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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.4546/2016
(Dr. Sajjad Haider Shami Versus Mst. Sadaf Pervaiz etc.)

J U D G M E N T

Date of Hearing:	09.11.2018
Petitioner by:	Mr. Athar Mansoor Butt, Advocate.
Respondents No.2 & 3 by:	Mr. Sikandar Nisar Saroya, Advocate.
Respondents No.1, 4 to 6 by:	Proceeded against <i>ex parte</i> vide order dated 15.10.2018.

Atir Mahmood, J.: Succinctly stated facts of the case are that on 16.10.2012, the petitioner filed a suit for declaration and permanent injunction alleging that he got married to respondent No.1 Mst. Sadaf Pervaiz on 27.02.1997 under Muslim Family Laws Ordinance, 1961 which was duly registered in Pakistan vide Nikah Nama (Exh.P1); that the parties were Muslim and Pakistani National but later on, they shifted to U.K. for the purposes of education and job; that after getting U.K. nationality in September, 2005, they started to live thereat as UK nationals; that afterwards, relations between the parties became strained whereupon respondent No.1 obtained divorce from U.K. Court and got 50% share of the petitioners' immovable property situated in UK in addition to share in pension amount of the petitioner. The petitioner challenged the said order by way of filing appeal which was dismissed vide order dated 30.03.2012 passed by U.K. Court of Appeal. The petitioner through the instant suit prayed that the orders of learned U.K. courts be declared contrary and violative to Section 13 of CPC and that the same are not effective upon rights of the petitioner.

2. Notices were issued to the respondents but none appeared on their behalf, as such, they were proceeded against ex parte vide order dated 27.02.2013 and 14.03.2013 and after recording ex parte evidence of the petitioner, the suit of the petitioner was dismissed vide *ex parte* judgment and decree dated 09.02.2015. The petitioner assailed the said judgment and decree in appeal which also met with the same fate vide judgment and decree dated 29.09.2016. Hence this civil revision has been preferred.

3. Learned counsel for the petitioner *inter alia* contends that the judgments and decrees of learned courts below are not sustainable as evidence of the petitioner has not been taken into consideration by them; that there is misreading and non-reading of evidence; that there are material illegalities in the impugned judgments and decrees; that the orders passed by learned courts of UK are contrary to the law enforced in Pakistan, as such, these are neither sustainable nor effective upon the rights of the petitioners and that the respondent No.1 got the impugned order from the British Court by concealment of material facts as she did not disclose that she was the owner, to the extent of her share, in the property left behind by her deceased father in Pakistan, therefore, this civil revision be allowed, the impugned judgments and decrees be set aside and the suit of the petitioner be decreed as prayed for.

4. Respondents No.1, 4 to 6 have been proceeded against ex parte vide order dated 15.10.2018 whereas learned counsel for respondents No.2 & 3 has vehemently opposed this civil revision and fully supported the impugned judgments and decrees.

5. Arguments heard. Record perused.

6. Admittedly, after leaving Pakistan, both the parties became U.K. nationals and getting UK nationality in September, 2011, as such, all the matters relating to the parties were to be decided by the

Courts thereat. It is also admitted fact that respondent No.1 approached the U.K. Court for dissolution of marriage who dissolved the matter and gave decision regarding properties of the petitioner situated in U.K. on 25.08.2011, much prior to petitioner's approaching the courts in Pakistan on 16.10.2012. The said properties since do not situate within the territorial jurisdiction of courts of Pakistan but that of U.K., the courts hereat have no jurisdiction to take decision regarding the said properties but the courts situated at U.K. Record unambiguously reflects that the petitioner has been contesting the cases filed by respondent No.1 in U.K., therefore, he was well within knowledge of that proceedings and cannot be said to have been condemned heard. The proceedings in Pakistan appear to have been initiated by the petitioner maliciously and malafidely just to save the skin from what has already been ordered by the Courts of U.K. which cannot be permitted under lame excuses. Even otherwise, the orders of the Arbitration Counsel for commencement and conclusion of the proceedings after receiving alleged notice of 'Talaq' were not produced before the trial Court at Lahore nor relied upon before the British Courts.

7. The contention of learned counsel for the petitioner is that since both the parties were Pakistani by origin who married hereat under Muslim Family Laws and their marriage was registered in Pakistan, therefore, the U.K. law is not applicable upon the parties but that of Pakistan. Suffice it to say that having immigrated to and got U.K. nationality, the parties were U.K. nationals and subject of U.K. laws as well as to the law of Pakistan and jurisdiction of the U.K. courts cannot be curtailed. The contention of learned counsel for the petitioner is misconceived, hence cannot be acquiesced to.

8. Another contention of the petitioner is that the orders/judgments of the British Courts cannot sustain as these fall

within the exceptions given in Section 13 of the CPC which reads as under:

“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 of 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 recognize the law of Pakistan in cases 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 Pakistan.”

Suffice it to say that the petitioner could not establish any of the above exception being attracted in the present case.

9. Even otherwise, there are concurrent findings of law and fact against the petitioner which are immune from interference by this Court in its revisional jurisdiction unless there is some gross illegality floating on their surface. No such illegality could be pointed out by learned counsel for the petitioner, therefore, no interference is warranted.

10. For the foregoing reasons, this civil revision is meritless, hence **dismissed**.

(ATIR MAHMOOD)
Judge

Akram*