Before S.S. Saron & S.P. Bangarh, JJ.

HARPREET SINGH SEKHON—*Appellant*

versus

RAJWANT KAUR—*Respondent*

FAO No. 5742 OF 2010

February 22, 2013

Code of Civil Procedure, 1908 - Ss. 13, 14 - Hindu Marriage Act, 1955 - Divorce Act, 1869 - S. 2 - Family Courts Act, 1984 - Ss. 7, 14, 16 - Divorce Act, 1869 - S. 2 - Husband obtained decree of Divorce dated 23.05.2005 passed by Circuit Court of Cook County, USA - Wife filed suit for Declaring the said Divorce Decree to be illegal etc. before District Judge, Family Court, Faridabad - Husband contested the suit through his father and GPA - District Judge declared the Divorce Decree to be null and void - Appeal filed-held that judgment of the Court of Cook County, Illinois does not give any reason in support of the decision which indeed is a violation of the principles of natural justice and would come within the exceptions envisaged by clause (b) and (d) of Section 13 CPC - Irretrievable breakdown of marriage is not one of the grounds recognised by the Hindu Marriage Act for the dissolution of marriage- the decree of divorce passed by the foreign court on a ground unavailable under the Hindu Marriage Act unsustainable - moreover the judgement was an ex parte judgment and it failed to comply with principles of natural justice - Appeal dismissed.

Held, that a perusal of the above shows that a foreign judgment is conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except in six circumstances as enumerated in Clause (a) to (f); besides, there is a presumption as to foreign judgments. Therefore, it is to be ascertained whether the present case comes within the exceptions of Section 13 CPC. It may be noticed that merits of the case have not been adverted to in the judgment (Ex.P7) of the Court of Cook County, Illinios and neither have any reasons been given in support

of the decision that has been passed, which indeed is a violation of the principles of natural justice and would come within the exceptions envisaged by clause (b) and (d) of Section 13 CPC. The recording of reasons in support of an order is an accepted facet of the principles of natural justice. The judgment (Ex.P7) of the Circuit Court of Cook County, Illinois as reproduced above indeed does not deal with the merits of the case and does not record any reasons in support of its decision which is in clear violation of the principles of natural justice. In terms of Clause (c) of Section 13 CPC the exception to a foreign judgment being conclusive inter alia provides that a refusal to recognize the law of India in cases in which such law is applicable; besides, clause (f) thereof provides that the foreign judgment is not conclusive where it sustains a claim founded on a breach of any law in force in India.

(Para 19)

Further held, that the plaintiff respondent had not put in appearance in the Circuit Court of Cook County, Illinois. It is not clearly mentioned in the judgment dated 23.05.2005 (Ex.P7) as to whether she had put in appearance. It does not say whether she put in appearance or she had been found in default. In fact both are mentioned. The documents that had been in the Circuit Court of Cook County, Illinois do not show that she filed her reply. In fact she had not received a copy of the petition, which she had been asking for. In the absence of a copy of the petition she could not have made an effective contest. Therefore, for all intents and purposes, the judgment dated 23.05.2005 (Ex.P7) of the Circuit Court of Cook County, Illinois was/is an ex parte judgment; besides, it failed to comply with principles of natural justice.

(Para 24)

Further held, that the Circuit Court of St. Louis Country, Missouri had, therefore, no jurisdiction to entertain the petition according to the Act under which admittedly the parties were married. Secondly, irretrievable breakdown of marriage is not one of the grounds recognised by the Act for the dissolution of marriage. Hence, the decree of divorce passed by the foreign court was on a ground unavailable under the Hindu Marriage Act.

A reference was made to Section 13 CPC, which states that a foreign judgment is not conclusive as to any matter thereby directly adjudicated upon between the parties if (a) it has not been pronounced by a court of competent jurisdiction; (b) it has not been given on the merits of the case; (c) it is founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable; (d) the proceedings are opposed to natural justice, (e) it is obtained by fraud, (f) it sustains a claim founded on a breach of any law in force in India. The decree in the said case dissolving the marriage passed by the foreign court it was held was without jurisdiction according to the Hindu Marriage Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that Court. The decree was also held to be passed on a ground which was not available under the Hindu Marriage Act which was applicable to the marriage.

(Para 26)

Further held, that the parties are admittedly Sikhs and are governed by Hindu Law in the matters of marriage. Even during the course of hearing, Sh. Dilraj Singh Sekhon GPA for the appellant accepted that the parties profess the Sikh Religion. Section 2 of the Divorce Act, 1869 relates to extent of the Act and in respect to the extent of power to grant relief generally, it is provided that nothing hereinafter contained shall authorise any Court to grant any relief under the said Act except where the petitioner or respondent professes the Christian religion. Neither of the parties professes the Christian religion. Therefore, the said contention is absolutely untenable and misconceived. The provisions of the Divorce Act, 1869 are not even remotely applicable to the present case.

(Para 35)

Surjit Singh, Senior Advocate with Ishreet Kaur, Advocate for the appellant and Dilraj Singh Sekhon, GPA Holder of the appellant in person.

Manish Jain, Advocate, Mr. Aman Singla, Advocate and Mr. Tajinder Singh, Advocate for the respondent with respondent-Rajwant Kaur in person.

S.S. SARON, J.

(1) The appellant Harpreet Singh Sekhon has filed this appeal through his father and General Power of Attorney Dilraj Singh Sekhon against the judgment and decree dated 25.08.2010 passed by the learned District Judge, Family Court, Faridabad whereby the suit filed by the respondent-wife Rajwant Kaur Sekhon for declaring the ex parte judgment dated 23.05.2005 passed by the Circuit Court of Cook County, Illinois, United States of America (USA-for short) to be illegal has been decreed in her favour and the aforesaid divorce decree has been declared null and void and not binding on the rights of the plaintiff-respondent Rajwant Kaur Sekhon.

(2) The marriage between the plaintiff-respondent Smt. Rajwant Kaur Sekhon and the defendant-appellant-Harpreet Singh Sekhon was solemnized by way of Anand Karaj on 09.02.2000. The plaintiff alleged that her marriage was a decent marriage. Her parents, brothers and sisters spent about Rs 30,00,000/- on the marriage. A list of expenses on the dowry articles and the other expenses including ring ceremony expenses has been attached. The defendant-appellant along with his parents had been permanently residing in USA. They are green card holders of United States of America. The father of the defendant-appellant namely Dilraj Singh Sekhon Ex Joint Director of Central Bureau of Investigation after leaving his job in India settled permanently in USA. He was working as a lecturer at Columbia College, Chicago, USA. However, for the last about three years, he was living at Mohali in Punjab in his own house. He is owner of more than 70 'killas' (acres) of agricultural land in village Issawal, Ludhiana (Punjab). The plaintiff-respondent was residing at House No.645 Sector-16, Faridabad (Haryana). The said house is owned by the father of the defendant/appellant and is a Joint Hindu Family property. According to the plaintiff-respondent, the minor daughter of the parties namely Sirut (sic. Seerat) Sekhon through her mother and guardian Rajwant Kaur Sekhon (plaintiff respondent) filed a suit against her father Harpreet Singh Sekhon (defendant/appellant), her grand parents namely Dilraj Singh Sekhon and Smt. Tejinder Kaur, her father's brother namely Sarabjit Singh Sekhon and paternal aunt namely Smt. Satnam Kaur inter alia claiming that she is also co-owner in possession in equal share of the residential House No.645 Sector-16, Faridabad; besides, co-owner in equal share of property in

village Issawal, District Ludhiana (Punjab) and co-owner in residential House No.722 Phase-IX, near Cricket Stadium, Mohali. The said suit was pending in the Court of Civil Judge (Junior Division), Faridabad at the time of filing of the present suit out of which the present appeal arises. On 24.02.2002, the plaintiff/respondent received a telephone message from Dilraj Singh Sekhon (father-in-law of the plaintiff), the husband of the plaintiff and her mother-in-law as also other family members namely Satnam Kaur and Pikky Aulakh. It is alleged that they were taunting her for bringing inadequate dowry. They were harassing her mentally and physically by beating her. First Information Report (FIR) for the offences under Sections 498-A and 406 read with Section 34 of the Indian Penal Code (IPC-for short) was got registered in this regard at Police Station Central, Faridabad. After marriage, the plaintiff and defendant resided at Mohali, Ludhiana and village Issawal. The defendant-appellant then went to USA leaving the plaintiff at her parental house at Faridabad. There she had a daughter on 04.12.2000. The in-laws of the plaintiff did not cook food for three days as they did not want a female child. On 30.12.2000, the defendant came back to India and took the plaintiff with him to Mohali. The defendant, it is alleged, came to India from USA on several occasions, however, despite promising to take the plaintiff to USA, he never took her and each time he would say that he would take her next time. The plaintiff in this way felt that she was being made a fool of. Thereafter on 23.05.2005, the defendant obtained a decree of divorce from the Circuit Court of Cook County, Illinios Department-Domestic Relations Division. In terms of the said decree it is alleged that an ex parte and a fraudulent divorce decree was got passed in favour of the defendant. The said divorce decree being a foreign judgment it was prayed was liable to be set aside being not a valid decree in view of Section 13 of the Code of Civil Procedure (C.P.C-for short) and on other grounds as well. It was submitted that under the provision of Hindu Marriage Act, 1955 only the District Courts within the local limits of whose ordinary civil jurisdiction (i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition, resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive

would have the jurisdiction to entertain and try the petition. Therefore, it was submitted that the Circuit Court of Cook County, Illinos had no jurisdiction to entertain the petition. According to the provisions of the Hindu Marriage Act under which the parties were admittedly married, irretrievable break down of marriage as a ground for dissolution of the marriage was not recognised. It was submitted that the defendant by way of filing the divorce petition in USA committed fraud and forged grounds, which were not available to him; besides, no valid ground mentioned in the divorce petition by the defendant was existing at the time of filing the divorce petition. The parties never resided in USA together and the plaintiff never refused to reside with the defendant in USA or in India. The defendant does not provide or send from USA any kind of maintenance to the plaintiff and her daughter in India. The defendant and her family had been avoiding services in all Court cases which were pending at Faridabad. The plaintiff and her minor daughter were fully dependent on her parents. The plaintiff had also filed a petition under Section 9 of the Hindu Marriage Act for seeking restitution of conjugal rights.

(3) The defendant/appellant filed written statement through his father and General Power of Attorney (GPA) Dilraj Singh Sekhon. Preliminary objections were raised to the effect that the petition was time barred. The divorce judgment by the Court of Cook County Illinos, it is stated, was passed on 23.05.2005 and the petition to set aside the divorce judgment was filed on 15.04.2008. The case did not fall within the territorial jurisdiction of Faridabad Court. The marriage was solemnized at Jalandhar in Punjab. The plaintiff and defendant had lived together as husband and wife in H.No.722, Phase-9, Mohali. They had never lived in House No.645 Sector-16, Faridaband. The said house was occupied by a tenant. The divorce granted by the Circuit Court of Cook County, Illinios was a valid divorce. On receipt of notice from the said Court, it is stated that the plaintiff had filed her appearance voluntarily through her attorney. By filing her appearance, she had submitted to the jurisdiction of the said Court. By filing reply to the same she had contested the case in the Circuit Court of Cook County, Illinios. It is stated that the defendant Harpreet Singh Sekhon could not file divorce petition in India because he was not a domicile of India. He has been a domicile and permanent resident of USA. A reference was

made to the case of ***Dr. David Chakravarthy Arunmainayagan*** versus ***Geetha Chakravarthy Arunmainayagan (1),*** (Madras) wherein in the context of the Divorce Act, 1869, it is stated that the parties to marriage should be domiciled in India which is a condition precedent under Section 2 of the Divorce Act to file a petition. It is further stated that the list relating to expenditure on dowry articles was false and baseless. It was a simple and dowry less marriage. The dowry articles such as furniture, TV, Refrigerator and other such items were not required to be taken to USA where non-resident Indians (NRIs) live. On 11.06.2002, the plaintiff and her father Sarwan Singh Nijjar got the marriage registered with the Registrar of Marriages, Jalandhar-I, Punjab when Harpreet Singh Sekhon defendant was living in USA. This fraudulent registration of marriage was being investigated by the Deputy Commissioner, Jalandhar and the Punjab Police, Jalandhar. The plaintiff it is stated is not residing in House No.645 Sector-16, Faridabad. The said house was in forcible possession of her brother Jagjit Singh who had taken its possession after breaking open the lock of the house with the help of his relative. On 06.07.2005, case FIR No.252 had been registered at Central Police Station, Faridabad for the offence under Section 448 of the IPC. The plaintiff had never lived in the said house. She lived in her parental house i.e. H.No.2382 Sector-9, Faridabad. She reaches that house whenever Investigating Officer goes there. The said house is a self-acquired property of Harpreet Singh Sekhon who had constructed the house to live in it after retirement from the Central Government. Baby Sirut (sic. Seerat) Sekhon minor it is stated was being misused by the plaintiff and her relative to grab the property. No Court had declared the plaintiff as her guardian. Harpreet Singh Sekhon defendant had filed a case for custody of Baby Sirut (Seerat) Sekhon. On 30.11.2005, the Additional District Judge, Faridabad had vacated the stay granted by the lower Court. Thereafter the High Court had granted interim stay in this case. On 24.02.2002, it is stated that no telephone call was made from USA to the husband of plaintiff and her mother-in-law in India because during that period they were living in USA. A false dowry complaint was got registered under Section 498-A and 406 IPC. A complaint under Section 498-A IPC was not maintainable at the behest of a divorcee. Besides, Section 34 IPC was not incorporated in the FIR as had been alleged by the plaintiff in this para. Out of five accused, three had been

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discharged as the police had found them innocent. Regarding the remaining two accused, the allegations of ill-treatment, physical assaults and dowry demand pertain to the periods they were living in USA. The letters written by the plaintiff to her mothere-in-law at an address in USA during the said periods it is stated contradict the allegations in the FIR. Dowry articles cannot be entrusted to NRIs who live in USA and NRIs living in USA cannot misuse dowry articles in India. It is alleged that the father of Harpreet Singh Sekhon defendant had arranged admission of plaintiff in an institute in USA where he was teaching. He had also sent sponsorship for her but she did not get a visa from the American Embassy. Brother of Harpreet Singh Sekhon-defendant had also sent sponsorship for the plaintiff from Canada but the plaintiff did not go to the Canadian Embassy for an interview. Thereafter Harpreet Singh Sekhon had sent Immigration Forms to the plaintiff to be filled up for immigration to USA, which she did not fill up. This showed that the plaintiff did not want to join her husband in USA. When the defendant came to India, he was subjected to mental cruelty which was unendurable. She had inflicted immeasurable mental agony and torture. During his short stay in India, she had made his life miserable and they had lived separate and apart in India. It is alleged that she did not cook food in the house and was getting food from a hotel. She had stated that she had not dined in less than five star hotels. It is alleged that her father and mother were illiterate. Her father had worked as a tempo driver in Faridabad and the marriage was a fraud. It is further alleged by the defendant that the character and loyalty of the plaintiff were found doubtful. Unknown men were coming to meet her. Those men did not know that her husband had come from USA and was sitting inside the house. The defendant did not know where his wife was going in a car. Her whereabouts were not known. Attitude and behaviour of his wife showed total disrespect towards him. She had used filthy and abusive language against him. When her husband had raised objections about her undesirable activities then she had threatened him that she would get him put behind bars by lodging a dowry complaint which she later did in the year 2005. There was no temperamental compatibility. She was hot headed and quarrelsome. On 11.09.2007, she had misbehaved with the father of the defendant Harpreet Singh Sekhon in the District Courts, Faridabad. On this the father of the defendant had

lodged a written complaint with the SSP, Faridabad seeking protection and to restrain her not to come near him during the period he remains in the District Courts, Faridabad. About half a dozen cases filed by plaintiff against the defendant were pending in the District Courts, Faridabad. On 23.05.2005, it is stated that the Circuit Court of Cook County had passed a decree for dissolution of the marriage between the parties after the plaintiff had filed her appearance through her attorney and had contested the case on receipt of notice from the said Court. The parties were married under Hindu Law but the said law did not allow the defendant Harpreet Singh Sekhon to file a divorce petition in India because he was not a domicile of India. The plaintiff had stated that she had not submitted to the jurisdiction of that Court but by filing her apearance she had in fact submited to the jurisdiction of the said Court. The Circuit Court of Cook County was a Court of competent jurisdiction. The said Court had gone through the reply to the claims submitted by the plaintiff and had taken a decision. This confirmed that the decision of the Court was based on contest between the parties. As per the judgment for dissolution of marriage passed by the Circuit Court of Cook County, the Court at Faridabad, it is submitted, expressly retains jurisdiction of this case for the purpose of enforcing all the terms of the said judgment for dissolution of marriage. The defendant Harpreet Singh Sekhon was a domicile of that country. It is submitted that there was no fraud with relation to merits of the case and the jurisdictional facts. The said Court had the jurisdiction because the defendant in this case was a domicile of that country. The custody of Baby Sirut (sic. Seerat) Sekhon had been reserved in the judgment passed by Circuit Court of Cook County. The objection of plaintiff that divorce petition was not maintainable in USA was dismissed on the ground that the petitioner (now defendant) satisfied all the conditions laid down by that Court. Baby Sirut (sic. Seerat) Sekhon, it is submitted, was being misused by the plaintiff and her relatives to grab the property. The defendant-Harpreet Singh Sekhon wants to take her to USA to give her education there. The conjugal rights cannot be restored to a divorcee who had filed a criminal complaint under Sections 498-A and 406 IPC, besides, about half a dozen cases against the defendant in District Courts, Faridabad. The divorce judgment passed by the Circuit Court of Cook County, it is submitted is a valid divorce judgment and the Court had

jurisdiction over the subject matter. On the pleadings of the parties, the following issues were framed by the learned Civil Judge (Junior Division) Faridabad on 13.05.2009:-

> 1. Whether the plaintiff is entitled to decree of declaration as prayed for? OPD
>
> 2. Whether the suit is time barred? OPD
>
> 3. Whether the Court has no jurisdiction to entertain the present suit? OPD.
>
> 4. Relief.

(4) After the said issues were framed by the learned Civil Judge (Junior Division), Faridabad on 13.05.2009, the case on the establishment of the Family Court, was transferred and received by the District Judge, Faridabad on 27.05.2009. On 04.11.2009, the learned District Judge, Family Court observed that it had been brought to the notice of the said Family Court that the issues settled on 13.05.2009 were not specific. Therefore, it was expedient to reframe the issues. The parties had not led any evidence till the said date i.e. 04.11.2009. Accordingly, the following issues were settled for adjudication by re-framing them:-

> 1. Whether the judgment and decree dated 23.05.2005 of Circuit Court of Cook County, Illinois County Department-Domestic Relations Division of Judge Jeanne R. Cleveland Bernstein in case titled Harpreet Singh Sekhon and Rajwant Kaur Sekhon dated May 23, 2005 dissolving the marriage is liable to be set aside, as alleged? OPP.
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> 2. Whether this Court has no territorial jurisdiction to try this suit, as alleged? OPD
>
> 3. Whether the suit is time barred? OPD
>
> 4. Whether the suit is not maintainable before the Civil Court? OPD
>
> 5. Relief.

(5) No other issues were pressed or claimed.

(6) The learned District Judge after considering the evidence and material on record decreed the suit of the plaintiff-respondent with costs. The divorce decree dated 30.05.2005 passed by the Circuit Court of Cook County, Illinois, USA was declared null and void and not binding on the rights of the plaintiff; besides, the suit was held to be within limitation and as regards jurisdiction of the Court at Faridabad, the same was not pressed during the course of arguments. The plaintiff had also sought alimony/ maintenance allowance for a sum of Rs.75000/- per month. However, the said plea was not supported by any kind of evidence. Accordingly the same was declined.

(7) Aggrieved against the said judgment and decree, the defendant-appellant through his father and Attorney Dilraj Singh Sekhon has filed the present appeal. This Court on 04.10.2010 subject to the appellant's depositing an amount of Rs.70,000/- (provisional) towards litigation expenses, to be paid to the respondent, issued notice of motion on the application regarding condonation of delay and also in the main appeal. The service was complete. Thereafter on 09.02.2011 to explore the possibility of a compromise between the parties the case was adjourned to 16.02.2011. On the said date as per the attorney (Dilraj Singh Sekhon) of the appellant, there were no chances of compromise. The case was adjourned to 20.04.2011 for arguments. On 27.04.2011, counsel for the parties were in agreement that efforts were being made to compromise the matter and the case on request was adjourned to 06.05.2011. On 06.05.2011, the following order was passed:-

> "Present : Mr. Robin Dutt, Advocate for the appellant. Mr. Manish Jain, Advocate for the respondent.
>
> Efforts were made to settle the matter amicably. However, it appears that the appellant is not ready to arrive at a reasonable settlement. It has also been brought to our notice that the Court at Faridabad, granted an interim maintenance to the respondent-wife @ Rs.30,000/ - per month and Rs.20,000/- per month to the child. It is stated that despite directions issued by the appellate Court, where the dispute is pending at the instance of the appellant, the amount of maintenance

has not been paid, which is to the tune of about Rs.11 lacs.Unless that amount is paid, probably, this appeal cannot be pressed by the appellant.

Under the circumstances, we direct the appellant to deposit amount of compensation granted, before the next date of hearing with the Court below, where the appeal is pending under the Domestic ViolenceAct, 2005.

Adjourned to 20.05.2011."

(8) The appellant, however, did not deposit the amount in terms of the said order. He filed CM No.13227-CII of 2011 for modification of the above said order dated 06.05.2011. It was submitted that it had wrongly been presented before this court that the appellant was liable to pay the respondent Rs.11 lacs as arrears of maintenance. It was submitted that the Judicial Magistrate Ist Class, Faridabad vide order dated 13.12.2010 (in proceedings under the Protetion of Women from Domestic ViolenceAct, 2005) had directed the appellant to make payment of Rs.30,000/- to applicant No.1 (Rajwant Kaur) and Rs.20,000/- to applicant No.2 (Seerat) before 10th of every from the date of application. Besides, the employer of respondent No.1 was also directed to deduct the same amount and deposit it in the account of applicant No.1 (on behalf of applicant No.2 as well) before 10th of every month. Therefore, according to the appellant, it was evident that the maintenance in fact was to be paid from 13.12.2010 and the judgment dated 13.12.2010 was under appeal and the appellant had applied for stay of operation of the judgment before the appellate Court and no order regarding payment of the maintenance amount had been directed by the appellate Court and the stay matter was to come up for hearing before the appellate Court on 26.05.2011. Therefore, the direction to pay the maintenance amount mentioned in the order dated 06.05.2011, it was submitted, needed to be modified. The said CM came up before the Bench which had passed the earlier order on 11.07.2011. A copy of the order dated 03.06.2011 passed by the learned Additional Sessions Judge, Faridabad in appeal against the order dated 13.12.2010 passed by the Judicial Magistrate Ist Class, Faridabad was shown in this regard. A perusal of the same indicated that the appeal filed by the applicant/appellant against the orderdated 13.12.2010 passed by the learned Judicial Magistrate

Ist Class, Faridabad was not being heard on account of the aforesaid order dated 06.05.2011 passed by this Court. The appeal before the Court below was fixed for 24.07.2011. The application for modification of the order dated 06.05.2011 passed by this Court and also the main appeal on 11.07.2011 were adjourned to 26.07.2011. The appellate Court (Addl. Sessions Judge, Faridabad) was directed to decide the appeal filed by the appellant on the date fixed without being influenced by any observation made by this Court in its order dated 06.05.2011. On 26.07.2011, it was brought to the notice of the Court that on account of some unavoidable circumstances, the appeal could not be heard by the Court below on the date fixed. The Court below was directed to comply with the order passed by this Court on 11.07.2011 and the case was adjourned to 09.08.2011 and then to 17.08.2011. On the said date it was adjounred to 26.08.2011. On 26.08.2011, the record from the learned trial Court was received and the case was adjourned to 16.09.2011 for arguments. On 14.10.2011, CM No.13277-C2 of 2011 seeking clarification (sic.-modification) of the order dated 06.05.2011 it was observed had become infructuous in view of order passed subsequent thereto. In view of the above this matter, it was ordered be listed before a Bench as per roster on 07.11.2011, on which date it was adjourned to 29.11.2011. On 29.11.2011 this court observed that the appeal filed by the appellant against the order dated 13.12.2010 passed by the court of Judicial Magistrate Ist Class, Faridabad i.e. in proceedings under the Protection of Women from Domestic Violence Act had been dismissed by the court of Additional Sessions Judge, Faridabad on 08.08.2011 and the order regarding payment of interim maintenance to the extent of Rs.30,000/- and Rs.20,000/- per month to the respondent and her minor daughter respectively had been upheld. Though Criminal Misc. No.M-24964 of 2011 had been filed against the order dated 08.08.2011 but no stay regarding the payment of interim maintenance had been granted. Before addressing arguments, learned counsel for the appellant had sought time to seek instructions with regard to the payment of said amount to the destitute wife and child of the appellant. The case was adjourned to 19.12.2011. It was made clear that if the aforesaid interim maintenance in terms of order dated 13.12.2010 passed by the Judicial Magistrate Ist Class, Faridabad was not paid, the plea taken by the respondent wife that this appeal is to be dismissed would be considered on the adjourned date. On 19.12.2011 learned counsel for the appellant sought more time to have

instructions whether the order regarding payment of interim maintenance to the respondent had been complied with or not. For the said purpose the case was adjourned to 02.02.2012. On 02.02.2012 a week's time was granted to make payment of maintenance as it prima facie appeared that the appellant was not providing for his wife and minor daughter. The case was adjourned to 09.02.2012. On 09.02.2012 a detailed order was passed by this Court. It was inter alia observed by the Bench that passed the order that it was prima facie satisfied that the appellant may be guilty of contempt of court. However, before initiating any proceeding the Bench intended to grant the appellant a week's time to purge the contempt. The Bench also recorded its opinion that interim maintenance was not prayed for or assessed in the appeal as maintenance had already been assessed by Judicial Magistrate Ist Class, Faridabad. The case was then adjourned to 21.02.2012. On 21.02.2012, the appellant had not filed any reply or affidavit in response to order dated 09.02.2012. On the request of learned counsel for the appellant, the case was adjourned to 14.03.2012, on which date it was adjourned to 23.03.2012 and then to 02.05.2012. On the last of the dates, it was adjourned to 29.05.2012 for arguments and then to 23.07.2012. On 23.07.2012, learned Senior counsel Mr. Surjit Singh, Advocate who had been appearing for the appellant did not appear. He was called for by the Court and he submitted that his client had taken the brief from him. It was, however, accepted that he had not been discharged by the Court. In order to effectively decide the case, it was observed that it would be just and expedient that he assists the Court. Learned Senior counsel gracefully agreed to assist the Court. He prayed for time. On his request, the case was adjourned to 30.07.2011. On the said date, Mr. Manish Jain, Advocate for the respondent submitted that since the appellant had not complied with the orders passed by this Court on 06.05.2011, 11.07.2011, 26.07.2011, 29.11.2011 and 09.02.2012, this appeal may be dismissed and contempt proceedings be initiated against the appellant. The case was adjourned to 14.08.2012 and the trial Court records were requisitioned for the said date. The case was heard on 05.10.2012 and thereafter on 06.10.2012. The case was heard on 06.10.2012 at length. Mr. Manish Jain, Advocate appearing for the respondent had submitted that this case is liable to be dismissed for non-payment of maintenance.

(9) Mr. Surjit Singh, learned Senior Advocate appearing with Ms. Ishreet Kaur, Advocate submitted that Crl. Misc.No.M-24964 of 2011 had been filed by the appellant against the order dated 08.08.2011 passed by the learned Additional Sessions Judge, Faridabad ordering the payment of maintenance in proceedings under the Protection of Women from Domestic Violence Act. Even though no stay had been granted but an application for grant of stay was pending. It is also submitted that an order passed in another proceedings under the Protection of Women from Domestic Violence Act, 2005 for payment of maintenance could not be executed in the present appeal which is a suit for declaration.

(10) Mr. Manish Jain, Advocate leaned counsel for the plaintiff-respondent, however, submitted that this Court on 09.02.2012 had recorded its opinion that interim maintenance was not prayed for or assessed in the appeal as maintenance had already been assessed by the Judicial Magistrate Ist Class which it is submitted is in proceedings under the Protection of Women from Domestic Violence Act, 2005.

(11) After deliberations it was agreed between the learned counsel for the parties and Mr.Dilraj Singh Sekhon GPA for the appellant that the main appeal as also the effect of non-payment of maintenance and the connected appeal (FAO No.6208 of 2011) claiming custody of the minor child Seerat be heard together. Accordingly, the main appeal as also the effect of non-payment of maintenance amount and the connected appeal are taken up and have been heard.

(12) Insofar as the main appeal is concerned Mr. Surjit Singh, learned Senior Advocate with Ms. Ishreet Kaur, Advocate for the appellant has contended that the learned trial Court wrongly held that the plaintiff-respondent had not submitted herself to the Circuit Court of Cook Country, Illinios in USA. In fact she had filed her appearance in the said Court. A reference has been made to the judgment dated 23.05.2005 of the Circuit Court of Cook County, Illinois, the letter to the notice issued on 07.04.2005 by Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois which is a publication in the press and a letter dated 13.05.2005 in which appearance has been entered on behalf of respondent by Shri Mandeep Singh Sachdev, Advocate at Jalandhar and a letter dated 19.04.2005 written by Malhotra & Malhotra Associates International Lawyers at

Chandigarh regarding appearance; besides, the application (Ex.P5) written by the respondent through her counsel Shri Mandeep Singh Sachdev, Advocate at Jalandhar to Ms. Dorothy Brown Clerk of the Circuit Court of Cook County, Illinois and another letter dated 05.09.2005 (Ex.P6) written by Shri Mandeep Singh Sachdev, Advocate at Jalandhar to Ms. Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois. According to learned Senior Counsel the said documents evidently show that the respondent had put in her appearance before the Circuit Court of Cook County, Illinios. It is submitted that even though some of the documents are not exhibited, however, strict rules of Evidence Act are inapplicable in view of the provisions of Sections 14 and 16 of the Family Courts Act 1984 and the same can be read in evidence. It is next contended that the suit filed was not within the jurisdiction of the Family Court. A reference has been made to Section 7 of the Family Courts Act. A suit for specific relief, it is contended, would not be covered under the Family Courts Act. It is lastly contended that a foreign judgment is conclusive as to any matter thereby adjudicated upon between the parties in view of Section 13 CPC. Therefore, the decree (Ex.P7) passed by the Circuit Court of Cook County, Illinois is valid.

(13) Mr. Dilraj Singh Sekhon GPA for the appellant has vehemently contended that the Circuit Court of Cook County, Illinois was the only competent Court to grant the decree of divorce as the defendant-appellant was not a domicile in India and, therefore, in view of Section 2 of the Divorce Act, a suit filed by him for grant of divorce would not be maintainable in India. A pointed reference has been made to the case of Dr. David Chakaravarthy Arumainayagam and another versus Geetha Chakravarthy (supra); besides, it is submitted that the application for ordering payment of maintenance under the Protection of Women from Domestic Violence Act, 2005 was not maintainable and a criminal miscellaneous application under Section 482 of the Code of Criminal Procedure against the order dated 13.12.2010 passed by the learned Judicial Magistrate Ist Class, Faridabad and order dated 08.08.2011 passed by the learned Additional Sessions Judge, Faridabad is pending in this court.

(14) In response Mr. Manish Jain, Advocate learned counsel for the respondent has submitted that the judgment and decree passed by the learned Court below are perfectly legal and valid. It is submitted that the

plaintiff respondent never submitted to the Circuit Court of Cook County, Illinois. She had been proceeded against ex parte there. A reference has been made to the copy of the passport (Ex.P8) to contend that she had never visited USA. Therefore, there was no question of her defending the case; besides, it is submitted that the notices received from Ms. Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois have been placed on record as Ex.P2 and Ex.P3 by the plaintiff herself and even the form filled by Mr. Mandeep Singh Sachdev, Advocate at Jalandhar and the application (Ex.P8) and the letter dated 05.09.2009 (Ex.P5) of Mr. Mandeep Singh Sachdev, Advocate at Jalandhar have been placed on record by the plaintiff herself to show that she had been demanding the necessary documents and procedure for filing a reply which was not responded to by the Circuit Court of Cook County, Illinois. Besides, it is submitted that the parties are Sikhs and governed by Hindu law in the matters of marriage specially when one of them is not a citizen of America. The Circuit Court of Cook County, Illinois, it is submitted, had no jurisdiction to dissolve the marriage. In any case it is submitted that the decree comes within the exceptions to Section 13 CPC inasmuch as it has not been pronounced by a court of competent jurisdiction and it has not been given on merits of the case; besides, it is opposed to the principles of natural justice. Therefore, the same comes within the exceptions as envisaged by clauses (a), (b), (c) and (d) of Section 13 CPC. The proceedings before the Family Court are valid and there is no infirmity in the same. Besides, it is submitted that for failure to pay the maintenance amount as ordered by this Court, the appeal is liable to be dismissed on that account alone.

(15) During the course of hearing, it has also been submitted by Mr. Manish Jain, Advocate for the respondent that Dilraj Singh Sekhon, who has filed the appeal does not have a valid attorney to present the appeal and the attorney given in his favour by his son (appellant) does not authorise him to file an appeal on his behalf.

(16) We have given our thoughtful considerations to the contentions of the learned counsel for the parties and with their assistance gone through the records. The primary issue, which is involved in the case is whether the marriage between the parties stands dissolved on account of the judgment dated 23.05.2005 (Ex.P7) passed by the Circuit Court of Cook County,

Illinois or whether the said judgment is null and void and does not affect the matrimonial status of the plaintiff respondent to continue to be the wife of the appellant-Harpreet Singh Sekhon. In order to appreciate the said contention, the said judgment (Ex.P7) as has been filed in Court in its entirety is reproduced as under:-

"PERSONAL SERVICE
OR DEFAULT

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS COUNTY DEPARTMENT- DOMESTIC RELATIONS DIVISION

In Re the Marriage of:	)	Judge Jeanne R.
HARPREET SINGH SEKHON	)	Cleveland Bernstein
Petitioner	)	May 23, 2005
and	)	Circuit Court-1883
RAJWANT KAUR SEKHON	)	05D03518
Respondent	)	No.D

JUDGMENT FOR DISSOLUTION OF MARRIAGE

(17) This cause coming on to be heard for prove up on the Verified Petition for Dissolution of Marriage, Petitioner appearing pro se, personal service having been had on Respondent and Respondent having been found in default, or the Respondent having filed a pro se appearance and the parties being in agreement, the court having heard testimony

FINDS :

1. Respondent did / did not appear in court.

2. The Court has jurisdiction of the parties and the subject matter.

3. Petitioner was a resident of the State of Illinois on the date the petition was filed and for 90 days preceding these findings.

4. The parties were married on 2/9/2000 in Jalandhar, Punjab, India.

5. Petitioner has proven that grounds exist for dissolution of marriage as alleged in the Petition.

6. The following children were born.

NAME	BIRTH DATE
a. Seerat Kaur Sekhon	December 4, 2000

Respondent is not pregnant.

7. The custody of the child Seerat Kaur Sekhon is reserved.

8. Based on the testimony of the Petitioner which has been transcribed for the record and the evidence received.

IT IS HEREBY ORDERED THAT :

A. The parties are awarded a judgment of Dissolution of Marriage and the bonds of matrimony existing between Petitioner and Respondent are hereby dissolved.

B. Wife is granted leave to resume the use of her former name.

C. This court expressly retains jurisdiction of this case for the purpose of enforcing all of the terms of this judgment for Dissolution of Marriage."

NAME	ENTER
ADDRESS	sd
CITY, STATE, ZIP	JUDGE
TELEPHONE	

(18) The decree as has been placed on record shows that it is quite unclear as to whether the respondent has been found in default or the respondent had filed a pro se appearance. Besides, it records that the parties are in agreement and the Court had found the facts as mentioned in paras 1 to 8 above to be established. Para 1 mentions respondent did/did not appear in Court. Therefore, it is unclear as to whether the respondent before the Circuit Court of Cook County, Illinois who is the plaintiff-respondent herein had appeared or did not appear. The same also records

that the parties are in agreement. However, even if it is to be taken that the plaintiff-respondent herein had appeared in the Court of Cook County, Illinios there is nothing to show that she was in agreement with the order that was passed for dissolving the marriage. The said order also mentions that the custody of child Seerat Kaur Sekhon is reserved. In case the order is reserved, it is not shown as to whether any further order has been passed or whether the same in fact meant that it was deferred. There is a hand written note on the left side of the order (Ex.P7) that all other issues of custody, property division are reserved. There is no signature below the said note and it is unclear as to whether it is part of the Court proceedings or has been added later and, if so, by whom. The columns of name, address, city, State, zip and telephone have been left blank. Therefore, the said decree is quite unclear as regards the fact whether the respondent is taken to have appeared or not. The provisions of Section 13 and 14 CPC which are relevant for consideration may be noticed. The same read as under:-

> "**Section 13:-When foreign judgment not conclusive.** A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-
>
> (a) where it has not been pronounced by a Court competent jurisdiction;
>
> (b) where it has not been given on the merits of the case;
>
> (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in case in which such law is applicable;
>
> (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
>
> (e) where it has been obtained by fraud;
>
> (f) where it sustains a claim founded on a breach of any law in force in India.
>
> Section 14:-**Presumption as to foreign judgments.**__The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was

pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction"

(19) A perusal of the above shows that a foreign judgment is conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except in six circumstances as enumerated in Clause (a) to (f); besides, there is a presumption as to foreign judgments. Therefore, it is to be ascertained whether the present case comes within the exceptions of Section 13 CPC. It may be noticed that merits of the case have not been adverted to in the judgment (Ex.P7) of the Court of Cook County, Illinios and neither have any reasons been given in support of the decision that has been passed, which indeed is a violation of the principles of natural justice and would come within the exceptions envisaged by clause (b) and (d) of Section 13 CPC. The recording of reasons in support of an order is an accepted facet of the principles of natural justice. Reasons recorded in an order indicate the link between the materials on which certain conclusions have been reached at and are based. These disclose as to how the mind has been applied to the subject matter for a decision and against plausible injustice. The reasons are liable to be given so as to reveal a rational nexus between the facts considered and the conclusion reached. These satisfy the party against whom an order is made. Although if reasons are not recorded in support of an order, it does not always vitiate decision, however, principles of natural justice enjoin the recording of reasons. The judgment (Ex.P7) of the Circuit Court of Cook County, Illinois as reproduced above indeed does not deal with the merits of the case and does not record any reasons in support of its decision which is in clear violation of the principles of natural justice. In terms of Clause (c) of Sction 13 CPC the exception to a foreign judgment being conclusive inter alia provides that a refusal to recognise the law of India in cases in which such law is applicable; besides, clause (f) thereof provides that the foreign judgment is not conclusive where it sustains a claim founded on a breach of any law in force in India. The parties to the marriage are Sikhs and are governed by Hindu law in the matter of marriage and divorce. The Hindu MarriageAct, 1955 applies to them. The question that the appellant is a domicile in USA is inconsequential as the parties were married by Anand

Karaj ceremony of marriage in India. Marriage by Anand Karaj is recognized form of marriage under the Hindu Marriage Act by virtue of Section 2 of the Anand Marriage Act, 1909 which envisages that all marriages which may be or may have been duly solemnized according to the Sikh marriage ceremony called Anand shall be, and shall be deemed to have been with effect from the date of the solemnization of each respectively, good and valid in law. Therefore, for the purpose of divorce, provisions of Hindu Marriage Act, 1955 are applicable to the parties especially when the wife has been a resident of India and is shown to have never gone to USA. Therefore, it is difficult to say that she is subject to the law of a country to which she has never visited or merely because her husband has been residing there. When the marriage was solemnized in India in accordance with the Hindu Marriage Act, the law applicable to the parties would be governed by the said Act. In the circumstances the case of the plaintiff comes within the exceptions envisaged clauses (c) and (f) of Section 13 CPC as well. The question whether the plaintiff respondent appeared in the said Court as has already been noticed is quite unclear from the judgment (Ex.P7).

(20) Learned Senior counsel appearing for the appellant has referred to the documents regarding notice (Ex.P2) issued to the plaintiff respondent. The same in fact is a publication made in the press which was issued on 07.04.2005 and was addressed to the plaintiff respondent at House No.2382, Sector-9, Faridabad. The plaintiff respondent in her evidence tendered her affidavit as Ex.PW1/A. It is inter alia submitted by her that she was married to the defendant appellant on 09.02.2000, according to Sikh rites and rituals by Anand Karaj. It is further stated that somewhere in the middle of April 2005 she found an envelope in the letter box of her House No.645, Sector 16, Faridabad containing a cutting of a newspaper wherein a notice (Ex.P2) was published that the defendant had filed a petition for dissolution of the marriage between the parties in the Circuit Court of Cook County, Chicago, Illinois USA against her and she was called upon to file her response to the said petition or otherwise make her appearance in the Office of Clerk of the Circuit Court of Cook County, Illinois, Room No.802, Richard J. Daley Centre, in the City of Chicago, Illinois on or before 06.05.2005 otherwise default may be entered against her any time after that day and a judgment for dissolution of marriage entered in accordance with the prayer of the said petition. It is further deposed by the plaintiff that she wrote a

letter dated 19.04.2005 to the aforesaid Clerk of the Circuit Court of Cook County to supply the details of the above case to her along with copy of the petition and further informing her that the aforesaid Court had no jurisdiction to hear the case because the marriage of the plaintiff and the defendant never took place in USA and she had never visited USA and stayed with her husband in USA. In response to the said letter, the plaintiff received a photocopy of letter dated 25.04.2005 (Ex.P3) from Hon'ble Dorothy A. Brown, Clerk of the Circuit Court of Cook County, Illinois, Chicago USA whereby she was required to submit fee of $143.00 so as to complete and submit appearance Form. The appearance Form (Ex.P4) was appended with the said letter. The deponent (plaintiff) wrote another letter dated 29.04.2005 (Ex.P5) to the aforesaid Clerk of the Circuit Court of Cook County, Illinois demanding a copy of petition, telephone number, E-mail address and Website of the Court and other facilities so she might contest the above case. However, she categorically stated in her letter that she was not submitting herself to the jurisdiction of the said Court. Another letter dated 05.09.2005 (Ex.P6) was also written to the aforesaid Court by the deponent (plaintiff) through her counsel Shri M. S. Sachdev, Advocate seeking the details of the next date of hearing. However, thereafter the deponent (plaintiff) did not receive any information whatsoever from the aforesaid Court. Somewhere in the end of July, 2006, she again received a plain envelope containing a photocopy of judgment of dissolution of marriage dated 23.05.2005. In terms of the ex parte judgment (Ex.P7), the marriage between the deponent (plaintiff) and the defendant was declared dissolved. According to the plaintiff, it was apparent that the copy of the divorce decree was brought at the house of the deponent (plaintiff) by the defendant through his father or somebody else. By that time multi pronged litigation was in process between the parties as the defendant and his father were trying their level best to oust the deponent (plaintiff) and her little child from House No.645, Sector-16, Faridabad which was her matrimonial home. Her petition under Section 125 of the Code of Criminal Procedure for grant of maintenance and several other cases including cases under Section 406 and 498-A IPC were also in process.

(21) It may, therefore, be noticed that according to the plaintiff she received an envelope in her House No.645, Sector-16, Faridabad, which contained cutting of a newspaper wherein a notice (Ex.P2) was published

that the defendant had filed a petition seeking dissolution of the marriage between the parties in the Circuit Court of Cook County, Chicago, Illinois. In cross-examination, it is stated by the plaintiff that she did not live in House No.2382, Sector-9, Faridabad but she was living in House No.645, Sector-16, Faridabad. It is, however, stated as correct that when her daughter Seerat Sekhon was born she had shown her address of House No.2382, Sector-9, Faridabad. She voluntarily stated that this was her parents' house and at that time, none of her in-laws or her husband were present in India. She denied that the defendant never asked her to shift in House No.645 Sector-16, Faridabad. She further denied that in the said house her brother and his family were staying. She denied that she never stayed at Ludhiana and Issewal. She denied that her father-in-law sent sponsorship along with admission in some course in USA. She voluntarily stated that he had sent sponsorship to her as his friend's daughter and not his (daughter) in-law and, therefore, the said sponsorship was totally illegal. At that time it is voluntarily stated that she was five months' pregnant. It is stated as correct that elder brother of the defendant ('Jeth' of the plaintiff) had sent Rs.20,000/- as a gift for her daughter Baby Seerat. She denied that she was ever sent any immigration form or that she had not sent the same back duly filled. She denied the suggestion that she ever sent any appearance sheet to American Court and a copy to her father-in-law. It is voluntarily stated by her that her in-laws sent to her a newspaper slip/clipping of the American Court and then she asked the American Court to send her the details of the Court case and copy of the petition. She or her mother never received any registered cover containing judgment of divorce of American Court in July, 2005. She voluntarily stated that she had received a copy of divorce judgment in July, 2006 which was thrown in the court yard of her house by someone else in an envelope. She had only discussed with a lawyer Mr. Malhotra and had never engaged him to appear in the case in America. She voluntarily stated that she had engaged Mr. Mandeep Singh Sachdev to issue a letter to American Court which was Ex.P-6. She possessed only one passport and not two.

(22) A letter Ex.P-5 was written by the plaintiff to Ms. Dorothy Brown, Clerk of the Circuit Court of Cook County, Illinois. It was primarily for supplying a copy of the petition to her. It was inter alia stated by the plaintiff in her said letter (Ex.P5) that she had received an envelope containing

a cutting of alleged publication. The said envelope bears the name of Ms. Dorothy Brown but does not bear the seal of posting or receiving. It was possible that some prank had been committed on her, so for verification purposes, the application was being sent for assistance. The plaintiff also asked for supplying her the telephone numbers of the Hon'ble Court, E-mail address and website, so that the forms could be downloaded; besides, she requested for supplying her the relevant law to the effect as to how she could appear before the Hon'ble Court for contesting the petition and also provide the details of free legal aid assistance, in her country because she was not having any independent income and was totally dependent on the meagre income of her father as admittedly she had not been sent any maintenance by the petitioner (defendant herein). The claims mentioned by the plaintiff in her letter (Ex.P-5) were without prejudice to her legal rights of not submitting to the jurisdiction of the said Court as the divorce petition had to be challenged firstly and foremostly on the ground of jurisdiction. The letter dated 05.09.2005 (Ex.P6) is from Mandeep Singh Sachdev, Advocate for the plaintiff requesting for providing him further details as to what was the status of the case and which was the next date of hearing.

(23) The contention of the learned senior counsel for the defendant/ appellant that the Forms had been tendered as appearance on behalf of the plaintiff before the Circuit Court of Cook County, Illinois is not of much significance. The said Forms are not exhibited on record and have not been proved in accordance with the mode of proving documents. Section 14 of the Family Courts Act relates to application of Indian Evidence Act. It is provided therein that a Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. Therefore, in terms of Section 14 of the Family Courts Act, a Family Court may receive evidence and the strict rules of evidence for proving a document are not rigorously applicable. However, even then the said documents are not of much significance or relevance. The documents which are referred to are admittedly not exhibited documents but in fact these have not even been marked. One of the documents is a cutting of the newspaper, the other is a document of putting in appearance in which only the name of the parties is mentioned and is signed by Advocate Mr. Mandeep Singh Sachdev of

Jalandhar and is signed by the plaintiff entering her appearance but it is not shown whether the same had indeed been filed or whether the same was considered to have been filed by the Circuit Court of Cook County, Illinois. The letter dated 19.04.2005 of Malhotra and Malhotra Associates is addressed to the Minister Counsellor for Counsular Affairs and Counsul General, American Embassy, Santipath, Chankyapuyri, New Delhi in which entry of details of Harpreet Singh Sekhon (defendant) bearing Indian passport number A5692155 issued in Chicago, on October 21, 1998 and valid till June 17, 2007 are mentioned. It is stated that the wife Rajwant Kaur Sekhon (plaintiff) is contesting the proceedings of divorce pending in the State of Illinois, County of Cook and a copy of the newspaper notice in this regard was enclosed. The matrimonial proceedings initiated by Harpreet Singh Sekhon (defendant) were being contested by Rajwant Kaur Sekhon, therefore, a note of the matter with regard to Harpreet Singh Sekhon may be made as he may try to remarry and obtain another spouse visa for another helpless Indian Girl. The said letter it may be noticed was primarily an intimation to refrain the defendant-appellant from remarrying another person and obtaining another spouse visa for another helpless girl. The letter was not addressed to the Court but to the American Embassy at New Delhi. The benefit which the defendant appellant seeks to derive from the said letter is that it is mentioned therein that the plaintiff was contesting the proceedings for divorce. This by itself in fact is quite an innocuous statement as she in fact all along had been expressing her desire to contest the petition by asking for a copy of the petition, the proceedings in that case, the procedure to be followed for putting in appearance and whether free legal aid was available as she had no means to bear the expenses for the litigation. Therefore, the said letter of 'Malhotra & Malhotra Associates is also quite inconsequential. Another document is of biographic information which has various columns. The said document is signed by the plaintiff-respondent. The columns are all blank. Therefore, the said document is also quite inconsequential.

(24) The above circumstances indicate that the plaintiff respondent had not put in appearance in the Circuit Court of Cook County, Illinois. It is not clearly mentioned in the judgment dated 23.05.2005 (Ex.P7) as to whether she had put in appearance. It does not say whether she put in appearance or she had been found in default. In fact both are mentioned.

The documents that had been in the Circuit Court of Cook County, Illinois do not show that she filed her reply. In fact she had not received a copy of the petition, which she had been asking for. In the absence of a copy of the petition she could not have made an effective contest. Therefore, for all intents and purposes, the judgment dated 23.05.2005 (Ex.P7) of the Circuit Court of Cook County, Illinois was/is an ex parte judgment; besides, it failed to comply with principles of natural justice.

(25) In ***International Woolen Mill*** versus ***Standard Wood (U.K) Ltd. (2),*** it was held that the broad proposition that any decree passed in the absence of defendant, is a decree on merits as it would be the same as if the defendant had appeared and contested the judgment cannot be accepted. In respect of the judgment in question in the said case, it was observed that the same did not indicate whether any documents were looked into and/or whether the merits of the case were at all considered. It merely granted to the respondent a decree for the amounts mentioned therein. It was noticed that the appellant in the said case by his letter dated 8.11.1997, replied to the notice of the respondent dated 18.10.1997. In the said reply it had been mentioned that the goods were of an inferior quality and not as per contract. It was held that the Court had not applied its mind or dealt with this aspect. It had not examined points at controversy between the parties. It had given an ex parte order as the appellant did not appear at the hearing of the suit. It was not a judgment on merits and such a decree it was held cannot be enforced in India. In respect of Section 114 Illustration (e) of the Indian Evidence Act, it was observed that the same merely raises a presumption that judicial acts have been regularly performed. However, to say that a decree had been passed regularly is completely different from saying that the decree had been passed on merits. An ex parte decree passed without consideration of merits may be a decree passed regularly if permitted by the rules of that Court. Such a decree would be valid in that country in which it is passed unless set aside by a Court of appeal. However, even though it may be a valid and enforceable decree in that country, it would not be enforceable in India if it has not been passed on merits. Therefore, for a decision on the question whether a decree has been passed on merits or not, the presumption under Section 114 of the Evidence Act would be of no help at all. Even if it were to be presumed that all

(2) (2001) 5 SCC 265

formalities were complied with and the decree was passed regularly it still would not lead to the conclusion that it was passed on merits. Therefore, the ratio of the said judgment in International woolen Mill versus Standard Wood (U.K) Ltd. (supra) applies to the facts and circumstances of the present case inasmuch as the impugned judgment (Ex.P7) is not on merits of the case, it is not clear whether the respondent had put in appearance; besides, it is in violation of the principles of natural justice.

(26) Another aspect which requires consideration is whether the judgment (Ex.P7) being passed by a Foreign Court is valid in respect of matters where the parties are governed by Hindu Law and the Hindu Marriage Act in respect of the marriage. The Hon'ble Supreme Court in ***Y. Narasimha Rao and others*** versus **Y. Venkata Lakshmi and another (3)**, held that marriages performed under Hindu Marriage Act can be dissolved only under the said Act. The parties in the said case were married at Tirupati on 27.02.1975. They separated in July, 1978. The Ist appellant therein filed a petition for dissolution of the marriage in the Circuit Court of St. Louis County, Missouri, USA. The Ist respondent sent her reply from here under protest. The Circuit Court passed a decree for dissolution of marriage on 19.02.1980 in the absence of Ist respondent. Certain facts relating to the decree of dissolution of marriage passed by the Circuit Court of St. Louis County, Missouri, USA were that the Court assumed jurisdiction over the matter on the ground that the 1st appellant had been a resident of the State of Missouri for 90 days next preceding the commencement of the action and the petition in that Court. Secondly, the decree had been passed on the only ground that there remained no reasonable likelihood that the marriage between the parties could be preserved and that the marriage had, therefore, irretrievably broken. Thirdly, the 1st respondent had not submitted to the jurisdiction of the Court. From the records it appeared that to the petition, the respondent therein had filed two replies of the same date. Both were identical in nature except that one of the replies began with an additional averment as follows: "without prejudice to the contention that this respondent is not submitting to the jurisdiction of this Hon'ble court, this respondent submits as follows". She had also stated in the replies, among other things, that (i) the petition was not maintainable, (ii) she was

(3) (1991) 3 SCC 451

not aware if the first appellant had been living in the State of Missouri for more than 90 days and that he was entitled to file the petition before the Court, (iii) the parties were Hindus and governed by Hindu Law, (iv) she was an Indian citizen and was not governed by laws in force in the State of Missouri and , therefore, the Court had no jurisdiction to entertain the petition, (v) the dissolution of the marriage between the parties was governed by the Hindu Marriage Act and that it could not be dissolved in any other way except as provided under the said Act, (vi) the Court had no jurisdiction to enforce the foreign laws and none of the grounds pleaded in the petition was sufficient to grant any divorce under the Hindu Marriage Act. The Hon'ble Supreme Court observed that under the provisions of the Hindu Marriage Act, 1955 only the District Court within the local limits of whose original civil jurisdiction-(i) the marriage was solemnized, or (ii) the respondent, at the time of the presentation of the petition resides, or (iii) the parties to the marriage last resided together, or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at the time, residing outside the territories to which the Act extends, or has not been heard of as being alive for a period of seven years of more by those persons who would naturally have heard of him if he were alive, has jurisdiction to entertain the petition. The Circuit Court of St. Louis Country, Missouri had, therefore, no jurisdiction to entertain the petition according to the Act under which admittedly the parties were married. Secondly, irretrievable breakdown of marriage is not one of the grounds recognised by the Act for the dissolution of marriage. Hence, the decree of divorce passed by the foreign court was on a ground unavailable under the Hindu Marriage Act. A reference was made to Section 13 CPC, which states that a foreign judgment is not conclusive as to any matter thereby directly adjudicated upon between the parties if (a) it has not been pronounced by a court of competent jurisdiction; (b) it has not been given on the merits of the case; (c) it is founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable; (d) the proceedings are opposed to natural justice, (e) it is obtained by fraud, (f) it sustains a claim founded on a breach of any law in force in India. The decree in the said case dissolving the marriage passed by the foreign court it was held was without jurisdiction according to the Hindu Marriage Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that Court. The decree was also held to be passed on a ground which was

not available under the Hindu Marriage Act which was applicable to the marriage. Further, the decree it was held had been obtained by the 1st appellant by stating that he was a resident of the Missouri State when the record showed that he was only a bird passage there and was ordinarily a resident of the State of Louisiana. He had, if at all, only technically satisfied the requirement of residence of ninety days with the only purpose of obtaining the divorce. He was neither domiciled in that State nor had he an intention to make it his home. He had also no substantial connection with the forum. The 1st appellant had further brought no rules on record under which the St. Louis Court could assume jurisdiction over the matter. On the contrary, he had in his petition made a false averment that the 1st respondent had refused to continue to stay with him in the State of Missouri where she had never been. In the absence of the rules of jurisdiction of that Court, it was observed by their Lordships that they were not aware whether the residence of the 1st respondent within the State of Missouri was necessary to confer jurisdiction on that court, and if not, of the reasons for making the said averment. In respect of clause (a) of Section 13 CPC it was held that the said clause should be interpreted to mean that only that court would be a court of competent jurisdiction to which the Hindu Marriage Act or the law under which the parties were married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other Court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in Section 41 of the Evidence Act, it was observed was also to be construed likewise. It was further observed that Clause (b) of Section 13 CPC states that if a foreign judgment has not been given on merits of the case, the courts in this country will not recognise such judgment. This clause, it was held, should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married, and (b) that the decision should be a result of the contest between the parties. The latter requirement, it was held, is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the court and contests the claim, or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the Court either in person or through a representative

for objecting to the jurisdiction of the Court, is not to be considered as a decision on the merits of the case. In this respect the general rules of the acquiescence to the jurisdiction of the Court which may be valid in other matters and areas should be ignored and deemed inappropriate. It was further held that clause (c) of Section 13 CPC states that where a judgment is founded on a refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognised by the courts in this country. It was observed that the marriages which take place in this country can only be under either the customary or the statutory law in force in this country. Hence, the only law that can be applicable to the matrimonial disputes is the one under which the parties are married, and no other law. When, therefore, a foreign judgment is founded on a jurisdiction or on a ground not recognised by such law, it is a judgment which is in defiance of the Law. Hence, it is not conclusive of the matters adjudicated therein and therefore, unenforceable in this country. For the same reason, such a judgment will also be unenforceable under clause (f) of Section 13, since such a judgment would obviously be in breach of the matrimonial law in force in this country. Clause (d) of Section 13 CPC which makes a foreign judgment unenforceable on the ground that the proceedings in which it is obtained are opposed to natural justice, it was observed, states no more than an elementary principle on which any civilised system of justice rests. However, in matters concerning the family law such as the matrimonial disputes, this principle has to be extended to mean something more than mere compliance with the technical rules of procedure. If the rule of audi alteram partem has any meaning with reference to the proceedings in a foreign court, for the purposes of the rule it should not be deemed sufficient that the respondent has been duly served with the process of the court. It is necessary to ascertain whether the respondent was in a position to present or represent himself/herself and contest effectively the said proceedings. This requirement should apply equally to the appellate proceedings if and when they are filed by either party. If the foreign court has not ascertained and ensured such effective contest by requiring the petitioner to make all necessary provisions for the respondent to defend including the costs of travel, residence and litigation where necessary, it should be held that the proceedings are in breach of the principles of natural justice. It is for this reason that their Lordships found that the rules of Private International Law of some countries insist, even in commercial matters, that the action should

be filed in the forum where the defendant is either domiciled or is habitually a resident. It is only in special cases which is called special jurisdiction where the claim has some real link with other forum that a judgment of such forum is recognised. This jurisdiction principle is also recognised by the Judgments Convention of the European Community. It is, therefore, the courts in this country also insist as a matter of rule that a foreign matrimonial judgment will be recognised only it it is of the forum where the respondent is domiciled or habitually and permanently resides, the provisions of clause (d) of Section 13 CPC may be held to have been satisfied. The provision of clause (e) of Section 13 CPC which requires that the courts in this country will not recognise a foreign judgment if it had been obtained by fraud, it was observed, is self-evident. It was held that the said rule could be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

(27) The present case does not come in any of the aforementioned exceptions as the respondent before the Circuit Court of Cook County, Illinois (i.e. the plaintiff herein) is not domiciled nor habitually and permanently residing in USA. In fact the plaintiff has placed on record her passport in terms of which she has never visited USA. Relief that has been granted by the Circuit Court of Cook County, Illinois is not available under the matrimonial law in this country i.e. the Hindu Marriage Act, 1955 under which the parties have been married. The claim for dissolution of the marriage as laid is not available under the matrimonial law i.e. Hindu Marriage Act by which the parties are governed. The parties are Sikhs and had married in accordance

with Anand Karaj and are governed by Hindu Marriage Act. The respondent before the Circuit Court of Cook County, Illinois never voluntarily or effectively submitted to the jurisdiction of the said forum and did not contest the claim inasmuch as she was never given copy of the petition. The respondent before the Circuit Court of Cook County, Illinois never consented to the grant of relief. Therefore, the decree (Ex.P7) of the Circuit Court of Cook County is not a decree which can be said to be valid between the parties. In terms of the ratio of the judgment in Y. Narasimha Rao and others versus Y. Venkata Lakshmi and another (supra), the decree (Ex.P7) cannot be said to be valid. Insofar as the rights of the parties are concerned, the parties are Indians. The marriage was solemnized in India and they are governed by the Hindu Marriage Act. The law is well-settled by the judgment in Y. Narasimha Rao and others versus Y. Venkata Lakshmi and another (supra) and the decree (Ex.P7) of the Circuit Court of Cook County cannot be said to be valid on any ground in view of the aforesaid enunciation of the law.

(28) In ***Harmeeta Singh*** versus ***Rajat Taneja (4),*** it was held that the parties lived together for a very short time in the United States of America. The wife had lived in India for almost her whole life and was presently domiciled in India. The defendant (husband) was of Indian origin and his parents and family members were Indian citizens and were domiciled in India. The defendant in the said case it was alleged had substantial interests in immovable properties in India. It was held that in the said event the marriage dissolved by a decree in America, in consonance with principles of private international law which are embodied in Section 13 CPC, inter alia, the said decree would have to be confirmed by a Court in this country. Furthermore, if the defendant (husband) were to remarry in the United States of America on the strength of the decree of divorce granted in that country, until this decree is recognized in India he would have committed the criminal offence of bigamy and would have rendered himself vulnerable to be punished for bigamy. It was further observed that the plaintiff (wife) had not submitted to the jurisdiction of the Courts in the United States of America. In the context of their residing together as husband and wife, the Plaintiff's stay in the United States of America could well be viewed as transient, temporary and casual. Having not received a spouse visa she may

(4) 2003 (2) RCR (Civil) 197 (Delhi)

not even be in a position to enter USA. The defendant (husband) was restrained from continuing with the proceedings in the United States of America.

(29) From the afore-stated propositions, it is quite evident that for a decree of divorce by a foreign Court to be valid in India in respect of matrimonial matters, it must be passed (a) in accordance with the law applicable for the grant of matrimonial relief by which the parties are governed; (b) only that Court would be a Court of competent jurisdiction by which the parties are governed in the matters of marriage or the law under which the parties are married recognises as a Court of competent jurisdiction to entertain the matrimonial dispute. Any other Court would be a Court without jurisdiction unless both the parties voluntarily and unconditionally submit themselves to the jurisdiction of that Court; (c) the decision of the foreign Court should be as a result of contest between the parties which requirement would be fulfilled only when the respondent before the foreign Court is duly served and he/she voluntarily and unconditionally submits himself/herself to the jurisdiction of the Court and contests the claim or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the court, or an appearance in the Court either in person or through a representative for objecting to the jurisdiction of the Court, is not to be considered as a decision on the merits of the case; (d) the foreign matrimonial judgment is to be recognized only if it is of the forum where the respondent is domiciled or habitually and permanently resides; (e) it is to be ascertained that the foreign Court had ensured an effective contest to a petition seeking matrimonial relief by requiring the petitioner to make a necessary provisions for the respondent to defend including the cost of travel, residence and litigation where necessary and if not is to be held that the provisions are in breach of the principles of natural justice.

(30) The contention of the learned Senior counsel that the Family Court has no jurisdiction is devoid of merit. A perusal of the record shows that the suit had been filed by the plaintiff for declaring the decree (Ex.P7) to be void in the Court of the learned Civil Judge (Senior Division), Faridabad. The Additional Civil Judge (Senior Division), Faridabad on 17.04.2008 on perusal of the office report ordered the suit to be registered

and defendant summoned for settlement of issues. The proceedings were conducted for sometime by the learned Additional Civil Judge (Senior Division), Faridabad. Then on 01.04.2009, it was transferred to the Court of Civil Judge (Junior Division), Faridabad. The issues in the case were framed on 13.05.2009 by the Civil Judge (Junior Division), Faridabad. At the time of framing issues the learned trial Judge heard arguments on the jurisdiction of the Court. It was observed that the suit was for declaration that the ex parte judgment dated 23.05.2005 passed by the Circuit Court of Cook County in USA be declared as null and void. The learned counsel for the defendant contested the suit on the ground that since ex parte injunction had been granted by the Court in USA, therefore, the appeal/ suit to set aside the ex parte order of Circuit Court should be filed in USA only. The learned Civil Judge (Junior Division) referred to the case of Y Narasihma Rao versus Ventaka Lakshmi (supra) wherein it has been held that parties married according to Hindu rites in India, petition for divorce was filed in American Court where parties never last resided. Therefore, under Sections 13 and 9 of CPC, prima facie the Court had jurisdiction to entertain the present suit. Thereafter on 27.05.2009, it was received in the Family Court on its establishment and the proceedings were conducted before the District Judge (Family Court), Faridabad. Issues were re-framed on 04.11.2009. Therefore, it is a case of transfer of the case to the Court of District Judge (Family Court), Faridabad on its establishment. Section 7 of the Family Courts Act deals with the jurisdiction of the Family Court and the same reads as under:-

"Jurisdiction.-

(1) Subject to the other provision of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.— The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

(31) In terms of Section 7(1) (a), a Family Court is to exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation and it is to be deemed, for the purpose of exercising such jurisdiction under such law, to

be a District Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends. Therefore, Section 7 confers powers on the Family Courts to exercise jurisdiction by which any District Court or any Subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation are mentioned. Clause (b) of Explanation relates to suits and proceedings for any declaration as to the validity of a marriage or as to the matrimonial status of any person. A suit for declaration when clouds are cast on the matrimonial status of any person, a suit seeking a declaration as to the validity of marriage or matrimonial status can be instituted. In the present case, in view of the decree of the Circuit Court of Cook County, Illinois, the matrimonial status of the plaintiff-respondent was affected inasmuch as she was to be not treated as the wife of the defendant-appellant. Therefore, the suit for establishing her matrimonial status was clearly maintainable. A declaratory decree merely declares the rights of a decree-holder and the matrimonial status of the person seeking such declaration. Family Court, therefore, decides disputes in a judicial manner and declares the rights of the parties including the matrimonial status. Family Court in terms of Section 7 is a District Court or a Subordinate Civil Court to which the provisions of Civil Procedure Code and Criminal Procedure Code have been made applicable in terms of Section 10 thereof. Therefore, the Family Court is clothed with all powers and the jurisdiction which any District Court or any Subordinate Court exercises under the Hindu Marriage Act. Section 34 of the Specific Relief Act, 1963 entitles any person to any legal character, or to any right as to any property, to institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled and the plaintiff need not in such suit ask for any further relief. The said provision gives a remedy to a person against others who claim an adverse interest as to his legal character or to any right as to any property. The object is to remove the cloud which may be cast upon the legal character of the plaintiff on his rights. A declaration seeking a matrimonial status would be covered in a suit seeking declaration for the purpose. Clouds having been cast on the rights of the plaintiff as to her matrimonial status by virtue of the impugned judgment of the Circuit Court of Cook County, Illinois, USA, she was entitled to file a suit for declaration seeking the said judgment to be a nullity and it would be a suit with respect

to her matrimonial status which would be within the competence of the Family Court in view of Clause (b) of Explanation to Section 7 of the Family Courts Act.

(32) In ***KA Abdul Jaleel*** versus ***T. A. Shahida (5),*** it was held that the expression "dispute relating to marriage and family affairs and for matters connected therewith" in explanation (c) to Section 7 of the Family Courts Act must be given a broad construction. It was observed that the statement of objects and reasons clearly show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean that the properties claim by the parties thereto as spouse of the other, irrespective of the claim whether the property is claimed during the subsistence of marriage or otherwise. It was further held that it is well-settled that the jurisdiction of a Court created specially for the resolution of disputes of certain kinds should be construed liberally. The restricted meaning if subscribed to Section 7 Explanation (c) of the Family Courts Act would frustrate the object for which the Family Court were set up. Therefore, the Family Courts have jurisdiction to determine the status of a party of his or her being the spouse of the other. Clouds were casts on the rights of the plaintiff-respondent regarding her matrimonial status with the passing of the decree dated 23.05.2005 (Ex. P-7) passed by the Circuit Court of Cook County, Ilinios. Therefore, she had a right to seek declaration of her status in terms of Section 34 of the Specific Relief Act, 1963. The effect of the declaration is to hold the matrimonial status of the plaintiffrespondent is that of a wedded wife of the defendant-appellant. The effect would be that the plaintiff becomes entitled to the status and privileges which she has of being the wife of the defendant notwithstanding the decree of the Circuit Court of Cook County, Illinios. Such a decree entitles the plaintiff to claim necessary relief to which she is entitled to on account of her matrimonial status as the wife of the defendant. For the said purpose, the Family Court established under the Family Courts Act would have the jurisdiction to entertain and try the suit. Therefore, the contention in this regard of learned Senior Counsel for the appellant is without any basis.

(5) (2003) 4 SCC 166

(33) The other contention that has been raised by Dilraj Singh Sekhon father and general attorney of the defendant/appellant is that the Court at Faridabad had no jurisdiction and the parties had married at Jalandhar and last resided at Mohali. They had never lived at Faridabad. In this regard, it may be noticed that the plaintiff has pleaded that she was residing at Faridabad; besides, property of the defendant i.e. House No.645 Sector-16, Faridabad is situated at Faridabad. Both the parties last resided at House No.645 Sector-16, Faridabad and the cause of action to file the suit had also accrued at Faridabad within the jurisdiction of the Court at Faridabad. Issue No.2 on 04.11.2009 was framed to the effect as to whether the Family Court had no territorial jurisdiction to try the suit as alleged. The onus of this issue was on the defendant. Dilraj Singh Sekhon GPA of the defendant filed his affidavit (Ex.DW-1/A). In the said affidavit (Ex.DW-1/A) there is nothing mentioned as regards the jurisdiction of the Court at Faridabad even though the onus of the issue was on the defendant. As against this the plaintiff in her affidavit (Ex.PW-1/A) has stated that somewhere in the middle of April 2005 she found an envelope in the letter box of her House No.645, Sector-16, Faridabad containing a cutting of a newspaper wherein a notice was published that the defendant had filed a petition for dissolution of the marriage between them in the Circuit Court of Cook County, Chicago, Illinios USA against her and she was called upon to file her response to the said petition. Therefore, it is the specific averment of the plaintiff that a notice for her appearance had been found in an envelope of her letter box at Faridabad. Therefore, the cause of action had accrued to the plaintiff within the territorial jurisdiction of the civil Court at Faridabad. The objection in the written statement filed by the defendant through his attorney and father Dilraj Singh Sekhon is that the parties never last resided together at Faridabad and they were married at Jalandhar. However, the present is a suit for declaration and has been filed where the defendant has his house at Faridabad and the cause of action accrued to the plaintiff at Faridabad. It is not a case seeking dissolution of marriage under the Hindu Marriage Act, 1955 where the petition is to be filed at the place where the marriage was solemnized or where the parties last resided together. In any case in view of amendment effected to the Hindu Marriage Act by Act No.50 of 2003 Clause (iii-A) has been added to Section 19 thereof which entitles the wife who is the petitioner to present to the District Court within the local limits of whose ordinary original

jurisdiction she is residing on the date of the presentation of the petition. Therefore, the contention of the defendant that the Court at Faridabad had no jurisdiction to entertain and decide the petition is devoid of merit.

(34) Another contention that has been raised by Sh.Dilraj Singh Sekhon GPA holder is that the limitations for filing an appeal under Section 28 of the Hindu Marriage Act is 30 days from the date of decree. What is sought to be contended is that the decree dated 23.05.2005 (Ex.P-7) passed by the Circuit Court of Cook County, Illinois has been assailed after 30 days of the date of decree. However, it may be noticed that the present case relates to a suit for declaration which was filed by the plaintiff on 17.04.2008. It is not an appeal. The learned Additional Civil Judge (Senior Division), Faridabad on 17.04.2008 passed an order to the effect that the suit taken out from the petition box. Reader to put up after office report on the said day itself. The Reader reported on 17.04.2008 that the Court fee was correct. Thereafter on the same day, the learned Additional Civil Judge (Senior Division), Faridabad passed an order to the effect that office report had been perused. Suit was ordered to be registered and the defendant summoned for settlement of issues on filing of process fee. Copy of plaint and registered AD covers for 12.05.2008 were ordered. The suit was received by the learned District Judge (Family Court), Faridabad on 27.05.2009. The date of institution of the suit mentioned in the impugned judgment and decree of the District Judge (Family Court) is 25.05.2009 which, in fact is the date of transfer of the case. Otherwise, the suit was initially filed on 17.04.2008. The learned District Judge (Family Court), Faridabad while deciding issue No.2 held that the suit seeking declaration had been filed within three years of the impugned decree and, therefore, it was not time barred. The said finding is correct and is in accordance with law. The said finding in fact was to be on issue No.3 as reframed on 04.11.2009 by the learned District Judge (Family Court), Faridabad. However, this is only a technical lapse. A suit for declaration is governed by Article 113 of the Limitation Act, 1963 which is a residuary article. It is envisaged therein that any suit for which no period of limitation is provided elsewhere in the Schedule, the limitation is three years when the right to file the suit accrues which in the facts and circumstances would be when the status of the plaintiff as a wife of the defendant is denied.

(35) Another objection which is seriously pressed by Sh.Dilraj Singh Sekhon GPA for the appellant is that the defendant is not domicile in India, therefore, he could not file a suit for claiming the matrimonial relief in India. The said contention has been urged on the basis of Section 2 of the Divorce Act, 1869. A judgement of the Hon'ble Madras High Court in ***Dr. David Chakaravarthy Arumainayagam and another*** versus ***Geetha Chakravarthy Armainayagam and another (6)*** has been strenuously relied upon. The said contention in fact is absolutely misconceived as the parties are not governed by the Divorce Act, 1869. The parties are admittedly Sikhs and are governed by Hindu Law in the matters of marriage. Even during the course of hearing, Sh. Dilraj Singh Sekhon GPA for the appellant accepted that the parties profess the Sikh Religion. Section 2 of the Divorce Act, 1869 relates to extent of the Act and in respect to the extent of power to grant relief generally, it is provided that nothing hereinafter contained shall authorise any Court to grant any relief under the said Act except where the petitioner or respondent professes the Christian religion. Neither of the parties professes the Christian religion. Therefore, the said contention is absolutely untenable and misconceived. The provisions of the Divorce Act, 1869 are not even remotely applicable to the present case.

(36) Learned counsel for the plaintiff-respondent has also raised an objection that Sh.Dilraj Singh Sekhon GPA for the appellant who claims to have a power of attorney in his favour does not have a valid power of attorney to represent his son Harpreet Singh Sekhon who is the defendant. In the connected FAO No.6208 of 2011, there was a specific issue in this regard and in the order pronounced today, it has been held that the power of attorney on the basis of which Dilraj Singh Sekhon is litigating on behalf of his son does not give him the necessary power. Therefore indeed the power of attorney executed by Harpreet Singh Sekhon defendant in favour of Dilraj Singh Sekhon on 22.02.2006 does not confer on him any power to pursue litigation on his behalf.

(37) Another contention that has been raised by learned counsel for the plaintiff is that the defendant-appellant has failed to pay the maintenance amount and the appeal is liable to be dismissed on this account. Normally

(6) 2002(1) Marriage Law Journal 354

where the maintenance amount has not been paid, the Court is under an obligation to strike off the defence of the defaulting party and dismiss or allow the appeal as the case may be. However, the maintenance that has been granted in the present case is in proceedings under the Protection of Women from Domestic Violence Act, 2005. Criminal miscellaneous application against the said proceedings against the orders passed by the learned trial Magistrate and the learned Additional Sessions Judge, Faridabad is pending in this Court and the matter is still to be finally considered in the said case. Therefore, in the facts and circumstances, we are not inclined to dismiss the appeal only on account of non-payment of maintenance. However, that would not preclude the plaintiff to claim her due rights in accordance with law in the said proceedings by way of execution or other appropriate remedies as may be available to her. The defendant appellant in fact should have honoured the payment of maintenance as ordered by this Court on various dates. However, Dilraj Singh Sekhon GPA for the appellant has been reluctant in paying the amount and has contended that the same is subject matter of the criminal miscellaneous application, which is pending in this Court. Since we are dismissing the appeal on merits we need not to go into this aspect of the matter.

(38) It may also be placed on record that Mr. Surjit Singh, Senior Advocate had been appearing in the case. However, on 23.07.2012 he did not appear. He was called for by the Court and he submitted that his client had taken the brief from him. It was, however, accepted that he had not been discharged by the Court. In order to effectively decide the case, he was asked to assist the Court for which he gracefully agreed. Therefore, it is on the request of the Court that Mr. Surjit Singh, Senior Advocate had appeared in this case. Although he had submitted that he may be allowed to withdraw and the appeal be allowed to be argued by Dilraj Singh Sekhon GPA for the appellant.

(39) In view of the above, we find no merit in the appeal and the same is accordingly dismissed.

A. Jain