

Court No. - 39

Case :- FIRST APPEAL No. - 1145 of 2023

Appellant :- Smt. Adity Rastogi

Respondent :- Anubhav Verma

Counsel for Appellant :- Dharmendra Vaish

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Syed Aftab Husain Rizvi,J.

1. Heard Sri Dharmendra Vaish, learned counsel for the appellant and perused the record.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the order dated 11.08.2023 passed by the Additional Principal Judge, Family Court, Moradabad in Matrimonial Case No. 1042 of 2022 (Smt. Adity Rastogi Vs. Anubhav Verma) filed under Section 13 of the Hindu Marriage Act, 1955. By that order, the learned court below has dismissed the proceedings instituted by the present appellant as lacking in territorial jurisdiction.

3. While there may be some substance in the submissions being advanced by learned counsel for the appellant that the learned court below did not allow the appellant any opportunity to rebut the facts stated in the application dated 11.08.2023 filed by the respondent and while there may be substance in the further submissions being advanced by learned counsel for the appellant that at present, no proceedings for divorce are pending between the parties before the competent court in Australia, at the same time, those considerations may not lead us to any conclusion as to error committed by the learned court below in refusing to entertain the divorce proceedings instituted by the present appellant. It is so because for whatever reasons that may exist, it remains undisputed to the appellant that she is residing at Australia. Though she may have briefly visited India and may have instituted the divorce proceedings at that time, considering

the undisputed status of her residency in Australia, the provisions of Section 19(b)(a) of the Act would not come to her rescue.

4. The term 'residing' though not defined under the Act, it clearly denotes more than a casual visit to a place falling within the territorial jurisdiction of the Court where a divorce proceeding may be instituted. Once it is admitted to the appellant that she is continuing to reside in Australia though under force of circumstance, it has to be maintained in law that she is not residing within the territorial jurisdiction of the Family Court, Moradabad.

5. Consequently, we find no error in the order passed by the learned court below dated 11.08.2023. The present appeal stands **dismissed** at this stage. If however, status of the appellant's residency changes that may give rise to fresh cause on the strength of that change of status.

Order Date :- 28.10.2023
Abhilash

(S. A. H. Rizvi, J.) (S. D. Singh, J.)