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Supreme Court of India

Neerja Saraph vs Jayant V.Saraph on 6 October, 1994

Equivalent citations: 1994 SCC (6) 461, JT 1994 (6) 488

Author: R Sahai

Bench: Sahai, R.M. (J)

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           PETITIONER:
NEERJA SARAPH

        Vs.

RESPONDENT:
JAYANT V.SARAPH

DATE OF JUDGMENT06/10/1994

BENCH:
SAHAI, R.M. (J)
BENCH:
SAHAI, R.M. (J)
SINGH N.P. (J)

CITATION:
 1994 SCC  (6) 461        JT 1994 (6)   488
 1994 SCALE  (4)445


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by R.M. SAHAI, J.- These appeals directed against the interim order passed by the High Court in an appeal filed by Respondent 2 against rejection of an application for setting aside of an ex parte decree, raise an important issue as to how to protect the

rights and interests of women who are deserted by non-resident Indians on decree of annulment obtained from foreign courts.

2.Plight of women and their exploitation both inside and outside the house socially and economically is ancient. A mass of literature has been written to elevate their status. But a new social evil is surfacing. Any matrimonial column of any newspaper or magazine would carry a column that a NRI seeks Indian bride without any demand. The attraction of getting a groom and that too serving or earning abroad without dowry, lures many specially from middle class. Even otherwise parental insistence for Indian bride in the hope that their son is not lost for ever is not uncommon. Result, at times, is matrimonial alliance by a reluctant husband to assuage the sentiments of his parents. Victim is the helpless, poor, educated girl, normally, of a middle class family with dreams of a foreign land.

3. To what extent such misfortune may befall any innocent girl is vividly transparent by this unfortunate case. The appellant M.A., B.Ed. daughter of a senior Air Force officer serving as a teacher and drawing salary of Rs 3000 was married to Respondent 1, a Doctorate in Computer Hardware and employed in United States, at the behest of her father- in-law approached through a common family friend. How Respondent I met the appellant at Delhi upon his own request then picked her from her aunt's place at Bombay before marriage is not necessary to be stated nor is it necessary to narrate that the marriage was performed with gusto befitting the status of both the families. The marriage was performed on 6-8-1989 and the appellant was taken for honeymoon to Goa for few days. Respondent I returned to America on 24-8-1989, wrote letters to appellant on 15-9-1989, 20-10-1989 and 14-11-1989 persuading her to give up her job and suggesting the various avenues for her career in America. Appellant believing all that tried for visa and ultimately resigned her job in November 1989. But from December things started getting cold. And when father of appellant wrote a letter in January 1990 to the respondent-husband about the sufferings of her daughter, it did not bring forth any favourable response and in June 1990 the respondent's brother came to Delhi and handed over two envelopes, one a petition for annulment of marriage in a USA court and another a letter from her father-in-law which reads as under:

> "I have no words to express my feelings at Jayant's decision which is very unfortunate. I was hoping against hope. I have to accept the moral responsibility for Jayant's decision and apologize. Baba and your Mausa, they can squarely blame me for not knowing my son. This is agonizing experience for you in your life. I cannot say any more.

Please bear in my mind that we share your grief. I earnestly request you to see us when you come here in Bombay and keep friendl y relations. God bless you.

Yours affectionately, Nana"

For the father-in-law it was an unfortunate experiment, an effort, 'hoping against hope' forgetting that failure of it would be ruination of the other. For the son it was a pleasure trip. But for the daughter-in-law it was loss of everything, her maidenhood, status, service, dignity and peace. Her dreams stood shattered and she was reduced to nothing. 'Accepting moral responsibility', 'not knowing the son', 'sharing the grief' by the father-in-law are of little avail to the appellant. There is no whisper in the letter that he was willing to compensate for the wrong done to the appellant due to error in his assessment of his own son. It is not the soothing words alone which were needed but some practical solution to the disaster brought about by him. In these desperate circumstances, the wife having been forsaken by her husband and having lost the job had no alternative except to file a suit for damages against the husband and father-in-law for ruining her life in forma pauperis. And the father-in-law who has words of sympathy for the appellant contested her claim to sue in forma pauperis vehemently, though without any success. The suit was decreed ex parte for Rs 22 lakhs and odd. In an appeal filed by Respondent 2 the High Court stayed the operation of the decree subject to the appellant, who is

Respondent 2 in this Court, depositing a sum of Rs 1,00,000 within one month from the date the order was passed. It permitted the appellant to withdraw 50% of it. Various submissions have been advanced on behalf of the father-in-law to support the order of the High Court including his helplessness financially. Is it a case of any sympathy for the father-in-law at this stage? In our opinion not. True the decree is ex parte. Yet it is a money decree. However, no opinion is expressed on this aspect as the appeal is pending in the High Court. But the order of the High Court is modified by directing that the execution of the decree shall remain stayed if the respondents deposit a sum of Rs 3,00,000 including Rs 1,00,000 directed by the High Court within a period of two months from today, with the Registrar of the High Court. The appellant shall be entitled to withdraw Rs 1,00,000 without any security. The remaining Rs 2,00,000 shall be deposited in a nationalised bank as fixed deposit. The interest accruing on it shall be paid to the appellant every month. If the proceedings are not decided within reasonable time, it shall be open to the appellant to move an application for withdrawal of further amount.

4.Why the facts of this case have been narrated in brief with little background is to impress upon the need and necessity for appropriate steps to be taken in this direction to safeguard the interests of women. Although it is a problem of Private International Law and is not easy to resolve, but with change in social structure and rise of marriages with NRIs the Union of India may consider enacting a law like the Foreign Judgments (Reciprocal Enforcement) Act, 1933 enacted by the British Parliament under Section (1) in pursuance of which the Government of United Kingdom issued Reciprocal Enforcement of Judgments (India) Order, 1958. Apart from it there are other enactments such as Indian and Colonial Divorce Jurisdiction Act, 1940 which safeguard the interests so far as United Kingdom is concerned. But the rule of domicile replacing the nationality rule in most of the countries for assumption of jurisdiction and granting relief in matrimonial matters has resulted in conflict of laws. What is this domicile rule is not necessary to be gone into. But feasibility of a legislation safeguarding interests of women may be examined by incorporating such provisions as-

> (1) No marriage between a NRI and an Indian woman which has taken place in India may be annulled by a foreign court;
>
> (2) Provision may be made for adequate alimony to the wife in the property of the husband both in India and abroad. (3)The decree granted by Indian courts may be made executable in foreign courts both on principle of comity and by entering into reciprocal agreements like Section 44-A of the Civil Procedure Code which makes a foreign decree executable as it would have been a decree passed by that court.

The appeals are disposed of accordingly. Any observation made shall not be taken as expressing of any opinion when the case is decided on merits.