

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943

Mat.Appeal.No.497 OF 2020

Against order in Unnumbered OP of 2020 (CF 2580/2020) dated
11/8/2020 of Family Court, Pathanamthitta)

APPELLANT/S:

GEORGE KOSHY
AGED 50 YEARS
S/O.K.G.KOCHUKOSHY, KONNAYIL HOUSE, OPP VHSS,
KAIPATTOOR MURI, VALLICODE VILLAGE, KAIPATTOOR P.O.,
KONNI TALUK, PATHANAMTHITTA PIN-686 648.

BY ADVS.
SRI.V.PHILIP MATHEW
SRI.JEPH JOSEPH
SRI.JOHNSON K.KURIEN

RESPONDENT/S:

SARAH KOSHY
AGED 45 YEARS
KALLOORTHAZHCHAYIL, MARTHOMA COLLEGE ROAD,
KUTTAPPUZHA, R.S.P.O., PATHANAMTHITTA DISTRICT-689
103 (ALSO HAVING PRESENT RENTAL ADDRESS AT 16 DURANT
PLACE CHERRYBROOK, 2126 NSW, AUSTRALIA)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
09.04.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.MUHAMED MUSTAQUE & DR.KAUSER EDAPPAGATH, JJ.

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MAT.APPEAL NO.497/2020  
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“C.R.”

JUDGMENT

Dated this the 9th day of April 2021

The appeal arises from an unnumbered original petition filed by the appellant herein. The original petition was filed for an anti-suit injunction before the Family Court, Pathanamthitta. The Family Court, without issuing notice, by a detailed order dismissed the original petition holding that it has no jurisdiction to entertain the original petition. The said order is under challenge in this appeal.

2. The anti-suit injunction was filed to restrain the respondent from proceeding with the divorce petition filed by her in Australia.

3. As disclosed from the pleadings, the marriage between the appellant and the respondent was solemnised at St.Ignatious Orthodox Church Kaipattoor. Anti-suit injunction is a species of injunction.

4. Anti-suit injunction is instituted to prevent the opposite party from instituting or continuing with the proceedings in another Court in domestic or foreign country.

5. In matrimonial matters, the parties may be entitled to invoke different jurisdiction - jurisdiction based on

domicile or jurisdiction based on celebration of marriage etc.

6. In **Modi Entertainment Network and Ors.v. W.S.G. Cricket PTE Ltd** [AIR 2003 SC 1177], the Hon'ble Supreme Court examined the general principles related to anti-suit injunction by Courts. It is appropriate to refer the relevant portion of the said judgment which reads as follows:

The Courts in India like the Courts in England are Courts of both law and equity. The principles governing grant of injunction an equitable relief-by a Court will also govern grant of anti-suit injunction which is but a species of injunction. When a Court restrains a party to a suit/proceeding before it from instituting or prosecuting a case in another Court including a foreign Court, it is called anti-suit injunction. It is a common ground that the Court in India has power to issue anti-suit injunction to a party over whom it has personal jurisdiction, in an appropriate case. This is because Courts of equity exercise jurisdiction in personam. However, having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another Court.

7. The Apex Court in a recent Order in **Madhavendra L.Bhatnagar v. Bhavna Lall** [(2021) 2 SCC 775] the Hon'ble Supreme Court held that anti-suit injunction can be issued if the other party had already resorted to proceedings before another court including outside India.

8. In **Vivek Rai Gupta v. Niyati Gupta [(2018) 17 SCC 21]**, the Apex Court particularly referred to anti-suit injunction in matrimonial disputes.

9. The Hon'ble Supreme Court in **Dinesh Singh Thakur v. Sonal Thakur [AIR 2018 SC 2094]** also referred to parameters in granting reliefs in anti-suit injunctions in matrimonial disputes.

10. Renowned authors, Shri Anil Malhotra and Ranjit Malhotra in their book 'The Global Indians and The Law' published by OakBridge referred to anti- suit injunction in Chapter 23 as follows:

When between the same parties, litigating on the same subject matter, and based on the same cause of action, only one Court has jurisdiction, it is said to have exclusive jurisdiction. However, if more Courts than one have jurisdiction over the same matter, they are called Courts of concurrent jurisdiction. In such circumstances, the criteria to determine which is the more appropriate jurisdiction for the adjudication of the matter, either party can elect to restrain the other party, not to proceed with the same litigation in the other nonpreferred jurisdiction. In such process, Courts in different jurisdictions cannot restrain each other. However, the same parties appearing before both the Courts in different jurisdictions, can seek an injunction to restrain the other party, from proceeding in the other non-preferential jurisdiction with the same matter. Such suits seeking restraint of proceedings in one jurisdiction are called Anti-Suit Injunctions.

The authors further referred to anti-suit actions in matrimonial litigation as follows:

In this backdrop, this new dimension of matrimonial litigation is coming in practice in the arena in the shape of anti-suit injunctions. They are the remedy against filing of suits in different jurisdictions, in respect of the same cause of action. A petition preferred in India, for restraining an opposing spouse from pursuing or continuing with a complaint for matrimonial relief in a foreign Court, would be such an anti-suit injunction petition in matrimonial matters. Lack of jurisdiction, both regarding the corpus of the Hindu marriage, and the physical presence of an Indian spouse in the territory abroad, is the main ground of such suits in India. However, even the reverse application now finds popular practice, making anti-suit injunctions a two-way street.

11. We do not have any difficulty in holding that anti-suit injunction is maintainable in view of the power to grant injunction in matrimonial disputes by the family court. This power is traceable to Explanation (d) to Section 7(1) of the Family Courts Act. However, the Family Court has to be very cautious in granting the relief. As held by the Apex Court in **Dinesh Singh Thakur's** case (*supra*) parameters as laid down in Section 41 of the Specific Relief Act, 1963 are to be considered while advertent to the reliefs sought. Entertaining a suit and granting reliefs are different aspects of the proceedings. The Family Court in this matter appears to have mixed up the entire issue without advertent to its jurisdiction to entertain such petition.

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12. We therefore, set aside the order of the Family Court. We direct the Family Court to number the case and hear the parties on reliefs sought in the matter. In view of the urgency expressed by the appellant, we direct the parties to appear before the Family Court on 15/4/2021 and the Family Court shall hear and dispose of the interim application without further delay. Since respondent is abroad, we permitted her to appear before us through her counsel without formal vakalath being filed. If the respondent is not in a position to file vakalath, the Family Court shall permit the respondent to appear through the counsel on filing a memo. Registry is directed to communicate this judgment to the Family Court, Pathanamthitta, forthwith.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

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