five years of his study, Satya continued to live in India with the children. She did not ever join Teja Singh in America, since he had promised to return to India after completion of his studies. In January, 1965, Satya had moved an application u/s 488 of the Code of Criminal Procedure, 1973, alleging that Teja Singh had neglected to maintain her and her children. She claimed maintenance at Rs. 1,000/- per month. Teja had appeared through Counsel and claimed that the marriage stood dissolved as on 30.12.1964 by a decree of divorce granted by the Second Judicial District Court of the State of Nevada, USA. He contended that Satya had ceased to be his wife by virtue of that decree and therefore, he was not liable to maintain her.

The Judicial Magistrate, Jullundar by a judgment dated 17.12.1966 held that the decree of divorce was not binding on Satya as Teja Singh had not permanently settled in the State of Nevada and the marriage could be dissolved only under the Hindu Marriage Act, 1955 and directed payment of maintenance. This was confirmed in revision by the Sessions Judge, Jullundur reiterating that the marriage could be dissolved only under the Hindu Marriage Act, 1955. The High Court of Punjab, at the instance of Teja Singha, held that at the commencement of the proceedings for divorce before the Court in Nevada, Teja was domiciled within that State in the USA and applying the old English rule, that during marriage, the domicile of the wife, without exception, follows the domicile of the husband and for this conclusion, relied on decisions of the Privy Council, of which the leading case was *Le Mesurier v. Le Mesurier*, 1895 AC 517 and other cases, which had followed the same, wherein it was held that according to the

International Law, the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage. The apex court opined that since the decision rested on Le Mesurier Doctrine, the real point in controversy was not answered and therefore, framed the following question for decision - "Is the decree of divorce passed by the Nevada Court, USA, entitled to recognition in India?"

The apex court opined that the answer to the question would depend principally on the rules of Private International Law and further took note that it was a well-recognised principle that Private international Law is not the same in all countries. There is no system of Private international Law which could claim universal recognition, which was the opinion expressed by most celebrated writers including, Graveson, Dicey and Morris and Martin Wolff. It was observed that there exists an English Private international law as distinct from a French, a German or an Italian Private international law. The rules on the conflict of laws in the various countries differ nearly as much from each other as do those on internal(municipal) law. The rules of Private international law evolved by other countries could not be adopted mechanically since they vary greatly and are moulded by the distinctive social, political and economic conditions obtaining in those countries. As for instance, the question relating to the personal status of a party depend in England and North America upon the law of his domicile, but in France, Italy, Spain, and most of the other European countries, upon the law of his nationality. Principles governing matters within the divorce jurisdiction are so conflicting in the different countries that not unoften a man and a woman are husband and wife in one jurisdiction, but treated as divorced in another jurisdiction, which is termed as a "limping marriage".

Considering the state of law in USA, it was observed that the USA has its own peculiar problems of the conflict of the laws arising from the co-existence of 50 States, each with its own autonomous legal system. The domestic relations of husband and wife constitute a subject reserved to the individual States and does not belong to the USA under the American Constitution. The validity of divorce decree passed by a State Court is in other States tested as if it were a decree granted by a foreign court. The apex Court took note of the principles on which the American Courts grant or refuse to grant recognition to divorce decrees passed by the foreign courts, including the courts of sister States. A foreign decree of divorce would be denied recognition in American Courts if the judgment is without jurisdiction or is procured by fraud or if treating it as valid would offend against public policy except where the issue of jurisdiction was litigated in the foreign action or the defendant appeared and had an opportunity to contest it, a foreign decree may be collaterally attacked for lack of jurisdiction, even though jurisdictional facts are recited in the judgment. Therefore, a foreign divorce decree may be rendered invalid by proof that neither party had domicile or bona fide residence in the State or country where the decree was rendered or if there was a fraudulent representation, designed and intended to mislead and resulting in damaging deception. The English Courts have by and large, come to

adopt the same criteria as the American Courts for denying validity to foreign decrees of divorce, though recent legislative changes have weakened the authority of archaic rules of English Law. The apex Court also expressed that the principles of American and English conflict of Laws are not to be adopted blindly by Indian courts, but an awareness of foreign law in a parallel jurisdiction would be a useful guidelines. Insofar as the case that the apex Court was dealing with, was concerned, it was observed that the Nevada Court had assumed jurisdiction on the basis that Teja Singh was a bona fide resident of and was domiciled in Nevada. This was a jurisdictional fact on which the decree was open to collateral attack, on the ground that Teja was not a bona fide resident of Nevada and the recital in the judgment to that effect was not conclusive and could be contradicted by satisfactory proof. The apex Court had found as a fact, from the material available that Teja Singh never lived in Nevada. He had made a false representation only for the purpose of obtaining a decree of divorce and he had immediately left Nevada. He was therefore a "bird of passage" and resorted to the court there solely to find jurisdiction and had procured a decree of divorce on a misrepresentation that he was domiciled in Nevada and therefore, concluded that the Le Mesurier doctrine, on which the High Court drew, loses its relevance and found that the Nevada Court had no jurisdiction to pass the decree of divorce and upheld the order of maintenance in favour of Satya and further observed that unhappily, the marriage between the appellant and the respondent therein would "limp", in that, the couple will be treated as divorced in Nevada but, their bond of matrimony will remain unsnapped in India, the country of their domicile. It was for the Legislature to find a solution to such schizoid situations as the British Parliament had to a large extent done by passing the Recognition of Divorces and Legal Separations Act, 1971 and hoped that the scheme for relieving the confusion caused by differing systems of conflict of laws as contained in the International Hague Convention of 1970 would serve as a model.

Similarly, the case of Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another, could also be usefully referred to.

Rao and Lakshmi were married at Tirupati in February 1975. They had separated in July 1978. Rao filed a petition for dissolution of marriage in the Circuit Court of St. Louis County, Missouri, USA. Lakshmi sent a reply from India under protest. The Circuit Court passed a decree of dissolution of marriage in February 1980 in her absence. Rao had earlier filed a petition for dissolution of marriage in the Sub-Court of Tirupati. In that petition, he filed an application for dismissing the same as not pressed in view of the decree passed by the Circuit Court of St. Louis County, Missouri. In August 1981, that petition was dismissed. In November 1981, Rao married another woman. Hence, Lakshmi filed a criminal complaint against Rao and his second wife for the offence of bigamy. Rao and another filed an application for their discharge in view of the decree of dissolution of marriage passed by the foreign court. The Magistrate discharged the appellants, namely Rao and another in October 1996. Lakshmi preferred a criminal revision petition to the High Court. The High Court by its decision in April

1987, set aside the order of the Magistrate holding that a photostat copy of the judgment of the foreign court was not admissible in evidence to prove the dissolution of marriage and directed the Magistrate to dispose of the petition filed by Rao afresh. It is that order which was questioned before the apex court. The apex Court observed from the record that the foreign court assumed jurisdiction on the ground that Rao had been a resident of the State of Missouri for 90 days next preceding the commencement of the action. Secondly, that the decree had been passed on the ground that there was no requisite likelihood that the marriage between the parties could be preserved and that it was irretrievably broken. Thirdly, Lakshmi had not submitted to the jurisdiction of the Court. Lakshmi had filed replies before the foreign court and she had specifically pleaded that the reply was filed without prejudice to the objection that Lakshmi was submitting to the jurisdiction of the court and there was, inter-alia, an objection that the parties were Hindus and governed by the Hindu law and were married in India according to the Hindu law. She was an Indian citizen and was not governed by the laws in force in the State of Missouri and therefore, the court had no jurisdiction. Further, the dissolution of the marriage between the parties was governed by the Hindu Marriage Act, 1955 and the court had no jurisdiction to enforce the foreign laws and none of the grounds pleaded in the petition for divorce were sufficient to grant any divorce under the Hindu Marriage Act, 1955. And after noting the other factual particulars observed that the decree dissolving the marriage passed by the foreign court was without jurisdiction. Neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that court, as required under the provisions of the Hindu Marriage Act, 1955 and the decree was granted on the ground which was not available under the Hindu Marriage Act. The decree was obtained by Rao on his representation that he was a resident of Missouri State, whereas he was only a bird of passage and was ordinarily resident of the State of Louisiana and therefore, the apex Court observed that it was possible for it to dispose of the case on the narrow ground that the appellant had played fraud on the foreign court, applying the ratio of the decision in *Satya vs. Teja Singh*. But however, the larger question that was present was, whether in many such cases, the courts in India could recognize the foreign divorce decrees, prompted the court to discuss the legal principles further. It was observed that the rules of Private International Law in India are not codified and are scattered in different enactments such as the Contract Act, Indian Succession Act, Indian Divorce Act, the Special Marriage Act etc. In matters of status or legal capacity of natural persons, matrimonial disputes, custody of children, adoption, testamentary and intestate succession etc., the problem is complicated by the fact that there exist different personal laws and no uniform rule can be laid down for all citizens. The distinction between matters which concern personal and family affairs and those which concern commercial relationships, civil wrongs etc., is well recognised in other countries and legal systems. This fact of national life had been recognised both by the Hague Convention of 1968 on the Recognition of Divorce and Legal Separations as well as by the Judgments Convention of the European Community

of the same year. Article 10 of the Hague Convention expressly provides that the contracting States may refuse to recognise a divorce or legal separation if such recognition is manifestly incompatible with their public policy. The Judgments Convention of the European Community expressly excludes from its scope, (a) status or legal capacity of natural persons, (b) rights in property arising out of a matrimonial relationship, (c) wills and succession (d) social security and (e) bankruptcy. A separate convention was contemplated for the last of the subjects. It was further observed that the courts in India have tried to follow the English rules of Private International Law insofar as the matrimonial law is concerned, and that the dependence on English law even in matters which are purely personal, was regrettable as nothing was done to remedy the situation and that the labours of the Law Commission reflected in its 65th Report on the very subject had not fructified at all even as late as 1991 when the judgment was rendered, though the report was of the year 1976. Therefore the apex court ventured to lay down the minimum rules of guidance for securing certainty, awaiting the legislative initiative and expressed that the relevant provisions of Section 13 of the Code of Civil Procedure, 1908 was capable of being interpreted to secure the required certainty and expounded on the scope of the several clauses of Section 13 of the CPC and laid down the following rule, as follows:-

15. Clause (a) of Section 13 states that a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. We are of the view that this clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in Section 41 of the Indian Evidence Act has also to be construed likewise.

16. Clause (b) of Section 13 states that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognise such judgment. This clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the court either in person or through a representative for objecting to the jurisdiction of the court, should not be considered as a decision on the merits of the case. In this respect the general rules of the acquiescence to the jurisdiction of the court which may be valid in other matters and areas should be ignored and deemed inappropriate.

17. The second part of clause (c) of Section 13 states that where the judgment is founded on a refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognised by the courts in this country. The marriages which take place in this country can only be under either the customary or the statutory law in force in this country. Hence, the only law that can be applicable to the matrimonial disputes is the one under which the parties are married, and no other law. When, therefore, a foreign judgment is founded on a jurisdiction or on a ground not recognised by such law, it is a judgment which is in defiance of the law. Hence, it is not conclusive of the matters adjudicated therein and, therefore, unenforceable in this country. For the same reason, such a judgment will also be unenforceable under clause (f) of Section 13, since such a judgment would obviously be in breach of the matrimonial law in force in this country.

18. Clause (d) of Section 13 which makes a foreign judgment unenforceable on the ground that the proceedings in which it is obtained are opposed to natural justice, states no more than an elementary principle on which any civilised system of justice rests. However, in matters concerning the family law such as the matrimonial disputes, this principle has to be extended to mean something more than mere compliance with the technical rules of procedure. If the rule of *audi alteram partem* has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent himself/herself and contest effectively the said proceedings. This requirement should apply equally to the appellate proceedings if and when they are filed by either party. If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice. It is for this reason that we find that the rules of Private International Law of some countries insist, even in commercial matters, that the action should be filed in the forum where the defendant is either domiciled or is habitually resident. It is only in special cases which is called special jurisdiction where the claim has some real link with other forum that a judgment of such forum is recognised. This jurisdictional principle is also recognised by the Judgments Convention of the European Community. If therefore, the courts in this country also insist as a matter of rule that foreign matrimonial judgment will be recognised only if it is of the forum where the respondent is domiciled or habitually and permanently resides, the provisions of clause (d) may be held to have been satisfied.

19. The provision of clause (e) of Section 13 of which requires that the courts in this country will not recognise a foreign judgment if it has been obtained by fraud, is self-evident. However, in view of the decision of this Court in *Smt. Satya v. Teja Singh* it must be understood that the fraud need not be only in relation to

the merits of the matter but may also be in relation to jurisdictional facts. From the aforesaid discussion the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

Reliance is also placed on *M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd.*, This was a case where the appellant had placed an order with the respondent for purchase of greasy fleece wool. The goods were shipped to Mumbai in September 1996. The appellant claimed the goods from Mumbai and took them to Ludhiana. The appellant did not pay the price of the goods on the ground that upon taking delivery, it was found that the goods were of an inferior quality. The respondent issued a notice in October 1997. The appellant relied to the same in November 1997. In January 1998, the respondent filed a case in Central London County Court in the United Kingdom and the respondent claimed that the appellant was served with the summons of that case. The appellant claimed that he had not been served. In April 1998, an ex parte decree came to be passed by that court. In August 1998, the respondent filed an execution application in the Court of the Civil Judge, Ludhiana. On receipt of the summons, the appellant filed an application praying for dismissal of the execution application as it was filed without following the procedure prescribed under the CPC. In reply, the respondent contended that the execution was u/s 44A of the CPC and as such there was no requirement to observe the provisions of Sections, 38, 39 and 40 of the CPC. The appellants, therefore, filed another application stating that the decree was not on merits and as per the provisions of Section 44A read with Section 13(b) of the CPC. The court had to refuse to execute the decree. Both the applications were heard and by two separate orders, both the applications were dismissed. A revision petition was filed, which also came to be dismissed by the High Court which found that the decree was not on merits, but it still dismissed the revision on the ground that the second application was barred by the principle of Constructive res judicata. It is against that order that the appeals were filed before the Supreme Court. In that, both the appellant and the respondent had preferred the appeals. Insofar as the respondent was concerned, he was questioning the judgment whereby it was held that the decree was not on merits. The apex court posed for itself two questions. The first question was whether the High Court was right in holding that the second

application was barred by the principles of res judicata? The apex court answered the same by holding that the appellant, instead of filing the second application, could have amended their first application and taken the very pleas in the second application. Therefore, if that be so, was not understandable as to how the second application was barred by the principles of res judicata, since the orders were passed after hearing the arguments on both the applications. Therefore, there being any res judicata or constructive res judicata did not arise. Insofar as the second question whether the decree of the English Court could be executed in India, after discussing the case law on the point, the apex court agreed with the following principles:

The decision of a court not given on examination of the points at controversy between the parties, but given ex parte on the basis of the plaintiff's pleas and documents tendered by the plaintiff, without going into the controversy between the parties since the defendant had not appeared at the time of hearing of the suit to defend the claim, the judgment could not be a judgment on the merits of the case. Even an ex parte judgment in favour of the plaintiff may appear to be a judgment even on merits. If some evidence adduced on behalf of the plaintiffs and the judgment however brief is based on a consideration of that evidence. Where however, no evidence is adduced on the plaintiff's side and his suit is decreed merely because of the absence of the defendant, either by way of penalty or in a formal manner, the judgment may not be one passed on the merits of the case. Section 13 of the CPC prescribes the conditions to be satisfied by a foreign judgment in order that it may be accepted by an Indian court as conclusive between the parties thereto or between the parties under whom they or any one of them litigate under the same title. One such condition was that the judgment must have been given on the merits of the case. Whether the judgment is one on the merits must be apparent from the judgment itself. It is not enough if there is a decree or a decision by the foreign court. In fact, the word "decree" does not find a place anywhere in the section. What is required is that there must have been a judgment. What the nature of that judgment should be is also indicated by the opening portion of the section where it is stated that the judgment must have directly adjudicated upon questions arising between the parties. The court must have applied its mind to that material and must have considered the evidence made available to it in order that it may be said that there has been adjudication upon the merits of the case. It cannot be said that the said decision on merits is possible only in cases where the defendant enters appearance and contest the plaintiff's case. Even where the defendant chooses to remain ex parte, it is possible for the plaintiff to adduce evidence in support of his claim. The decision on merits involves application of mind of the court to the truth or falsity of the plaintiff's case and therefore, though a judgment passed after the judicial consideration of the matter by taking evidence may be a decision on the merits, even though passed ex parte, a decision passed without evidence of any kind or passed only on its pleadings cannot be held to be a decision on merits.

Reliance was placed on *State of Kerala Vs. M.M. Manikantan Nair*, which is a defendant's appeal arising out of a suit for declaration and consequential reliefs. The trial court had decreed the suit filed by the respondent - plaintiff holding that she was the legally wedded wife of the appellant and their daughter was their only legal heir. It was also declared that the marriage between the appellant and the second respondent was a nullity. The findings of fact by the trial court were as follows:

That the appellant and respondent no. 1 had married as per the Roman Catholic Rites at Madras in January 1992. That after their marriage, they resided at Bangalore till May 1992. A child was born to them in October 1992. The appellant had changed his name from Deva Prasad Reddy to Salman Dev. The appellant had married respondent no. 2 according to the Muslim rites. A son was born to the appellant and respondent no. 2. The controversy was whether a decree of divorce granted by the American Court was valid as it was contended that it was a nullity as argued by the appellant. On the question of jurisdiction of the foreign Court, it was held that neither the appellant nor the first respondent were domiciled within the jurisdiction of that court and therefore, the court lacked jurisdiction to grant the decree. Referring to the exception carved out by the apex court in *Y. Narasimha Rao*, supra which pertains to a situation where the respondent has consented to the grant of relief though the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties and that the apex court has recognised the principle that if the respondent has consented to the grant of relief before a foreign court, the judgment and decree granted by any such forum would be conclusive, no matter the jurisdiction of the court was not in accordance with the provisions of the matrimonial law of the parties. In other words, the consent to the grant of relief in matters relating to matrimonial laws and a decree granted by a foreign court was taken to be sufficient to cure the defect in the jurisdiction of the court. The further argument that though the consent may cure the defect in the jurisdiction of the forum, it would however not authorise the forum to pass an order contrary to the provisions of the matrimonial law applicable to the parties, since the decree in that case was passed on a ground not available to the parties, as per their personal law, since no divorce by mutual consent was envisaged by the Indian Divorce Act, till it was amended to incorporate the same. The Division Bench of this Court rejected that argument for two reasons. If consent can cure the defect of jurisdiction of the forum, which grants the decree, by the same logic, it should also place a decree granted by such a forum beyond challenge on the ground that the relief granted was not available to the parties as per the personal law prevalent in the country of their origin. Secondly, that as on the date the question whether the foreign decree was valid as per the personal law applicable to the parties, was not a ground available on the date the American court dissolved the marriage, but as on the date the decree was being adjudicated upon, such a ground was available by virtue of the amendment introduced in the Act. Therefore, the Division Bench held that the divorce could

not be declared as invalid.

Reliance is also placed on a decision of the Delhi High Court in *Anubha Vs. Vikas Aggarwal*, That was a case where both the husband and wife were Hindus and the wife had filed a suit for judicial separation and maintenance in Indian Court. During the pendency of which, the husband had obtained the decree of divorce from the court in the United States Of America. On facts, it was found by the court that the wife had not submitted to the jurisdiction of the foreign court nor had she consented for grant of divorce by the foreign court. Thus, the decree obtained by the husband in the foreign court was neither recognisable nor enforceable in India.

The Counsel for the respondents has also placed reliance on *Satya vs. Teja*, *supra*, and *Y. Narasimha Rao vs. Y. Venkata Lakshmi*, *supra*, apart from a decision of the Madras High Court in *V.S. Subramanya Iyer vs. V.V. Ramasami Pillai*, AIR (38) 1951 Mad 531, for the proposition that in regard to proceedings pending in foreign courts, a party is not entitled to declaratory relief as of right. The Court would not and should not give a declaration as it had no jurisdiction in regard to the properties situated in foreign countries as if such a declaration were to be given, it would infringe upon the undoubted rights of the foreign tribunal to decide cases pending before it and that it would be improper and highly derogatory to the prestige of the foreign court if it is held that the decision of the foreign court was wrong for one reason or the other. Even if a court did, it would be *brutum fulmen* as the foreign Court would certainly ignore the decision of a local court.

The learned Counsel has also produced an extract of the Louisiana Divorce Laws, said to have been downloaded from the Internet, to demonstrate that the proceedings for judicial separation and divorce instituted by the respondent before the foreign court was in accordance with law, as he was then residing within the jurisdiction of the said court.

He has also drawn attention to the Hague Convention on the Recognition and Enforcement of Divorces and Legal Separations, 1970, the important features of which have been extracted in the book - *Conflict of Laws* by Atul Setalvad, which convention has been adopted by 18 countries and implemented inter- alia in Australia and the United Kingdom.

With the above legal principles in view, the sequence of events before the foreign court can be culled out from the record as follows :-

A petition for separation was filed by the first respondent before the foreign Court, alleging that the appellant had abandoned him and returned to India in June 1981. That petition was filed on 4.11.1981. The court had appointed a curator to represent the appellant, on 28.1.1982, the curator had informed the court that he had sent the notice by registered post to the appellant, but had received no response and he had formally denied the allegations in the petition. The case went to trial and judgment was rendered awarding judicial separation.

In June 1982, a petition for divorce was filed by the first respondent and again, a curator was appointed to represent the appellant. In November 1982, the case was taken up for trial and judgment was rendered. It is to be noticed that the notice of the proceedings had been served on the appellant, who had returned to Louisiana shortly before the hearing of the matter and had testified at the trial. A decree of divorce was granted as on 3.12.1982. In March 1983, the appellant had petitioned the court for partition of community property and also had petitioned for custody, child support and alimony. On 17.3.1983, a judgment was entered by agreement granting provisional custody and child support to the appellant pending trial. The judgment was rendered on 13.5.1983 and though a date was set for the trial, no trial was held. There were further proceedings relating to custody of one of the children between June 1983 and May 1984. There was a further petition for increase in child support and for additional relief, which went to trial and a judgment was granted in favour of the appellant in July 1987. In July 1988, there was a further petition for increase in child support, which was dismissed as there was failure to allege a change in circumstances. Thereafter, in October 1990, a petition to annul the judgment was filed, which was dismissed by a judgment dated 5.1.2000 and the same was challenged by way of an appeal before the Court of Appeal, Second Circuit, State of Louisiana, which in turn, was dismissed by a judgment dated 28.2.2001. Parallely, the suit in which the impugned judgment is rendered was filed before the Court of the City Civil Judge, Bangalore, as on 11.7.1983. The evidence was recorded from 21.10.1994, by which time, the plaint had been amended to incorporate the changed circumstances and the judgment has been rendered on 2.4.2002.

There are copies of proceedings before the foreign court. The pleadings on behalf of the appellant before that court, apparently, are filed without regard to the Indian law and absence of jurisdiction, which would be apparent going by the admitted circumstances, in that, as on the date of the grant of decree of divorce by the foreign court, the plaintiff and the first defendant who were married according to Hindu religious rites in India and continued to be governed by the 1955 Act, was a clear bar of jurisdiction insofar as their marriage being adjudicated by a foreign court. The appellant had appeared before the foreign court and had even tendered evidence at the final stages of the divorce proceedings. Insofar as the clear legal bar in the Indian law in respect of the adjudication of their matrimonial dispute was concerned, from Page-208 (marked in red ink) of the Court Records, the exchange between the foreign court and the appellant is recorded verbatim. The appellant in her halting English, has tried to explain to the court that it had no jurisdiction and the same is reproduced here to demonstrate that in her own words, she has attempted to bring to the attention of the court that she seeks to resist the grant of divorce.

A I'm sorry, sir, I don't want to give him divorce.

THE COURT: I know you don't. And I understand that. But the fact is that you have in this case a separation from bed and board which was obtained -

A But I didn't hold myself in separation-- my baby in hospital -

THE COURT: I know it, but he had obtained that. And I don't know how -

A --- I'm not going to marry again, one life is one time to marrying.

THE COURT: I don't quarrel with you on that. I have no answer to that because I - that's your belief and I don't disagree with it. But under our law he is entitled to the divorce based on what evidence I've heard. And this does not mean, as I have stated, that you have done anything that is wrong, but it is just the fact of your nonreconciliation.

A I was in hospital, how can I come here at that time, with baby with me at that time, how can I come at that time, and baby had---

THE COURT: see, what you feel like is there has to be some fault on the part of somebody or somebody has done something wrong. But the fact is, under our law if you live separate and apart for this period of time it entitles them to the divorce, and that's the reason this divorce was granted. There is a separation in the record and you have had no reconciliation since that time and that is the basis of our law, that it entitles him to a divorce.

A I don't know Louisiana law.

It was present to the mind of the foreign court that there was a personal law which governed the parties and the foreign court could not have assumed jurisdiction in the light of Section 19 of the 1955 Act. The court below was clearly wrong in holding that the petition for divorce could have been filed before the foreign court. If further proceedings had stopped at that stage, it was clearly a case where the decree of divorce granted by the foreign court could have been held not binding on the appellant. Therefore, the foreign court did lack jurisdiction as the parties were clearly governed by the provisions of the 1955 Act and therefore, the marriage, to which the 1955 Act applied, could not have been dissolved by a court without jurisdiction, notwithstanding the local law under which the proceedings may have been instituted. The judgment of the foreign court was also violative of clause (a) of Section 13 of the CPC, as the foreign court cannot be considered as a court of competent jurisdiction, since the law under which the parties were married could not recognise it as a competent jurisdictional court to entertain the matrimonial dispute in terms of clause (a) of 13 of the CPC.

It would also be bad as there was no real contest between the parties on all the issues that were relevant and it cannot be said that the appellant had voluntarily and unconditionally submitted herself to the jurisdiction of the foreign court and had contested the claim or agreed to the passing of the decree. The mere filing of the reply to claim and her express wish to contest the proceedings on the question of jurisdiction, cannot be considered as a decision on the merits of the case.

It was also violative of Clause (c) of Section 13, since it is founded on a refusal or complete negation of the law governing the parties and therefore, could not be recognised by the Courts in India. Therefore, as the position stood on the date the decree of divorce was granted in favour of the respondent, points (a) and (b) framed for consideration by this Court, as above, would certainly have to be answered in favour of the appellant. But, however, having regard to the subsequent events, whereby the appellant has instituted further proceedings before the American Courts over a period of several years and has derived the benefit of the decree of divorce, she had impliedly accepted the decree of divorce and submitted to the jurisdiction of the forum, although, the jurisdiction of that forum was not in accordance with the provisions of the matrimonial law of the parties. It would clearly fall within the exception to the rule that the jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law, under which the parties were married. This is one of the exceptions as pointed out by the apex Court in the case of Y. Narasimha Rao, *supra*. Therefore, the suit would have to be dismissed, but not for the reasons assigned by the trial court, but in the light of the above sequence of events and the circumstances that are evident. Consequently, the validity of the marriage of the respondents also cannot be assailed.

Therefore, the appeal is hereby dismissed. The parties to bear their own costs.