

(2012) 07 P&H CK 0298

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 3969 of 2010 (O and M)

Jyoti Ram @ Jyoti Sharda

APPELLANT

Vs

Anusandeeep Burmi

RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Constitution of India, 1950 - Article 227

Citation: (2013) 1 RCR(Civil) 145

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Paramjit Batta, for the Appellant;

Final Decision: Dismissed

Judgement

K. Kannan, J.

The petition is filed against the order of dismissal of the application filed by the wife by the matrimonial Court seeking for taking up the issue relating to the territorial jurisdiction as a preliminary issue. The trial Court accepted the objections taken by the husband that the application was deliberately filed to delay the proceedings particularly to the fact that after the counter was filed; issues had been framed on 28.09.2011 and the petitioner had produced two witnesses and their examination-in-chief had been conducted but cross-examination was deferred at the request of the applicant. The application relating to the issue of jurisdiction itself was moved subsequent to the commencement of trial. The Court was, therefore, justified in rejecting the plea for taking up the issue relating to jurisdiction. Even otherwise, I am not convinced that there is anything wrong about entertaining an application, in a case where Section 19 provides for the place of residence of the petitioner, who is not a wife, is also possible u/s 19(4) where the respondent is residing outside the territorial jurisdiction which the Act extends. The Act extends u/s 1 to the whole of India except Jammu and Kashmir and applies to Hindu

domiciled territories to which the Act extends territories outside such terrain.

2. Learned counsel appearing on behalf of the petitioner refers to a decision of the Bombay High Court in [Ms. Kashmira Kale Vs. Mr. Kishorekumar Mohan Kale](#), . In the case before Bombay High Court, the parties had admittedly domiciled in USA and a decree of divorce had been obtained in the Court in USA. A fresh petition was again filed in India also, which was treated as incompetent. In this case, the husband claimed that he had returned to India and was an ordinary resident in Mohalla Kalian Kurali, District Mohali. Only the wife was domiciled in USA and outside the jurisdiction of the Court and at a place beyond the frontiers of India to which the provisions of Hindu Marriage Act was inapplicable. If the trial Court had decided not to take up the issue relating to jurisdiction as the preliminary issue, it had appropriate reasons to do so and I do not find any cause to see this as an illegality or error of jurisdiction in dealing with the issue which is susceptible for revision u/s 115 CPC or under Article 227 of the Constitution. I am, on the other hand, prima facie of the view that the trial Court had jurisdiction to try this petition. The revision petition is dismissed.