

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Reserve: 4th March, 2009

Date of Order: March 17, 2009

I.A.No. 2466/2009 in CS(OS) 357/2009

Ms. Renu Judge

Plaintiff
Through: Ms. Malvika Rajkotia and
Ms. Arpita Rai , Advocates

Versus

Mr. Nanik Tirath Mulchandani

...Defendant
Through: Mr. Santosh Paul and
Mr. Sriharsh N.Bundela Advocates

I.A.No. 2466/2009

1. By this application under Order 39 Rule 1 & 2 CPC, the applicant/plaintiff has sought an interim injunction that defendant No.1 be restrained from filing any legal and custody proceedings against the plaintiff in Singapore and from prosecuting any proceedings already filed there.
2. The brief facts relevant for purpose of deciding this application are that the plaintiff, a U.K. Citizen, was married to defendant, an Indian citizen having resident status in U.K, in 1994. To the parties, a son named Nikhil was born on 9th September, 1997. The parties could not live together for long and plaintiff instituted divorce proceedings against the defendant in U.K.court in 2003 and a decree nisi was granted in this divorce matter on 26.9.2003 by U.K. court. The U.K. Court also passed an order in respect of the custody and visitation rights of defendant in respect of child Nikhil. The plaintiff, thereafter, secured employment in Singapore and applied to U.K.court for removing child Nikhil to Singapore. This application of the plaintiff was allowed by High Court of Justice Family Division of United Kingdom on 27.2.2004 and the U.K. Court directed the plaintiff to obtain a mirror order in respect of the arrangement made by it concerning child Nikhil from Singapore court. The Plaintiff moved to Singapore and made an application before Singapore court in accordance with the directions given by U.K. court. U.K.court order was mirrored by Singapore court on 12.3.2004. The plaintiff in order to secure mirror order had filed detailed affidavit before Singapore court. Since plaintiff continued living in Singapore and established her business there with one Mr. Amit Judge, with whom she had continued long relations, the Singapore Court was moved to from time to time regarding visitation rights of defendant. In 2008, plaintiff decided to

marry Mr. Amit Judge and decided to reside with him in India. There was an exchange of correspondence between her advocate and advocate of defendant. In view of the fact that plaintiff and defendant were both governed by the order of Singapore Court regarding visitation rights of defendant and regarding custody of Nikhil during vacation period to the defendant and other welfare measures for child, the defendant was informed by plaintiff about her plans of shifting the child to India. Child Nikhil, prior to that, was studying in Singapore and was in ordinary custody of plaintiff with certain vacation and visitation rights to the defendant. On receiving this notice, the defendant counsel wrote to the plaintiff counsel that an appropriate order should be obtained from court at Singapore for removing the child to India. Accordingly, plaintiff made an application to Singapore court seeking permission of Singapore court for removing the child from the jurisdiction of Singapore court. The Singapore court gave conditional permission to plaintiff to remove the child to India. The proceedings before Singapore court did not come to an end and remained pending. The plaintiff after coming to India filed a suit under Section 7, 8, 9 & 10 of the Guardian and Wards Act before District Judge, Delhi for her appointment as guardian and for custody of the child Nikhil Mulchandani, although, the plaintiff already had an order in her favour regarding custody of the child granted to her by court of U.K Court and then mirrored by Singapore Court. In her suit, she herself mentioned that the litigation had already been made in U.K. and Singapore. After filing the suit before District Judge, Delhi she preferred the present suit before this court seeking an injunction that the defendant should be restrained from continuing proceedings before Singapore court.

3. The defendant was served notice of the suit and the application. Defendant has placed on record the different affidavits filed by plaintiff before Singapore court and the different orders passed by U.K. court and Singapore court. There is no dispute as far as the facts are concerned and about the fact that plaintiff had removed child from the jurisdiction of Singapore court after obtaining an order from the Singapore court to which defendant was a party. The relevant portion of the order dated 15.8.2008 reads as under:-

1. The Plaintiff is granted leave to remove the child, Nikhil Tirath Nanik Mulchandani (“the child”) from the jurisdiction of Singapore upon the following conditions.

2. The Plaintiff and the Defendant shall agree and arrange within on (1) month for a medical assessment to be conducted for the child in India for Autism Spectrum Disorder. This assessment shall be conducted and completed within two (2) months.

3. a) There is to be counseling with a view to repairing the relationship between the Defendant and the child. The plaintiff is to bring the child for the counseling after the completion of the medical assessment stated at paragraph 2 above.

b) The Plaintiff and the Defendant shall jointly agree on the appointment of the counselor within one (1) month of the completion of the medical assessment stated at paragraph 2 above. All parties in this matter to participate in the counseling process if recommended to do so by the counselor.

4. Within two (2) months of the extraction of this Order, the Plaintiff shall apply to enter an order in India settling out the orders contained herein and shall serve the relevant documents on the Defendant.

5. The Plaintiff to give the Defendant the contact details and address of Nikhil's residence in India within one week from the date hereof.

6. Each party shall bear his/her own costs.

4. The counsel for plaintiff submitted that since plaintiff had shifted to Delhi and the child was now studying in Delhi and the defendant was also an Indian citizen, resident of Bombay, Delhi court was a forum convenient for the parties and proceedings before Singapore Court were before an inconvenient forum. Therefore, the defendant should be restrained from continuing the proceedings before Singapore court.

5. The counsel for defendant submitted that forum at Singapore was not a choice of the defendant. Forum of Singapore was a choice of the plaintiff who had secured employment in Singapore. The plaintiff and the child were both U.K.citizens. Plaintiff had obtained residence status in Singapore and the child was studying in Singapore and the Singapore court was the appropriate court having jurisdiction. The proceedings before Singapore court were proceedings initiated by the plaintiff. The orders passed by Singapore court were passed when both the parties had submitted to the jurisdiction of Singapore court. The defendant cannot be restrained from moving proper application before competent court where the plaintiff had initiated proceedings and the plaintiff's present application was misconceived.

6. Both the parties have relied upon Modi Entertainment Network Vs. W.S.G.Cricket Pvt. Ltd. (2003) 4 SCC 341. In this case para 24 laid down the principles regarding anti suit injunction as under:-

“24. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied to the following aspects.

(a) the defendant, against whom injunction is sought, is amenable to the personal jurisdiction of the court;

(b) if the injunction is declined, the ends of justice will be defeated and injustice will be perpetuated; and

(c) the principle of comity- respect for the court in which the of continuance of action/proceeding is sought to be restrained-must be borne in mind.

7. Keeping in view the principle laid down by the Supreme Court in the above case, I consider that it is not a fit case where an interim injunction should be granted to the plaintiff against the defendant restraining defendant from continuing the proceedings before the Singapore court. In fact, the proceedings before the Singapore court were initiated at the behest of the plaintiff and the plaintiff should approach Singapore court explaining her stand to seek an order from the Singapore court that it should divest itself of the proceedings regarding child custody since she was no more residing in Singapore. The jurisdiction of Delhi court has been invoked by the plaintiff on the basis of her shifting to Delhi. Delhi court has never been a natural court of the plaintiff. Plaintiff and her son both are U.K. citizens. The initial proceedings regarding custody of Nikhil and visitation rights of the defendant apart from divorce proceedings were initiated at U.K. court. When the plaintiff shifted to Singapore, she approached U.K. court and U.K court gave her permission to shift proceedings to Singapore with directions to obtain a mirror order in Singapore court and thereafter, Singapore court started having jurisdiction over the parties. Since, she has now shifted from Singapore and come to Delhi if she wants that Singapore Court should not proceed further with these proceedings, she should go to the Singapore court and make this request. Any order passed by this Court restraining defendant in fact would be an order restraining Singapore Court from bringing proceedings pending before it to logical end and would be contrary to comity and respect for the Court at Singapore.

8. A perusal of plaintiffs affidavits, earlier filed before Singapore court shows that she had stated before Singapore court that she was having a well established global business in Singapore. She had expanded her business in Singapore throughout the world and it was the Singapore court where she wanted to continue her proceedings. It is not her case even now that she has wound up her business from Singapore and she was only confined to Delhi or that Singapore has nothing to do with her or her child. Moreover, I consider that the defendant cannot be restrained from taking recourse to legal proceedings in a court where plaintiff initiated the proceedings and defendant had agreed to submit to the court. Neither the defendant can be restrained from initiating proceedings, if any, before Singapore Court in respect of violation of its order. It is for Singapore court to decide whether it should proceed further with the proceedings or not. To hold that it is the choice of the plaintiff to move from one jurisdiction to the other and the defendant has no choice, in fact would be travesty of justice. The Defendant got some orders regarding child from Singapore court in his favour. The plaintiff gave undertaking to Singapore court to comply with those orders. The non-compliance of those orders by the plaintiff has to be adjudicated by Singapore court and not by this court. Thus, I find no merits in this application under Order 39 Rule 1 & 2 CPC, the same is hereby dismissed.

CS(OS) No. 357/2009

List on 20th May, 2009.

March 17, 2009

Sd./-
SHIV NARAYAN DHINGRA J.