HIGH COURT OF DELHI

Bench: Justice V. Kameswar Rao And Justice Anoop Kumar Mendiratta
Date of Decision: 19th December 2023

MAT.APP.(F.C.) 365/2023,
CM APPLs. 64021/2023 & 64022/2023

DAMINI MANCHANDA ..... Appellant

versus

AVINASH BHAMBHANI ..... Respondent

Legislation:
Order XXXIX Rules 1 & 2, Order XXXIX Rule 2A, Order XXXIX Rule 4 CPC, Hindu Marriage Act

Subject:
Appeal challenging the Family Court's dismissal of an application for interim injunction to restrain the respondent from proceeding with a divorce petition in Canada.

Headnotes:

Jurisdiction and Forum Conveniens – Dispute over jurisdiction between Indian and Canadian courts in divorce proceedings involving Indian citizens with Canadian permanent residency – Application for anti-suit injunction to restrain respondent from pursuing divorce in Canada dismissed by Family Court – Principles of forum conveniens and comity of courts considered. [Paras 1, 4, 31, 33]

Appellant's Claim – Appellant's contention of having filed first divorce petition in India and respondent's subsequent petition in Canada constituting forum shopping – Emphasis on Indian citizenship and entitlement to larger reliefs under Indian laws dismissed by High Court. [Paras 26, 32]

Family Court's Analysis – Family Court's reliance on principles from Supreme Court judgments to dismiss application for anti-suit injunction – Distinction of facts from cited precedents and consideration of both parties' permanent residency in Canada. [Paras 27-30, 34]

Compliance with Interim Orders – Family Court's dismissal of appellant's claim of respondent's violation of interim orders – Encouragement of settlement efforts in matrimonial disputes noted. [Para 34]

Decision:
Appeal dismissed. No costs. CM APPL. 64021/2023 (for stay) dismissed as infructuous.

Referred Cases:

- Madhavendra L. Bhatnagar v. Bhavna Lall, Special Leave Petition, 14948/2020

- Modi Entertainment Network and Anr. v. WSG Cricket PTE Ltd., (2003) 4 SCC 341

Representing Advocates:
Ms. Preeti Singh for appellant
Mr. Anil Goel, Mr. Aditya Goel, and Ms. Chanchal Sharma for respondent

V. KAMESWAR RAO, J. (ORAL)
MAT.APP.(F.C.) 365/2023

1. This appeal has been filed by the appellant / wife challenging the order dated December 1, 2023, passed by the Family Court-01, Saket, Delhi ('Family Court', hereinafter) whereby the Family Court has dismissed the application filed by the appellant under Order XXXIX Rule 1 & 2 CPC along with application under Order XXXIX Rule 2A CPC and allowed the application under Order XXXIX Rule 4 filed by the respondent herein.

2. As noted from the record, the parties married each other on December 21, 2002. Two children were born out of their wedlock. Both the parties left for Canada along with their children on April 23, 2018 and started residing there. It is noted that both the parties along with children came to India in March, 2020. In July, 2020 the plaintiff / wife left for Canada.

3. It is the case of the appellant that she had sent a legal notice on January 12, 2021 to the respondent which was duly replied by the respondent on February 10, 2021. Because of the matrimonial discord between the parties, the appellant filed a divorce petition against the respondent before the Family Court, Saket, Delhi on December 16, 2020 through an authorized representative.

4. Though the respondent was residing in India at that time, he left for Canada along with both the children in September, 2021. It is a matter of record that he has filed a divorce case before the Superior Court of Justice, Ontario Toronto, Canada ('Court in Canada', hereinafter). It is in this background, the appellant herein had filed the anti-injunction suit along with the application under Order XXXIX Rule 1 & 2 CPC restraining the respondent from proceeding with the divorce petition filed by him before the Court in Canada.

5. On July 8, 2022, when the matter was listed before a Single Judge of this Court, the respondent, despite notice, failed to appear. The matter was proceeded ex parte and an order was passed restraining the respondent from proceeding with the divorce petition filed by him before the Court in Canada. Subsequently, the respondent filed two applications under Order XXXIX Rule 4 CPC and Order IX Rule 7 CPC, pursuant to which, the ex-parte order dated July 08, 2022 was recalled by the this Court vide order dated August 29,

2022. However, the interim relief granted vide order dated July 08, 2022 was directed to continue till further orders.

6. The suit which was initially filed before this Court was transferred to the Principal Judge, Family Courts, Saket, Delhi vide order dated December 05, 2022.

7. The case of the appellant before the Family Court was that she had filed the divorce petition on December 16, 2020 when the respondent was living in India. He deliberately avoided service and did not appear before the Family Court at Delhi. Despite the restraint order, the respondent was appearing before the Court in Canada, which amount to violation of the interim injunction dated July 8, 2022. According to her, as she had filed the divorce petition first, the proceedings initiated by the respondent before the Court in Canada need to be stayed. An allegation was raised that despite restraint order, the respondent was proceeding with the petition before the Court in Canada, which was refuted by the counsel for the respondent. The Family Court while dismissing the application filed by the appellant under Order XXXIX Rule 1 & 2 CPC read with application under Order XXXIX Rule 2A CPC has in paragraphs 11 to 15 stated as under:

> "11. It is not in dispute that the plaintiff/wife has obtained permanent residency of Canada, similarly, defendant/husband has also obtained permanent residency of Canada when the present suit was filed on 12.01.2022, even at that time, not only the defendant but also the plaintiff was residing in Canada. The plaintiff has never appeared before the Court in the present suit. It is also important to mention here that when the plaintiff filed a divorce petition before the Family Court, Saket, New Delhi on 16.12.2020 against the defendant/husband she was residing in Canada. The question arises when the plaintiff has been permanently residing and working in Canada and also filed a divorce petition against the defendant/husband, though, in India then why she is interested not to allow the defendant/husband to continue his divorce petition filed by him before the Court at Canada. Both the parties want divorce. The Courts in Delhi, India and the Court at Canada both are competent to proceed with the divorce petition as per prevailing law in the respective country. If the defendant/husband would have filed a suit for restitution of conjugal rights in Canada but the plaintiff/wife wants divorce from the defendant/husband and filed a petition for divorce in India in that eventuality it can be considered that as the defendant/husband is seeking relief opposite to the relief of the plaintiff/wife and he may be restrained to proceed with the said petition for restitution of conjugal rights. But where both the parties wants divorce then why one party should be restrained to pursue a divorce petition against the other party. The divorce decree whether granted by Indian Court or Canadian Court would have the same effect of dissolving the marriage of the parties. The Hon'ble Supreme Court of India in Modi Entertainment Network & Anr. V. W.S.G. Cricket Pte. Ltd. (2003) 4 SCC 341 in para no. 24 of the ruling has held as under:-
> "24. From the above discussion the following principles emerge:

(1) In exercising discretion to grant an antisuit injunction the court must be satisfied of 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 commencement or continuance of action/ proceeding is sought to be restrained must be borne in mind."

12. The plaintiff in order to succeed to get interim injunction against the defendant thereby restraining the defendant to proceed with the divorce petition filed by him before the Canadian Court has to satisfy/fulfil the three conditions that were laid down by Hon'ble Supreme Court of India in Modi Entertainment Network & Anr. (Supra). Firstly, the defendant being an Indian citizen is amenable to the jurisdiction of this Court, thus, the first condition is fulfilled. Secondly, if the interim injunction is declined to the plaintiff then the ends of justice would be defeated and injustice would be perpetuated. The question arises how the ends of justice would be defeated and injustice would be perpetuated if interim injunction is not granted in favour of the plaintiff/wife. As discussed above the plaintiff/wife is permanently residing in Canada having permanent residency of Canada, though, she filed a divorce petition in India and the marriage was solemnized in Delhi, India but as defendant/husband is also permanently residing in Canada having permanent residency of Canada and even their both the children are also residing in Canada, therefore, neither the ends of justice would be defeated nor injustice would be perpetuated if the injunction is declined to the plaintiff/wife. Hence, the second condition laid down by the Hon'ble Supreme Court of India does not lie in favour of the plaintiff/wife. So far as the third condition is concerned as both the parties want divorce and filed their respective divorce petitions, therefore, both the Courts in Canada and also the courts in India are competent to entertain the divorce petition as per law prevailing in their respective country, therefore, restraining the defendant/husband to proceed with a divorce petition pending before the Court at Canada would be against the Principles of Comity.

13. In view of the above discussions the Court is of the considered view that there is no prima facie case in favour of the plaintiff nor balance of convenience lies in favour of the plaintiff nor any irreparable loss is going to be caused to the plaintiff if interim injunction is not granted to her.

14. The ruling Madhavendra L Bhatnagar v. Bhavna Lall (supra) relied upon by the learned counsel for the plaintiff/wife is not applicable to the facts of the present case on two counts. Firstly, in Madhavendra L. Bhatnagar v. Bhavna Lall (supra) the matter was at the stage of exparte interim injunction but in the case in hand the defendant/husband has put up his appearance through his counsel and contesting the application U/o XXXIX Rule 1 & 2 CPC. Further, in Madhavendra L Bhatnagar v. Bhavna Lall (supra) the respondent (wife) filed divorce petition in a country where the appellant/husband never resided with the respondent/wife but in the case in hand the plaintiff was not only residing in Canada where the defendant had filed the divorce petition but both the parties lived together in Canada and

presently also the plaintiff has been permanently residing in Canada. At the time of filing of the present suit the plaintiff was residing in Canada and even prior to that when she filed divorce petition in India, she was living in Canada.

15. Learned counsel for the plaintiff argued that the defendant not only appeared before the Canadian Court to proceed the divorce petition filed by him but he also made the submissions for enforcing the settlement arrived between the parties and the defendant also made submissions before the Canadian Court to convert the purported settlement arrived at between the parties into the Court order and it amounts to violation of interim injunction order dated 08.07.2022. It is not in dispute that the defendant/his counsel appeared before the Canadian Court with the divorce petition on 01.09.2022, 06.12.2022 and thereafter on some more other dates. However, the appearance of the defendant before the Canadian Court in the divorce petition does not amount the violation of interim injunction order dated 08.07.2022. The defendant was restrained only not to proceed with his divorce petition on merit pending before the Canadian Court. The defendant was not restrained by the order dated 08.07.2022 to make efforts for settlement with the plaintiff in the divorce petition pending before the Canadian Court. It is important to mention here that in matrimonial cases the priority of the Courts to encourage and persuade the parties for the amicable settlement of their dispute. The Section 9 of the Family Court Act, 1984 casts a duty on the Family Court to make efforts for amicable settlement of matrimonial disputes. This court also vide order dated 12.01.2023 allowed both the parties to settle the disputes before any forum. Therefore, the appearance of the defendant/his counsel before the Canadian Court and making submissions for settlement of the dispute between the parties do not amount to violation of interim injunction order dated 08.07.2022. Further, learned counsel for the plaintiff contended that this Court allowed vide its order dated 12.01.2023 both the parties to settle the dispute before any forum but such forum was Mediation Centre at Delhi but not the Canadian Court where divorce petition is pending. Three is no substance in this contention of the learned counsel for the plaintiff. Both the parties were free to settle their matrimonial disputes at any forum including the Indian Courts and the Canadian Courts. The plaintiff has not brought anything on record to show that the divorce petition filed by the defendant before the Canadian Court was proceeded on merit at the instance of the defendant. It is also pertinent to mention here that the counsel of the plaintiff, who is representing her in Canada, sent a draft settlement on 07.07.2022 to the counsel for the defendant, who is representing him in Canada, and the defendant has also agreed to the said draft settlement, thus, it cannot be denied that the plaintiff was also interested in the amicable settlement of dispute between the parties. Considering all these aspects, the Court is of the considered view that defendant has not violated the interim injunction order dated 08.07.2022 or any other order by which interim injunction was extended from time to time and there is no merit in the application U/o XXXIX Rule 2 A CPC,

therefore, the same is dismissed."

8. Ms. Preeti Singh, learned counsel appearing for the appellant would submit that the impugned order of the Family Court is bad in law,

unreasonable, erroneous and was passed without appreciating the fact that both the parties herein are Indian citizens, hold Indian passports and are governed by Indian laws. According to her, the conclusion of the Family Court that since the parties are holding Permanent Residency ('PR', for short) Card of Canada, the Court in Canada has the jurisdiction to decide the divorce proceedings between the parties, is overlooking the aspect that the parties are Indian citizens and are bound by the Indian laws. In other words, merely holding a PR Card does not take away the jurisdiction of Indian Courts.

9. She submits that even the Family Court has erred in dismissing the plea of interim injunction by observing that when the divorce petition was filed before the Family Court against the respondent, the appellant was residing in Canada by overlooking the fact that though she was residing in Canada due to her job yet she continued to be a citizen of India. Moreover, the respondent and minor children were in India at the time when the divorce case was filed before the Family Court.

10. According to her, in accordance with Section 19 of the Hindu Marriage Act, the Family Court has the jurisdiction to try and decide divorce case filed on behalf of the appellant. She submitted that the Family Court ought to have considered that the appellant had migrated to Canada in 2018 only i.e. only two years prior to the initiation of litigation and moreover, both the parties hold Indian Passport therefore, she has rightfully initiated litigation in India. In fact, the Family Court has contradicted its own order dated August 09, 2023, passed in the divorce case wherein it has categorically stated that it has the jurisdiction to decide the divorce petition of the appellant and therefore, in the interest of justice the plea of the appellant to restrain the respondent from proceeding with his case in Canada ought to have been allowed. The Family Court has committed a grave error in observing that when the parties have been permanently residing and working in Canada and the appellant has also filed a divorce case in India then why she should not allow the respondent to continue his case in Canada.

11. That apart, both the parties are seeking divorce but the grounds of divorce in the two countries are entirely different as the Court in Canada could grant divorce on the ground of no fault theory as well. Further, the monetary reliefs as sought by the parties herein before the two forums are contrary to each other and governed by different laws. That apart, there is no concept of Stridhan, compensation etc. in the Courts of Canada.

12. That apart, the Family Court has erred in stating that the factors laid down for granting anti-suit injunction are not being fulfilled in the present

case. In fact, the Family Court ought to have observed that if interim injunction is not granted in favour of the appellant, the ends of justice would be defeated and injustice would be caused to the appellant as the parties herein are Indian citizens, subject to Indian law. The appellant herein has instituted her divorce case which includes permanent alimony and other reliefs qua property which are located in India.

13. That apart, the respondent has maliciously instituted the suit in Canada only to claim maintenance as the laws in Canada would favour him. Even if both the parties are seeking divorce but the other remedies / reliefs pertaining to which the law is different in both the countries. Moreover, the appellant herein being an Indian Citizen cannot be compelled to defend herself before the Court in Canada.

14. She has submitted that the respondent is trying to forum shop as the laws in Canada are much more favourable to him. The parties and the minor children have lived in India for sixteen years after the marriage. In April, 2018, the appellant and the respondent went to Canada along with their minor children in pursuance of their work. Though in March, 2020, the respondent along with the children returned back to India, the appellant went back to Canada in July, 2020 to carry on her job. In December, 2020, the appellant had filed a petition for divorce before the Family Court while the respondent and the Children were residing in Delhi. It is only when the respondent got to know about the proceedings pending against him that he left India to Canada along with the children in September, 2021, while the children were still enrolled in a School in Delhi. Her contention is that the respondent had effectively escaped the jurisdiction of Indian Courts where the divorce petition was filed for the first time at the instance of the appellant to take undue advantage of his own wrong before the Court in Canada. She stated that it is a general principle of law that the forum where the divorce proceedings were first initiated will have the exclusive jurisdiction to try the same.

15. She has submitted that the observation in the impugned order that both the parties hold PR cards of Canada and as such the respondent cannot be restrained from proceedings with his case in Canada is erroneous. The PR card merely permits the permits to travel to the country without the requirement of a VISA, and as such it cannot be the sole criteria to determine the issue. To the contrary, it would be the citizenship of the parties which would be the relevant criteria to decide the law to which the parties would be subjected. As both the parties continued to be Indian citizens, domicile in India, they would be subject to Indian laws and as such the matter can only be decided by the Courts in India.

16. It is also her contention that the Family Court has assumed jurisdiction to adjudicate the divorce petition filed by the appellant on one hand and on the other hand, it has also allowed the respondent to proceed with his case in Canada. The respondent has also filed a written statement before the Family Court on December 8, 2023 and as such has submitted himself to its jurisdiction.

17. Yet another argument of Ms. Preeti Singh is that the Family Court while relying upon the principle of Comity of Courts should have considered the fact that the injunction was not against the Court in Canada but against the respondent who is a private Indian citizen subject to Indian laws. In this regard she has relied upon the judgment in the case of **Madhavendra L. Bhatnagar v. Bhavna Lall, Special Leave Petition, 14948/2020.**

18. She has also contested the submission of the learned counsel for the respondent that the parties have entered into a settlement, by stating that the same is factually incorrect as the said submission is on the basis of certain draft e-mails exchange between the counsel for the parties under the clear heading 'without prejudice'. Even an application was filed by the appellant before the Family Court to take the said e-mails off the record, which is still pending adjudication. In light of the same, the e-mails ought not have been perused by the Family Court. Moreover, the Family Court had itself observed in an order dated August 9, 2023 by which the respondent's application under Order VII Rule 11 CPC was dismissed, that the said minutes of the alleged settlement were not recorded before a competent authority and not signed, and as such is not enforceable.

19. She also submitted that the learned Single Judge of this Court vide order dated July 8, 2022 had considered the judgments in **Madhavendra L. Bhatnagar (supra)** and **Modi Entertainment Network and Anr. v. WSG Cricket PTE Ltd., (2003) 4 SCC 341**, which are squarely applicable to the present case, and had rightly restrained the respondent from proceeding with the case in Canada. The Family Court has erroneously held that the said judgments are not applicable.

20. That apart, she stated that there has been willful violation of the injunction order granted by the Single Judge of this Court by the respondent. Though the injunction continued to operate, the respondent on September 1, 2022 and December 6, 2022 appeared before the Court in Canada and sought to enforce the alleged settlement agreement. Even in a affidavit dated March 20, 2023, the respondent made misleading submissions before the Court in Canada stating that "the Courts in India do not assume jurisdiction

of the matter". Even assuming that the Family Court had grant liberty to the parties to settle the dispute before any Forum, the respondent was not at all at liberty to enforce the disputed settlement agreement before the Court in Canada.

21. She seeks the appeal be allowed and the interim order be continued.

22. On the other hand, learned counsel for the respondent would justify the order of the Family Court to contend that both the parties have PR Cards of Canada and are residing with the children in Canada. That apart, the appellant has filed the petition through a representative and she had never came to India to initiate litigation. The petition in India is nothing but only to trouble the respondent forcing him to come to India to defend the litigation.

23. He states that divorce being the common relief sought by the parties in their respective petitions, the same can be considered by the Court in Canada rather than, two different petitions being pursued by the parties seeking different reliefs which will be in contradiction as it is clear from the submission made by the learned counsel for the appellant that her claim is primarily different from the claim which she otherwise could seek before the Canadian Court. He seeks the dismissal of the appeal.

24. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the Family Court while considering the application under Order XXXIX Rule 1 and 2 CPC and under Order XXXIX Rule 2A, was justified in vacating the interim relief granted by the learned Single Judge of this Court vide order dated July 8, 2022. Relevant part of the order granting the anti-suit injunction in the interim, thereby restraining the respondent herein from proceeding with the divorce suit before the Court in Canada reads as under:

"20. The Court takes a serious view of the matter that the defendant has deliberately avoided service in the divorce proceedings in India, but continues to pursue the divorce case filed by him before the Canadian Court. Despite service in the present matter and being aware of the present proceedings, the defendant refuses to appear before this Court.

21. The supreme court in **Modi Entertainment Network and Another V. W.S.G. Cricket Pte. Ltd.**, (2003) 4 SCC 341, has laid down, inter alia, thefollowing principles for grant of antisuit injunction:

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

(1) In exercising discretion to grant an anti-suit injunction the court must be satisfied of 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 commencement or continuance of action/proceeding is sought to be restrained — must be borne in mind."

22. Applying the aforesaid principles to the facts of the present case, the defendant is amenable to jurisdiction of this court. Further, in my view, ends of justice will be defeated if the anti-suit injunction is not granted. The defendant has deliberately chosen not to appear in the present proceedings as well as the divorce proceedings filed on behalf of the plaintiff in India and at the same time pursuing the divorce proceedings before the Canadian Courts.

23. A prima facie case is made out on behalf of the plaintiff. Balance of convenience is in favour of the plaintiff and against the defendant. The multiplicity of divorce proceedings before the Courts in India and Canada could result in conflicting decisions.

24. Accordingly, an interim injunction is passed against the defendant restraining the defendant from proceeding with the divorce suit filed by him before the Superior Court of Justice, Ontario, Toronto, Canada."

25. We have already reproduced the relevant paragraphs of the impugned order whereby the Family Court has dismissed the application under Order XXXIX Rule 1 and 2 CPC along with the one under Order XXXIX Rule 2A CPC filed by the appellant, and allowed the application under Order XXXIX Rule 4 CPC filed by the respondent herein.

26. The submission of Ms. Singh primarily is that (i) she had filed the divorce petition first before the Family Court at Saket, New Delhi when the respondent was residing with the children in Delhi, (ii) coming to know of the same, the respondent purposely left for Canada and filed a divorce suit there as the laws in Canada are more favourable to him and the same is nothing but forum shopping, (iii) as the parties married under Hindu laws, it is appropriate that the Court in India decides the issue as per Indian laws, (iv) the Court in India would be able to grant a greater relief to the appellant that the Court in Canada, insofar as the issues of Stridhan, compensation etc. are concerned.

27. Having noted the submissions made by Ms. Singh, at the outset we may state here that the issue with regard restraining a party from pursuing litigation in Courts elsewhere, is well settled by the Supreme Court in **Modi Entertainment Network and Anr. (supra)** of which reference was made by Ms. Singh. It was laid down that the relief of anti-suit injunction being discretionary in nature, a Court must consider the following aspects:

a) The defendant against whom the injunction is being sought must be amenable to the jurisdiction of the Court.

b) Refusal to grant the injunction would cause grave prejudice and the ends of justice will be defeated.

c) The principle of comity of courts must be borne in mind and due respect must be given to the Court in which the proceedings is sought to be restrained.

It was also held by the Supreme Court that in cases where multiple forums are available the Court in exercise of its discretion to grant anti-suit injunction can resort to the principle of forum conveniens having regard to the convenience of the parties and may grant an antisuit injunction with regard to the proceedings in a forum nonconveniens. The burden of establishing that the forum of choice is a forum non-conveniens or that the proceedings therein are oppressive or vexatious would be on the party so contending.

28. In so far as the judgment in the case of **Madhavendra L Bhatnagar (supra)** is concerned, the Supreme Court was dealing with an appeal against the judgment of the High Court of Madhya Pradesh affirming the order of the Trial Court rejecting an application for granting interim anti suit injunction order under Order XXXIX Rule 2 CPC. In the said case, the wife resorted to proceedings for divorce before the Superior Court of Arizona in USA. It was the case of the husband that the wife never resided in Arizona, USA. A child was born to the couple in California. The plea of lack of jurisdiction was raised before the Superior Court of Arizona. It appears that the Court in Arizona had made it clear that it would not take into account the laws applicable to Hindu marriages for dissolution of marriage. The appellant apprehending some drastic order is likely to be passed by the Court in Arizona at the instance of the wife, resorted to proceedings for divorce as well as the custody of the minor child in question before the Court at Bhopal in the state of Madhya Pradesh. During the pendency of the said suit for declaration and for direction to hand over the custody of the minor child, an application was moved by the appellant before the Trial Court which was rejected on the ground that the Court in Arizona was outside India and not subordinate to the Court in Bhopal.

29. When the matter was taken to High Court by the appellant it was of the view that Courts in India could adjudicate the controversy between the parties only after the Court in Arizona passes an order in the pending proceedings. The Supreme Court, in appeal, was of the view that same was not the purpose for which the ex parte ad-interim relief was sought by the appellant. It was held that the order needs to be set aside and interim relief as prayed for in the application filed before the Court at Bhopal needs to be granted, including restraining the respondent-wife from proceeding with the suit instituted by her in Superior Court of Arizona or from filing any other proceeding including interim applications in any proceedings thereof, till the Court in Bhopal passes an order.

30. Having noted the judgments on which much reliance has been placed by Ms. Singh, we are of the view that the Trial Court was justified in

distinguishing the judgment in the case of **Madhavendra L Bhatnagar (supra)** in paragraph 14 of the impugned order inasmuch as the matter in that case was at the stage of ex parte interim injunction. But in the case in hand, the respondent had already put in his appearance through his counsel and contested the application under Order XXXIX Rule 1 and 2 CPC. The Trial Court has also observed that in **Madhavendra L Bhatnagar (supra),** the divorce petition was filed in a county where neither the husband nor the wife had resided. But in the case in hand, the appellant was not only residing in Canada, but the respondent had also filed a divorce petition there. Both the parties live in Canada. Even at present, the appellant permanently resides in Canada. At the time of filing the suit and also the divorce petition in India, the appellant was residing in Canada. We find that the basis for the Trial Court to dismiss the application seeking the anti-suit injunction is also primarily on the ground of forum conveniens.

31. We agree with the conclusion reached by the Trial Court. None of the parties are currently residing in India. The doctrine of forum conveniens as noted by the Supreme Court in **Modi Entertainment Network (supra)** would make it clear that the Court in Canada is the appropriate and convenient forum for the parties to pursue their reliefs. The fact that the appellant had filed the suit through a Power of Attorney, without being to India is also an additional factor for us to hold that the Court in Canada is convenient for the respondent to pursue the litigation for divorce and as such, he cannot be restrained from pursuing the same and the Family Court has rightly vacated the interim order and dismissed the application under Order XXXIX Rule 1 and 2 CPC.

32. That apart, even the plea that the appellant would be entitled to a larger relief if she pursues her petition in India neither appeal to us nor can that be a ground to restrain the respondent from pursuing litigation elsewhere.

33. The plea of Ms. Singh that both the parties continue to be citizens of India and the same shall take precedence over their permanent residency status in Canada also does not appeal to us, as the status of the parties as citizens of India has no relation with the litigation initiated by one of the parties in Canada when the other party is also a permanent resident. Moreover, no plea was raised that the Court in Canada is not competent to decide the divorce suit initiated by the respondent.

34. Some submissions were also made with regard to the dismissal of the application under Order XXXIX Rule 2A CPC. The case of the appellant was that there have been multiple breaches of the interim order dated July 8,

2022. We are in complete agreement with the reasoning given by the Family Court in the following manner to dismiss the application:

"Learned counsel for the plaintiff argued that the defendant not only appeared before the Canadian Court to proceed the divorce petition filed by him but he also made the submissions for enforcing the settlement arrived between the parties and the defendant also made submissions before the Canadian Court to convert the purported settlement arrived at between the parties into the Court order and it amounts to violation of interim injunction order dated 08.07.2022. It is not in dispute that the defendant/his counsel appeared before the Canadian Court with the divorce petition on 01.09.2022, 06.12.2022 and thereafter on some more other dates. However, the appearance of the defendant before the Canadian Court in the divorce petition does not amount the violation of interim injunction order dated 08.07.2022. The defendant was restrained only not to proceed with his divorce petition on merit pending before the Canadian Court.
The defendant was not restrained by the order dated 08.07.2022 to make efforts for settlement with the plaintiff in the divorce petition pending before the Canadian Court. It is important to mention here that in matrimonial cases the priority of the Courts to encourage and persuade the parties for the amicable settlement of their dispute. The Section 9 of the Family Court Act, 1984 casts a duty on the Family Court to make efforts for amicable settlement of matrimonial disputes. This court also vide order dated 12.01.2023 allowed both the parties to settle the disputes before any forum. Therefore, the appearance of the defendant/his counsel before the Canadian Court and making submissions for settlement of the dispute between the parties do not amount to violation of interim injunction order dated 08.07.2022. Further, learned counsel for the plaintiff contended that this Court allowed vide its order dated
12.01.2023 both the parties to settle the dispute before any forum but such forum was Mediation Centre at Delhi but not the Canadian Court where divorce petition is pending. Three is no substance in this contention of the learned counsel for the plaintiff. Both the parties were free to settle their matrimonial disputes at any forum including the Indian Courts and the Canadian Courts. The plaintiff has not brought anything on record to show that the divorce petition filed by the defendant before the Canadian Court was proceeded on merit at the instance of the defendant. It is also pertinent to mention here that the counsel of the plaintiff, who is representing her in Canada, sent a draft settlement on 07.07.2022 to the counsel for the defendant, who is representing him in Canada, and the defendant has also agreed to the said draft settlement, thus, it cannot be denied that the plaintiff was also interested in the amicable settlement of dispute between the parties. Considering all these aspects, the Court is of the considered view that defendant has not violated the interim injunction order dated 08.07.2022 or any other order by which interim injunction was extended from time to time and there is no merit in the application U/o XXXIX Rule 2 A CPC, therefore, the same is dismissed.

35. In view of our above discussion, we do not see any merit in the appeal. The same is dismissed. No costs.

CM APPL. 64021/2023 (for stay) Dismissed as infructuous.