

VIVEK RAI GUPTA v. NIYATI GUPTA

21

[CITED ORDER]

(2018) 17 Supreme Court Cases 21

a (BEFORE DR A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.)
VIVEK RAI GUPTA .. Appellant;

Versus

NIYATI GUPTA .. Respondent.

b Civil Appeal No. 1123 of 2016[†] with Contempt Petition (C) No. 192
of 2012 in SLP (C) No. 6993 of 2012, decided on February 10, 2016

**Specific Relief Act, 1963 — Ss. 38 and 41 — Anti-suit injunction suit —
Violation of interim orders directing party concerned (respondent herein) not
to proceed with proceedings concerned in respect of which anti-suit injunction
was sought**

c — Divorce decree with other reliefs obtained by wife from US court and
in execution thereof husband's properties in US sold in non-compliance with
Supreme Court's interim orders, rendering said anti-injunction suit infructuous
— Petition for contempt of court filed by husband — Wife's undertaking before
Supreme Court not to proceed with execution qua husband's property in India
— Appeal and contempt petition of husband disposed of with certain directions
d — Civil Procedure Code, 1908, Or. 39 Rr. 1, 2 & 2-A

e While the parties were living in USA, pursuant to some matrimonial disputes,
the respondent wife initiated various proceedings including divorce petition against
the appellant husband there. The appellant came back in India and filed a petition
in the Family Court, Bandra, Mumbai seeking anti-suit injunction against the
respondent. The petition was dismissed by the Family Court and a writ petition
thereagainst was also dismissed by the High Court. The Supreme Court in special
leave petition filed by the appellant husband issued notice to the respondent wife
to show cause as to why leave may not be granted and she may not be restrained
from continuing the proceedings pending in the US court. In the meanwhile, the
respondent was directed not to continue the proceedings instituted by her in the US
f court. This was subject to the husband depositing Rs 1 crore in the Registry of the
Supreme Court within two months. The appellant husband deposited the amount
accordingly. But the respondent continued to pursue the proceedings in US court
and obtained decree of divorce, alimony and expenses and also order of monthly
maintenance against the respondent. The present position is that the divorce petition
in which the respondent wife had also claimed other reliefs, is not pending as all
g the proceedings have already been culminated into judgment and decree passed
by the US court. Therefore, there is no occasion to grant any anti-suit injunction
and, thus, the prayer made in this appeal is rendered infructuous. However, in spite
of various orders passed by the Supreme Court directing the respondent wife to
appear in the Court, as she failed to appear, in a contempt petition filed by the

h [†] Arising out of SLP (C) No. 6993 of 2012. Arising from the impugned Final Judgment and Order in
Vivek Rai Gupta v. Niyati Gupta, 2012 SCC OnLine Bom 2185 (Bombay High Court, WP No. 743
of 2012, dt. 7-2-2012)

appellant, the Supreme Court restrained all courts in India from passing any orders which implement the orders/decrees passed in any foreign court between the parties including any that are in the nature of execution of orders passed by the US court. But the properties of the appellant in USA have been sold either in execution of the decree passed by the US court or in some insolvency proceedings. However the appellant has one property in Jaipur. The respondent has submitted before the Supreme Court that she shall not execute the decree qua that property.

Disposing of the appeal and the contempt petition the Supreme Court

Held :

The above statement made by the respondent before the Supreme Court puts quietus to the controversy. If the execution proceedings are filed by the respondent wife for executing the aforesaid decree passed by the US court against any other movable/immovable property in India it would be open to the appellant husband to resist the said execution petition on any grounds available to him in law taking the position that such a decree is not executable. At that stage, it shall also be permissible for the appellant husband to take a plea that the decree in question was passed by US court even after the injunction orders passed by the Supreme Court and, therefore, should not be executed. It will also be permissible for the respondent wife to plead that the decree passed is not in violation of any orders and it would be for the court where the execution petition is filed to decide such an issue in accordance with law. (Paras 13 and 14)

Vivek Rai Gupta v. Niyati Gupta, 2012 SCC OnLine Bom 2185; *Vivek Rai Gupta v. Niyati Gupta*, 2012 SCC OnLine SC 1130; *Vivek Rai Gupta v. Niyati Gupta*, 2015 SCC OnLine SC 1722, referred to

R-D/60664/SV

Advocates who appeared in this case :

Ms Indu Malhotra, Senior Advocate (Vikas Mehta, Apoorva Bhumesh, Tanveer Nayar, Ms Rakhi Mohanty and Ms Anushree Menon, Advocates) for the Appellant;
Arvind Minocha, R.K. Aggarwal and Ms Veena Minocha, Advocates, for the Respondent.

Chronological list of cases cited

on page(s)

1. 2015 SCC OnLine SC 1722, *Vivek Rai Gupta v. Niyati Gupta* 23d-e, 24d, 25g-h, 26d-e
2. 2012 SCC OnLine Bom 2185, *Vivek Rai Gupta v. Niyati Gupta* 23c-d
3. 2012 SCC OnLine SC 1130, *Vivek Rai Gupta v. Niyati Gupta* 23d, 23d-e, 24f, 25b, 25f, 25f-g

ORDER

1. Leave granted. Having regard to the nature of the order we propose to pass, it is not necessary to take note of the facts in detail. Only material facts are stated, which are as under.

2. The appellant was the husband of the respondent. Both were living in Ohio, USA. Some disputes arose between them which led to the matrimonial discord. It resulted in filing of various proceedings by the respondent wife against the appellant husband herein. The respondent wife has obtained decree

a of divorce from the US court. Even the appellant husband filed divorce petition against the respondent wife in India in which a decree of divorce has been granted. Thus, insofar as separation of the appellant husband from the respondent wife is concerned, that has attained finality.

b 3. The appellant husband had contested the proceedings in US for some time but thereafter he came back to India in the year 2004. Fearing that those proceedings shall continue ex parte and may result in orders/decrees passed by the US court adversely affecting his interest, the appellant husband filed a petition in the Family Court Bandra, Mumbai seeking anti-suit injunction. In the said suit, he also filed an application for grant of temporary injunction restraining the respondent wife from pursuing the divorce petition in which the respondent wife had also claimed maintenance. The Family Court, Bandra, Mumbai vide its order dated 8-12-2011 dismissed the said application thereby c rejecting the prayer for grant of injunction restraining the respondent wife from pursuing the divorce petition. The appellant challenged that order by filing the writ petition in the High Court of Judicature at Bombay. The said writ petition has been dismissed vide impugned judgment dated 7-2-2012¹, thereby affirming the order of the Family Court Bandra, Mumbai. It is that judgment which is impugned in the present appeal, via special leave petition.

d 4. Notice was issued² in the special leave petition filed by the appellant husband and various orders were passed from time to time. It would be apposite to re-produce only two such orders, namely, the orders dated 27-2-2012² and 1-4-2015³. These orders are to the following effect:

“27-2-2012

e Heard Ms Indu Malhotra, learned Senior Counsel and perused the record including additional affidavit dated 25-2-2012 of the petitioner.

f Subject to the petitioner depositing a sum of Rs 1 crore in the Registry of this Court within a period of two months, which shall be invested in a fixed deposit in UCO Bank Branch of the Supreme Court, issue notice to the respondent to show cause as to why leave may not be granted and she may not be restrained from continuing the proceedings pending in the Court of Common Pleas, Division of Domestic Relations, Cuyahoga Country, Ohio in Case No. DR-08-324383.

Issue notice on the petitioner’s prayer for interim relief.

g In the meanwhile, the respondent is directed not to continue the proceedings instituted by her in Case No. DR-08-324383, pending in the Court of Common Pleas, Division of Domestic Relations, Cuyahoga Country, Ohio.

h 1 *Vivek Rai Gupta v. Niyati Gupta*, 2012 SCC OnLine Bom 2185
2 *Vivek Rai Gupta v. Niyati Gupta*, 2012 SCC OnLine SC 1130
3 *Vivek Rai Gupta v. Niyati Gupta*, 2015 SCC OnLine SC 1722

1-4-2015

IA No. 5 in Contempt Petition No. 192 of 2012 application for exemption from personal appearance on behalf of the respondent is dismissed. a

Contempt Petition (C) No. 192 of 2012

Till the next date of hearing, we think it is unavoidable, expedient and necessary to restrain all courts in India from passing any orders which implement the orders/decrees passed in any foreign court between the parties before us including any that are in the nature of execution of orders passed in the United States of America in litigation inter partes. b

List all pending applications as well as this petition for further consideration on a non-miscellaneous day in the month of July 2015.”

5. Notwithstanding the aforesaid orders, the respondent wife pursued the proceedings in the US court and the Court of Common Pleas, Cuyahog County, Ohio, USA passed the judgment and decree dated 18-9-2012 in favour of the respondent wife granting numerous reliefs to her including that of divorce. We may note that in spite of various orders passed by this Court directing the respondent wife to appear in this Court, as she failed to appear, the aforesaid order dated 1-4-2015³ was passed directing all the courts in this country not to execute the decrees passed by the foreign court. c
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6. The position which emerges from the aforesaid factual background is that as of today the divorce petition in which the respondent wife had also claimed other reliefs, is not pending as all the proceedings have already been culminated into judgment dated 18-9-2012 passed by the Court of Common Pleas, Cuyahog County, Ohio, USA as mentioned above. Therefore, there is no occasion to grant any anti-suit injunction and, thus, the prayer made in this appeal is rendered infructuous. e

7. However, at this stage, it needs to be noted that the appellant husband has also filed Contempt Petition No. 192 of 2012 alleging violation of the order dated 27-2-2012² passed by this Court. As pointed out above, vide order dated 27-2-2012² this Court had restrained the respondent wife from continuing with Case No. DR 08 324383 pending in the Court of Common Pleas, Cuyahog County, Ohio, USA subject to the condition that the appellant husband shall deposit a sum of Rs 1 crore with the Registry of this Court. The appellant husband had deposited the aforesaid amount. f

8. It is the allegation of the appellant husband that in spite of the aforesaid injunction order passed by this Court, the respondent wife proceeded with the said proceedings in the US court and ultimately got a decree of divorce, alimony and expenses and also order of monthly maintenance in the sum of USD 22,000 vide decree dated 12-4-2012. On that basis, the case set up by the appellant g

3 *Vivek Rai Gupta v. Niyati Gupta*, 2015 SCC OnLine SC 1722

2 *Vivek Rai Gupta v. Niyati Gupta*, 2012 SCC OnLine SC 1130

a husband is that the action of the respondent wife in continuing to proceed with the aforesaid case and obtaining a decree is contumacious and wilful violation of the orders passed by this Court. It is also submitted that further contempt is committed by not appearing in spite of directions given to this effect by various orders.

b 9. Mr Minocha, learned counsel appearing for the respondent wife, on the other hand, submits that the respondent wife has not committed contempt of any orders passed by this Court. He points out that the order dated 27-2-2012² was passed by this Court restraining the respondent wife from prosecuting Case No. DR-08-324383 pending in the Court of Common Pleas, Cuyahog County, Ohio, USA. He states that the decree is passed in divorce petition which was Case No. DR-09-329401. He further submits that insofar as Case No. DR-08-324383 is concerned, it was a petition for domestic violence filed by the respondent wife c against the appellant husband which had been disposed of way back in the year 2009. On the aforesaid basis, it is contended that insofar as the divorce petition is concerned there was no injunction order passed by this Court and, therefore, the respondent wife had every right to proceed with the said proceedings.

d 10. This argument is countered by Ms Indu Malhotra, learned Senior Counsel appearing on behalf of the appellant husband by submitting that Case No. DR-09-329401 is in fact continuation of earlier Case No. DR-08-324383. She has argued that as per Rule 39-A and SRF Form B of the Rules of Superintendence for the Courts of Ohio, divorce cases, where the marriage is to be terminated without minor children, must be concluded within twelve months e from the date of filing of the complaint for divorce. It is further pointed out that in case that does not happen, the petitioner can file fresh petition and in the fresh petition the orders passed in the earlier petition can be relied and acted upon and, in fact, that amounts to continuation of the earlier proceedings.

f 11. Prima facie, the contention of Ms Indu Malhotra, learned Senior Counsel appears to be correct, even otherwise, we need not go into these details. Suffice it to state that the purpose of order dated 27-2-2012² was to direct the respondent wife not to proceed with the divorce petition in which she had also claimed maintenance, alimony and expenses. As per order dated 27-2-2012², the respondent wife was restrained from proceedings “pending” in the said Court of Ohio, USA. Not only this, as pointed out above, in spite of various orders passed by this Court in the aforesaid appeal as well as in the contempt petition directing the respondent wife to appear in this Court, she failed to do so.

g 12. It is clear from the above that the respondent wife proceeded with the divorce petition and got decree dated 18-9-2012 in spite of injunction orders passed by this Court. Keeping in view the aforesaid, this Court had passed the order dated 1-4-2015³ directing that no court in this country shall execute the aforesaid decree.

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2 *Vivek Rai Gupta v. Niyati Gupta*, 2012 SCC OnLine SC 1130
3 *Vivek Rai Gupta v. Niyati Gupta*, 2015 SCC OnLine SC 1722

13. Be that as it may, we are informed that insofar as some of the properties of the appellant in USA are concerned, they have also been sold either in execution or in some insolvency proceedings. As far as execution of the decree in the US court is concerned, this Court has no role to play. The appellant husband has one property in Jaipur, namely, 709, Fountain Square, Jaipur. Mr Minocha, learned counsel appearing for the respondent wife, on instructions from the instructing counsel submits that the respondent wife shall not execute the decree qua the aforesaid property in Jaipur and the statement he makes to put quietus to the controversy.

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14. If the execution proceedings are filed by the respondent wife for executing the aforesaid decree dated 18-9-2012 passed by the Court of Common Pleas, Cuyahoga Country, Ohio, USA against any other movable/ immovable property in India it would be open to the appellant husband to resist the said execution petition on any grounds available to him in law taking the position that such a decree is not executable. At that stage, it shall also be permissible for the appellant husband to take a plea that the decree in question was passed by US court even after the injunction orders passed by this Court and, therefore, should not be executed. We make it clear that it will also be permissible for the respondent wife to plead that the decree passed is not in violation of any orders and it would be for the court where the execution petition is filed to decide such an issue in accordance with law.

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15. Accordingly, the civil appeal as well as contempt petition are disposed of by making the aforesaid order dated 1-4-2015³ absolute.

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