Neutral Citation Number: [2023] EWHC 2988 (Fam)

Case No: ZZ21D54780 / 1630-3262-5385-3837

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/11/2023

**Before** :

**MR JAMES EWINS KC**
**SITTING AS A HIGH COURT DEPUTY JUDGE**

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**Between :**

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|---|---|
| **Monisha Mahtani** | **Applicant** |
| **- and -** | |
| **Vivek Hariram Mahtani** | **Respondent** |

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**Philip Perrins** (instructed by **GN Law**) for the **Applicant**
**Vivek Hariram Mahtani** (in person) for the **Respondent**

Hearing dates: 16 and 17 November 2023

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# Approved Judgment

This judgment was handed down remotely at 10.30am on 22 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JAMES EWINS KC

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

## Mr James Ewins KC:

1. There is before me an application made on 21 March 2023 by the applicant, Monisha Mahtani, for an order that this court refuse to recognise the divorce obtained by the respondent, Vivek Hariram Mahtani, in Indonesia on 14 November 2017.

2. The applicant candidly states that she is making this application in order that the stay can be lifted on her English divorce and substantive financial remedy applications so that she can pursue financial claims against the respondent before the English court. This motivation has been fuelled during the course of these proceedings, the respondent having proceeded, without any notice to the applicant, to obtain the equivalent of a financial remedies order in Indonesia, the effect of which appears to be that the applicant has no rights to any of the respondent's assets or property and that she "*may not claim anything back from the Joint Property, except bed linen and personal clothing*".

3. It is a notable feature of this case that the respondent has not participated at all in any of the English proceedings. He has not acknowledged receipt or service of, or responded to, any of the documents arising out of the applicant's divorce petition issued on 6 September 2021, her Form A issued on 6 December 2022, or the application for non-recognition of the overseas divorce. This is despite the same having been served to him by the various means referred to in more detail below.

### SERVICE AND NOTICE OF PROCEEDINGS

4. I have been provided with various documents which indicate that all the applications, orders and court bundles in these proceedings have been served upon the respondent by various methods, including by post, personal service and by emails sent to various addresses which the court has authorised. In particular:

   i) The applicant states in her witness statement, which is supported by a statement of truth, that her initial application for divorce was served upon the respondent by post.

   ii) By her D11 application dated 9 October 2021, the applicant informed the court of the three email addresses that she then had for the respondent, including an address taken from the respondent's company website and two other addresses that she had previously used to correspond with the respondent, including his "@gmail.com" e-mail address. On 27 October 2021 the court made an order permitting service of the petition via email at those addresses and deemed the petition served 48 hours after

email service. The court then served the respondent at the email addresses provided. The applicant subsequently sent the divorce petition, her D11 application and the order permitting service, via email to the same email addresses.

iii) This was followed up in January 2022 by an e-mail from the applicant's solicitors to the respondent's e-mail addresses, including his "@gmail.com" e-mail address, regarding the divorce and financial matters.

iv) An email was sent by the applicant's solicitors on 31 August 2022 to e-mail addresses including the respondent's "@gmail.com" e-mail address, explaining that the applicant had never been served or otherwise informed of the divorce proceedings in Indonesia and seeking financial assistance for the applicant and the children.

v) A further email was sent by the applicant's solicitors on 23 January 2023 to the respondent's e-mail addresses including his "@gmail.com" e-mail address, informing the respondent that the applicant had issued an application for financial remedies upon divorce in England, that a hearing would take place on 23 March 2023, and strongly urging the respondent to seek legal advice; I have been shown an e-mail receipt indicating that that email was successfully delivered on the same day.

vi) An email was sent by the applicant's solicitors on 22 March 2023 to the respondent's e-mail addresses including his "@gmail.com" e-mail address, attaching the bundle for the hearing on the following day.

vii) An email was sent by the applicant's solicitors on 28 April 2023 to the respondent's e-mail addresses including his "@gmail.com" e-mail address, informing the respondent of the forthcoming hearing listed for 5 May 2023. I have been shown a receipt indicating that that email was successfully delivered on the same day and subsequently opened for reading (but not until 19 May 2023).

viii) On 4 May 2023, an envelope containing a 212 page document, being the court bundle for the hearing which took place before Roberts J on 5 May 2023, was personally served on the "office boy"/receptionist at the professional office address of the respondent in Jakarta.

ix) An email dated 17 May 2023 was sent by the applicant's solicitors to the respondent's e-mail addresses including his "@gmail.com" e-mail address

informing the respondent of the order of Roberts J made on 5 May 2023 and including a copy of the approved order. That order contained the explicit warning at ¶15:

> **WARNING: if the respondent fails to attend the hearings listed above, substantive orders may be made in his absence.**

x) On 28 June 2023 an email was received from the respondent's "@gmail.com" e-mail address to which correspondence had previously been sent, stating "*You got the wrong Vivek Mahtani*". The applicant's solicitors replied on 30 June 2023 to state that this was the same "@gmail.com" e-mail address that had previously been used by the respondent to send correspondence to the applicant. They asked for evidence that the sender was a different Vivek Mahtani. No reply was received. In her oral evidence before me, the applicant stated that the respondent's name was almost unique and very specific to her community. She said that she was only aware of one other person who shared the respondent's name, but that that person had a different email address on their LinkedIn profile.

xi) With specific regard to today's hearing, it was listed by Roberts J on 5 May 2023 to take place over 4 days from 13 to 16 November 2023. The respondent was informed of this listing, and the other directions given by Roberts J, by the e-mail dated 17 May 2023.

xii) Peel J gave further directions at the PTR hearing on 16 October 2023. The respondent did not attend the PTR hearing despite having been sent details of, and a remote attendance link to, that hearing in advance. Peel J specified, at ¶6 and ¶7 of his order:

> *(6) For the avoidance of any doubt, further to the order of DDJ Wilkinson dated 27 October 2021:*
>
> *a. service on the respondent of all applications and orders made and any evidence filed in these proceedings shall effected by email to any of the respondent's known email addresses, being:*
>
> *[6 different e-mail addresses for the respondent]*
>
> *b. service shall be deemed 48 hours after service via email.*
>
> *(7) The applicant's solicitors have permission to notify the respondent's Indonesian lawyers, Atep Koswara & Associates, Epicentrum Walk Fl, 5 Unit B, Rasuns Said, Kuningan, South*

> *Jakarta, Indonesia, of this order and the date for the determination hearing, below, via email at: koswaraate02@gmail.com.*

xiii) That order also contained the following warning at ¶11:

> ***WARNING: if the respondent fails to attend the hearings listed above, substantive orders may be made in his absence.***

xiv) At both the hearing on 5 May 2023 before Roberts J and the hearing on 16 October 2023 before Peel J, the court made orders stating:

> *"It is recorded that the court was satisfied that all reasonable steps have been taken by the applicant to bring these proceedings to the respondent's attention and the court being satisfied that the respondent was served with notice of today's hearing via email…"*

xv) I have seen an e-mail dated 20 October 2023, sent to the addresses referred to at ¶6 of Peel J's order above, which attached a copy of the order of Peel J made on 16 October 2023.

xvi) A further e-mail of the same date was sent to the e-mail address at ¶7 of Peel J's order. The details, including the email address, of those lawyers came to the attention of the applicant as a result of her finding the decision of the Indonesian court referred to at ¶52 below on the internet. The respondent's lawyers in Indonesia were named and details provided on the basis that they were acting under a power of attorney dated 8 February 2023.

xvii) A response was received from Atep Koswara & Associates on 1 November 2023 stating,

> *"My apology but I am not Mr. Vivek's Lawyer anymore. Therefore I could not provide any information regarding Mr. Vivek and his current whereabouts. I also have no rights to talk on behalf of Mr. Vivek anymore."*

xviii) I consider it more likely than not that Atep Koswara & Associates, who had so recently been instructed by the respondent, would have passed on to the respondent the information sent to them on 20 October 2023.

xix) Further e-mails providing the re-listed dates for the final hearing at 10:30 am on 16 and 17 November 2023 were sent to all the above e-mail addresses on 23 October 2023. Those e-mails stated, "*A link will be sent to you for the hearing.*".

xx) As a result of an administrative error in the listing office, the link for today's hearing was not generated and sent to the e-mail addresses in Peel J's order until 10:45 am on 16 November 2023, the first day of the hearing before me. The start of hearing was delayed until 11 am to allow time for the e-mail to arrive and the link to be accessed. When the hearing began at 11 am, neither the respondent nor anyone else on his behalf had accessed the remote hearing link. The link remained open and available to be accessed throughout the hearing which lasted until 12:30 pm. It was not accessed throughout that time.

5. Despite the above steps, the respondent has neither responded to, nor acknowledged receipt of, any of the applications, orders or other documents sent to him by e-mail in connection with these proceedings. Neither has the respondent filed any documents, nor instructed any legal representatives to do so on his behalf. He has not attended the four hearings that he has been invited to attend and for which he has had been provided with links to attend remotely.

6. I am satisfied that that all reasonable steps have been taken by the applicant to bring these proceedings to the respondent's attention. I am also satisfied that the respondent was served with notice of today's hearing via email on 23 October 2023, when the respondent was informed that a link would follow. I am satisfied that the link for the hearing was sent at 10:45 am on 16 November 2023 and that the respondent had a reasonable time to access the link.

7. As I indicated to Mr Perrins at the outset of the hearing, I am therefore content to proceed with this hearing in the respondent's absence.

**THE HEARING**

8. Since the respondent was not present at the hearing, I record the following.

9. At the hearing I was addressed by Mr Perrins, counsel for the applicant, who attended with the applicant, his instructing solicitors and a pupil barrister. I am grateful to Mr Perrins for his helpful written submissions and his clarity and conciseness in oral submissions.

10. I had previously received an electronic copy of the court bundle, which included Mr Perrins' skeleton argument and chronology with very helpful cross-references to the electronic pagination. I also received an authorities bundle.

11. At the hearing, I heard brief oral evidence from the applicant on oath. She confirmed the contents of her statement and provided some updating evidence regarding the further proceedings in Indonesia initiated by the respondent of which she had only found out shortly before the PTR hearing in October 2023.

12. I then heard oral submissions from Mr Perrins. The hearing concluded at 12:30 pm.

13. At the conclusion of the first day's hearing, I indicated my intention to provide my draft written judgment to Mr Perrins on the morning of the second day on the basis that we would reconvene in court at 11:30 am. I also requested that a further email be sent to the email addresses listed in the order of Peel J of 16 October 2023, providing the respondent with the link to access the second day of the hearing at which proceedings would begin at 11:30 am.

**BACKGROUND**

14. Because I do not have any evidence or submissions from or on behalf of the respondent, I only have the evidence, and submissions on behalf, of the applicant.

15. The applicant is 49 years old. She is a British citizen. The respondent is 51 years old. It is understood that he is an Indonesian citizen. The applicant and respondent were married in London on 6 February 2003. They went through a subsequent Hindu wedding celebration in Indonesia on 5 March 2003.

16. They have two children: [A], age 18, and [B], age, 15.

17. It is the applicant's case that the respondent comes from a very wealthy and prominent family in Indonesia. She states that during the marriage they lived a life of luxury where money was never an issue. She refers to the respondent's ownership of several luxury properties in South Jakarta in the mountain area of Puncak and another villa in Bali. She says they had staff including a cook, nanny, cleaner and driver and that the children went to exclusive private schools. She describes the respondent as a prominent businessman in his own right, being the director of and holding shares in several companies including those concerned with iron and steel and industrial chemicals, forestry products and spices and coconut plantations and related products. The applicant states that the respondent mixes with high society in Indonesia, including the President. Indeed, she states that the then President of Indonesia was a special guest at their wedding celebration in 2003. The

applicant conservatively estimates the respondent's wealth to be in the region of $45 million.

18. The family lived in Indonesia until 2016 when, in May, the applicant travelled with the children from Indonesia to England for what was originally intended to be a holiday to visit family. However, while here, the applicant decided to leave the respondent permanently and remain in England. The basis of her doing so is set out at length in some distressing detail in the particulars of behaviour in her divorce application (a document which she prepared herself as a litigant in person). She refers to physical, emotional and financial abuse at the hands of the respondent. Upon being made aware that neither the applicant nor the children would be returning to Indonesia, the respondent cut off all financial support to them. I understand that the applicant is currently in receipt of benefits, and is indebted to friends as a result of her outgoings, including the cost of legal advice, exceeding her own financial resources.

19. During the course of August 2016, there was email correspondence between the applicant and the respondent in which the applicant explained that she was going to stay in London with the children. She asked for financial support from the respondent. The respondent replied, refusing to come to London, refusing the applicant any financial support but promising to change if the applicant returned to Jakarta.

20. The applicant told me, through counsel, that the respondent also had her UK mobile phone number from the time she moved to London in 2016 and that the respondent had used it up until 2020.

21. In March 2017, the applicant was contacted by BUPA International to inform her that the annual premium of £5,868 had not been paid. The respondent subsequently told the applicant, by email in March 2017, that their private medical insurance had been cancelled, advising her and the children to use the NHS.

22. The applicant contacted the respondent in June 2017 because [A] had broken his toe. Specifically, she asked for help paying for his transport by taxi and he could not use public transport to get to school. She provided the respondent, as an attachment to her e-mail, with a copy of an NHS hospital letter referring to [A]'s injury, which letter stated in the top left corner "To the Parent or Guardian of [A]", followed by her full residential address and postcode in London. She asked the respondent to send her £900 for the children. The applicant also provided the respondent with details of her UK HSBC bank

account. In response to this correspondence, in June 2017 the respondent paid a sum of money - £985.06 - to the applicant into her UK HSBC bank account with the reference "FOR [A] AND [B]".

23. On 4 July 2017, the respondent commenced divorce proceedings in Jakarta.

24. At a hearing on 7 November 2017 the District Court of South Jakarta considered the respondent's application for divorce. The applicant did not attend. Therefore, the only evidence was that of the respondent and his witnesses. As is clear from the court's decision, it was the respondent's case that the last known residence of the applicant was in Jakarta and that they did not know her current whereabouts.

25. The District Court of South Jakarta gave a decision on that application which included a decision as to the court's jurisdiction in the following terms:

> *"(4) That in addition, based on Article 20. paragraphs (1) and (2) Government regulations No. 9 in 1975, concerning the implementation of UU, No. 1/1974,"PP, No. 9/1975", the authority to adjudicate (relative competence), a Divorce Suit rest in a Court of which the jurisdiction includes the place of residence of the Plaintiff, if the Defendant is unclear or unknown, or has no fixed place of abode. We quote the provision of Article 20 paragraphs (1) and (2) as follows:*
>
> *A divorce suit shall be filed by the husband or wife, or his/her attorney with a court of which the jurisdiction includes the place of residence of the defendant.*
>
> *In the event that the place of resident of the defendant is unclear or unknown, or the defendant has no fixed place of abode, the divorce suit shall be filed with a court at the place of residence of the plaintiff"*
>
> *(5) That because:*
>
> *a. Both of the plaintiff, and the defendant are Hindus;*
>
> *b. The defendant's, last known place of abode lay within the jurisdiction of the District Court of South, Jakarta; and,*
>
> *c. The plaintiff resides within the jurisdiction of the district court of South Jakarta;*
>
> *Then, in accordance with the legal provisions above, the court, which has jurisdiction to examine and adjudicate the divorce lawsuit, a quo is the District Court of South Jakarta."*

26. It is the applicant's case that the respondent (and his witnesses) knew that her last known place of abode was not in Jakarta, but was in London, the exact address of which the respondent knew because she had sent him an NHS letter which included her name and address in the top left hand corner.

27. Concerning the divorce itself, the District Court of South Jakarta found that:

> *"in May 2016 … the [applicant] left the house, saying that she wanted to take a holiday together with the children. However, the [applicant] never returned, and no news was subsequently received … At present the [respondent] does not know where the [applicant] is. At this time, the [respondent] is no longer in communication with the [applicant].,,, the [applicant]abandoned the [respondent] since May 2016 and subsequently has neither returned nor communicated with the [respondent]."*
>
> *"the last known residence of the [applicant] was [Jakarta] yet at this time her whereabouts, whether within the country or abroad, is unknown"*

28. The applicant denies that this is true. It is her case that the respondent and the witnesses were aware that she had been in England since May 2016, that the respondent was fully aware of her London address, and that he had been in communication with her as recently as June 2017 when he responded to her request for funds by sending money to her UK HSBC account.

29. It was further stated in the decision of the District Court of South Jakarta dated 7 November 2017, that:

> *"Considering that, on the day the trial was set, the proxy for the Plaintiff was present, but neither the Defendant nor a proxy appointed to represent her attended, despite her having been legally and appropriately summoned according to the Relaas Court Summons of 7 July 2017, the Relaas Court Summons of 26 July 2017 and the Relaas Court Summons of 30 August 2017…*
>
> *…the [applicant] was properly and legally summoned but was not present…"*

30. The applicant denies having received any notice of the respondent's application for divorce in Indonesia, the alleged or indeed any summons, or indeed any notice at all of any hearings in Indonesia concerning the respondent's application for divorce. It is the applicant's assumption that the court summonses were, in all likelihood, served on her last known address in Indonesia, being the property she had shared with the respondent

until she left in 2016 (as that is what the respondent told the court was her last known residence). However, the applicant's case is that the respondent knew that she no longer lived there and indeed knew the address where she lived in London.

31. The Indonesian divorce was subsequently pronounced by the District Court of South Jakarta on 14 November 2017.

32. It is the applicant's case that she first found out about the divorce in May 2018 as a result, she says, of the respondent making it known amongst family and friends in Indonesia that he was divorced. Her case is that the respondent procured the Indonesian divorce by dishonestly representing that he and his witnesses did not know the applicant's whereabouts, whereas he knew that she was living in London and, indeed, knew her address, e-mail address and UK mobile number.

33. I have seen e-mail correspondence between the applicant and respondent in June 2018, shortly after the applicant became aware of the divorce, in which the respondent made no reference to the divorce that he had obtained in Indonesia. He stated in an e-mail dated 5 June 2018:

> *In reference to all your emails, I would like to say that any matter which needs to be resolved between us should be discussed face-to-face in Jakarta itself. Let me know when you plan to come so I can arrange tickets for you, [A] and [B]. Look forward to meeting you all in Jakarta.*

34. It was a month later, in June 2018, that the applicant and the children moved out of her father's property in Swiss Cottage into a rented property in her own name in St John's Wood, where she still lives. The applicant states that she made the respondent aware of this address, having sent him the rental contract with a request that he pay her rent. The applicant states that the respondent had previously committed to paying her rent, but subsequently refused to do so.

35. The applicant emailed the Indonesian embassy in September 2020 to inform them that she had just found out about her Indonesian divorce, and to ask their advice. She was advised by the embassy to seek advice from a family lawyer in the UK. She also learned from the Indonesian embassy that "*the Immigration Office has confirmed that your name is on the immigration blacklist, as your husband has claimed*".

36. The applicant took legal advice in England. Her then solicitors obtained an expert report from Andrew Sriro, an expert in Indonesian law, dated 2019. The applicant was given

permission by Roberts J to rely upon that report in these proceedings, as stated at ¶10 of her order of 5 May 2023. According to Mr Sriro:

i) Notice of hearings is a basic due process right of the applicant.

ii) If the respondent was indeed aware of the fact that the applicant was living in London at the time of the filing of his application for divorce in Indonesia, he should have informed the Indonesian court, which would have been obliged to serve notice of the proceedings on the applicant, including a notice of the hearing date, and a copy of the divorce petition, through diplomatic channels.

iii) This process would entail the court sending a letter of request for service of the process to the Ministry of Foreign Affairs who would then send the documents through the diplomatic pouch to the Indonesian Embassy in England. The Indonesian embassy would then complete personal service on the applicant, and then provide a written report, confirming the completion of service, which would be sent through a reverse of the same channels mentioned above back to the Indonesian court. The Indonesian court is obliged, says Mr Sriro, to set a hearing three months following the dispatch of its request for service, and if the defendant does not appear at the first hearing, the process is required to be repeated a second and, if necessary, third time with up to two further three months' notice periods.

iv) Due to the passage of time, the divorce has become binding upon the applicant and respondent in Indonesia. However, Mr Sriro states that the divorce should not be viewed by a foreign court as final and binding because, as a matter of comity, Indonesian law expressly states that foreign judgements are not enforceable in Indonesia which would only consider such a judgement as evidence, rather than dispositive.

v) Nonetheless, the decision could be reviewed through the filing of another case in the Indonesian courts on the basis of fraud. Mr Sriro cites a specific Indonesian criminal provision which sets out an offence of deliberately relying on false information as to the place of residence of a defendant in a divorce application. If the respondent were found guilty, the applicant would be entitled to file an action for recession of the divorce.

37. It is the applicant's case that she is unable to commence proceedings in Indonesia to set aside the divorce or to make a criminal complaint against the respondent. This is because,

she says, she would need a very good lawyer which she cannot afford and she would be up against the corrupt system, which would favour the respondent because of his influential status in Indonesia.

38. On 15 May 2019, in Children Act proceedings in this jurisdiction, a child arrangements order and prohibited steps order was made by District Judge Hudd, providing that the children live with the applicant and that the respondent may not remove the children from (i) her care, (ii) their current school, or (iii) the UK. The order recited the fact that the respondent had not acknowledged the proceedings, but that he had been successfully served via post, email and WhatsApp, and that electronic confirmation of receipt was received on WhatsApp and the email address and telephone number of the respondent that were used for service were "active". It is the applicant's case that she was periodically blocked by the respondent when she tried to contact him on his mobile number, but that sporadic communications nonetheless continued until 2020.

39. In April 2020, the applicant wrote to the District Court in Jakarta where the divorce proceedings took place, as well as the Indonesian Embassy in London, to put them on notice that she had not been given notice of the divorce proceedings. She says that she also pointed out that she should have been notified through diplomatic channels because the respondent did in fact know at the time that she lived in London. However, the applicant states that she did not have sufficient funds to pursue these matters further in Indonesia.

**ENGLISH PROCEDURAL BACKGROUND**

40. The applicant subsequently petitioned for divorce in England on 6 September 2021.

41. The applicant acknowledges that, when she filed her divorce proceedings in England (which I understand that she did as a litigant in person and without the benefit of legal advice), she did not refer to the Indonesian divorce of which she was by then aware. She says that she did not do so because she was not convinced of the validity of the Indonesian divorce and did not understand the importance of revealing the other proceedings in her application for divorce. She now acknowledges that she should have set out the particulars of the Indonesian proceedings in her English divorce petition, and she apologises for not having done so. I accept that apology. It seems to me that the only consequence of her omission is that it has incurred delay which is not in her own interests but does not appear to have prejudiced the respondent either.

42. The applicant states that she served the respondent with her divorce petition by post on the basis that, as she understood it, that was acceptable service according to the rules of the Indonesian Court. She also made an application dated 9 October 2021 for service upon the respondent by email. An order was made by Deputy District Judge Wilkinson on 27 October 2021 granting that application on paper and her divorce petition was served by e-mail upon the respondent by the court.

43. Decree nisi was subsequently pronounced on 2 December 2021.

44. The divorce proceedings were subsequently stayed by an order made on 22 December 2022, in which it was stated by Deputy District Judge Pearce that a separate application was required to determine the issue of whether an overseas divorce is recognised in this jurisdiction. On 21 March 2023, the applicant made such an application, which is the application before me.

45. The applicant had by then filed her Form A, which was issued on 6 December 2022. A notice of a first appointment was issued on 9 January 2023.

46. On 23 January 2023, the applicant solicitors emailed the respondent at three separate email addresses at least one of which the applicant had previously used (successfully) to communicate with him, and informed the respondent:

    i) of the applicant's application for financial remedies, including a legal services payment order;

    ii) of the applicant's application that the validity of the Indonesian divorce is not recognised in England;

    iii) that the first directions appointment in the financial remedy proceedings would take place on 23rd of March 2023;

    iv) that the respondent was obliged to complete and exchange a Form E;

    v) urging the respondent to see legal advice; and

    vi) enclosing the relevant applications and documentation.

47. On 17 March 2023, the applicant filed an application for a legal services provision order and for maintenance pending suit and applied for her application to be allocated to a High Court judge. Following the hearing before Recorder Harris on 23 March 2023, which was conducted via CVP, it was recorded on the face of the order at ¶2 that:

> *"It is recorded that the respondent has not attended the hearing today, but the court is satisfied that all reasonable steps have been taken to bring these proceedings to the respondent's attention that he was served with notice of today's hearing via email on 23 January 2023, and the bundle for today on 22 March 2023, via email."*

48. Recorder Harris stayed the financial remedy application, pending determination of the application for non-recognition of the Indonesian divorce, save for the applicant's applications for maintenance pending suit and a legal services provision order, for which directions were made and a hearing set down. Both the divorce and the financial remedy proceedings were transferred to the Family Court sitting at the Royal Courts of Justice to be heard by an allocated High Court Judge. A direction was made that the respondent file and serve a witness statement in response to (i) the applicant's non-recognition application, (ii) her application for maintenance pending suit, and (iii) her application for a legal services payment order. He did not do so.

49. The applicant arranged for personal service of the 212 page bundle for the 5 May 2023 hearing upon the respondent by a local service agent in Jakarta. An envelope containing the court bundle was taken to the respondent's residential address in Jakarta however upon arrival the agent was informed by the receptionist that the respondent no longer resided there. It is notable that in subsequent proceedings on the respondent's application for financial remedies in Indonesia, referred to below, that the respondent gave his residential address as the address attended by the service agent. The envelope was subsequently handed to the "office boy" at the respondent's work address in Jakarta.

50. The applications for maintenance pending suit and a legal services payment order came before Roberts J on 5 May 2023, and the order made on that occasion contained the following recital at ¶2:

> *"It is recorded that the court was satisfied that all reasonable steps have been taken by the applicant to bring these proceedings to the respondent's attention and the court being satisfied that the respondent was served with notice of today's hearing via email on 28 April 2023 and the bundle for the days hearing on for May 2023, via email, but he has failed to attend."*

51. Roberts J proceeded to make substantive orders for maintenance pending suit and a legal services payment order. The respondent has not made any payments under that order. Further directions were given for the respondent to file a witness statement in response to the applicant's non-recognition application. He did not do so. A pre-trial review and final hearing of this application were also listed.

52. In her oral evidence, the applicant told me that shortly before the PTR hearing, she made a google search in an attempt to find any new e-mail addresses that the respondent may be using. That search revealed an advertisement placed in a local Indonesian newspaper which was purporting to seek to locate the applicant to inform her of a forthcoming court hearing between herself and the respondent. She subsequently found on the internet a decision of the South Jakarta District Court which appeared to be a determination of her financial claims upon divorce, which was pronounced on 17 July 2023. There are several notable matters within that decision:

i) the respondent gave his address in Jakarta as the same address that the service agent had been told on 4 May 2023 was no longer the respondent's residential address;

ii) the respondent stated that his attorney was "Atep Koswara, S.H., M.H and Wantoro, S.H, Advocates and Legal Consultants from the Law Office "ATEP KOSWARA & ASSOCIATES" with offices at Epicentrum Walk Fl. 5 Unit B Rasuna Said Kuningan South Jakarta, 081311950169, email: koswaraatep02@gmail.com"

iii) it is stated that the respondent had tried to find the whereabouts of the applicant, including asking for help from the applicant's family and friends, but that the respondent still did not know the whereabouts of the applicant;

iv) It is stated that the respondent had not communicated with the applicant since her departure from their home in 2016;

v) The decision refers to newspaper summonses dated 13 March 2023 and 5 May 2023, as a result of which the case was permitted to continue in the applicant's absence.

53. The PTR hearing came before Peel J, on 16 October 2023. That order contained the following recitals:

> *2. It is recorded that the court was satisfied that all reasonable steps have been taken by the applicant to bring these proceedings to the respondent's attention and the court being satisfied that the respondent was served with notice of today's hearing via email on 17 May 2023 and the bundle for today's hearing on 10 October 2023 via email, but he has failed to attend.*
>
> *3. It is recorded that the respondent has failed to make any payments of maintenance pending suit or the legal services payments order pursuant to the orders made by Mrs Justice Roberts on 5 May 2023.*

> *4. It is recorded that the respondent has failed to file and serve his witness statement in response to the applicant's non-recognition application pursuant to the order of Mrs Justice Roberts dated 5 May 2023.*

54. Peel J also ordered:

> *6. For the avoidance of any doubt, further to the order of DDJ Wilkinson dated 27 October 2021:*
>
> *a. service on the respondent of all applications and orders made and any evidence filed in these proceedings shall be effected by email to any of the respondent's known email addresses, being:*
>
> *[6 different e-mail addresses for the respondent]*
>
> *b. service shall be deemed 48 hours after service via email.*
>
> *7. The applicant's solicitors have permission to notify the respondent's Indonesian lawyers, [name and address], of this order and the date for the determination hearing, below, via email at: [e-mail address].*

55. Finally, I note that on 19 October 2023 the applicant's solicitors wrote to the Attorney General informing her about the proceedings and asking whether she would wish to intervene. The Attorney General replied on 30 October 2023 confirming that she did not intend to intervene at this stage.

**EVIDENCE**

56. I have read the applicant's application and statement, which is supported by a statement of truth. I also heard her give oral evidence under oath. I had no reason to doubt the truth of her evidence.

57. As noted above, the respondent has not participated at all in these proceedings and has therefore adduced no evidence of his own, nor has he taken the opportunity to challenge the applicant's written or oral evidence.

58. Pursuant to the order of Roberts J on 5 May 2003, I have read the report of Mr Sriro, an expert in Indonesian law.

59. I have also read various documents in the 257 page bundle, specifically e-mails and e-mail "read" receipts and well as a Google Translate translation of a decision of the South Jakarta District Court pronounced on 17 July 2023.

**LAW**

60. The relevant domestic law is Section 51(3) of the Family Law Act 1986, which, so far as is material, provides as follows:

> *'51(3) … recognition by virtue of section 45 of this Act of the validity of an overseas divorce, … may be refused if—*
>
> *(a) in the case of a divorce, … obtained by means of proceedings, it was obtained—*
>
> *(i) without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or*
>
> *(b) …; or*
>
> *(c) in either case, recognition of the divorce, … would be manifestly contrary to public policy.' states:*

61. Mr Jeremy Richardson QC sitting as a deputy High Court judge in the case of *Duhur-Johnson v Duhur-Johnson (Attorney-General Intervening)* [2005] 2 FLR 1042, summaries the law as follows, at ¶44:

> *"[44] It seems to me that the relevant law can be distilled into the following propositions:*
>
> *(Note: when I refer to 'petitioning spouse' I mean the party seeking the divorce and 'respondent spouse' means the other party, regardless of how they are described in the overseas jurisdiction)*
>
> *The power contained in s 51(3) as a whole provides for wide judicial discretion. The provisions need not be exercised if the interests of the respondent spouse (as opposed to the petitioning spouse) are met by other means (an example of this is El Fadl v El Fadl). It seems to me that it is important to emphasise that those interests must be safeguarded. I would anticipate that this approach would only be adopted where the respondent spouse has no option under the overseas divorce law but to submit to the divorce. The important point to note is that the judicial discretion is wide and the applicability of the section will vary depending on the many and varied circumstances of each case.*
>
> *When considering s 51(3)(a)(i) a judge must ask whether reasonable steps have been taken by the petitioning spouse to notify the respondent spouse of the divorce proceedings in advance of them taking place.*

> *In answering that question the judge must look at all the circumstances of the case and the 'nature of the proceedings' in the overseas jurisdiction.*
>
> *Whether reasonable steps to notify the other party have been taken is to be judged by English standards, having regard to the nature of the overseas proceedings.*
>
> *Whether reasonable steps have been taken is a question of fact in each case (it must also be remembered that there are cases where reasonable steps have been taken but they were unsuccessful or, in rare cases, where it is entirely reasonable for no steps to have been taken).*
>
> *It is important to note that whether the respondent spouse has notice of the proceedings is not the issue. It is whether the petitioner spouse has taken reasonable steps to notify the other party. The focus of inquiry is upon the actions of the petitioning spouse, not simply a question of whether the respondent spouse knew about the proceedings."*

62. In *Lachaux v Lachaux* [2017] EWHC 385, Mostyn J suggested a slightly different test to that at (6) above, namely, "*The focus of the enquiry is on whether the respondent was given reasonable notice, by whatever means, not on whether the petitioner gave it*.".

63. Otherwise, *Duhur-Johnson* has been followed by Holman J in *Olafisoye v Olafisoye* (No 2) (recognition) [2010] EWHC 3540 (Fam), [2011] 2 FLR 564 at para 33, and by Peter Jackson J in *Ivleva v Yates* [2014] EWHC 554 (Fam), [2014] 2 FLR 1126, paras 6 and 10. These authorities were more recently followed by Peel J in *J v J* [2021] 3 FCR 549 .

64. In *J v J*, Peel J referred to *Olafisoye*, in which Holman J noted at paragraph 34 that there are two stages, namely:

> *"First, it must make an assessment or judgment whether such steps were not taken as 'should reasonably have been taken'; but even if the court adjudges that they were not, that merely opens the door or gateway to the second stage and an overall exercise of discretion whether or not to recognise the overseas divorce."*

65. Peel J also referred to Holman J's judgment at paragraph 35 that:

> *"In exercising the second stage of discretion, if the gateway is open and it arises, the court should, in my view, still be very slow to refuse recognition of the decision and order of the foreign court, at any rate when, as here, it is clearly that of an independent, properly constituted court operating a procedure and applying substantive law (as is clear from the documents in this case) which substantially accords with our own. It is not*

> *simply a matter of 'comity' or respect for the foreign court. Orderly legal relationships in the international world require that, so far as possible, judicial outcomes in one country can be relied upon in all others provided there was (as here) a proper connection with the first country."*

**MY FINDINGS – STAGE 1**

66. First, I must make findings as to whether such steps were not taken as 'should reasonably have been taken' to give notice of the proceedings to the applicant. In making this decision of fact, I must have regard to the nature of the proceedings and all the circumstances and form my decision according to English standards, having regard to the nature of the overseas proceedings.

67. What steps should reasonably have been taken on the facts of this case? I accept the expert opinion of Mr Sriro at ¶36.i) above:

> *If the respondent was aware of the fact that the applicant was living in London at the time of the filing of his application for divorce in Indonesia, he should have informed the Indonesian court, which would have been obliged to serve notice of the proceedings on the applicant, including a notice of the hearing date, and a copy of the divorce petition, through diplomatic channels.*

68. I find that the respondent was indeed aware that the applicant was living in London and that he knew her e-mail address and UK mobile number at the time of the filing of his application for divorce in Jakarta on 4 July 2017 and at all times until the divorce was pronounced in Indonesia on 14 November 2017. This is clear from:

i) the e-mails between the applicant and respondent in August 2016, which make it clear that the applicant was living in London and that the respondent knew that she was;

ii) the e-mail from the respondent to the applicant in March 2017 in which he told the applicant to use the NHS because he does not plan to renew the BUPA health insurance;

iii) the further e-mail from the applicant to the respondent on 2 June 2017 in which the applicant sent the respondent an NHS letter regarding their son, [A], which contained the applicant's London address in the top left corner;

iv) the fact that the respondent responded to the 2 June 2017 e-mail by sending money to the applicant's UK HSBC bank account shows that he received it;

v) The fact that the respondent was communicating with the applicant by email; and

vi) the applicant's evidence, which I accept, that the respondent has known her UK mobile number since 2016, and has not been blocked from using it.

69. I therefore find that that the respondent should reasonably have informed the Indonesian court of the applicant's address in London, of her e-mail address and/or her UK mobile number.

70. I find that the respondent did not inform the Indonesian court of his awareness that the applicant was residing in London or of her e-mail address or telephone number either when he made the application or subsequently. Even when the matter came to court on 7 November 2017, the respondent did not tell the court what he knew about the applicant's whereabouts and the means to communicate with her concerning the divorce proceedings.

71. I base this finding on the decision of the District Court of South Jakarta dated 7 November 2017, in which it was stated that:

> *"The [applicant's], last known place of abode lay within the jurisdiction of the District Court, of South, Jakarta."*
>
> *"in May 2016 … the [applicant] left the house, saying that she wanted to take a holiday together with the children. However, the [applicant] never returned, and no news was subsequently received … At present the [respondent] does not know where the [applicant] is."*
>
> *"At this time, the [respondent] is no longer in communication with the [applicant].,,, the [applicant]abandoned the [respondent] since May 2016 and subsequently has neither returned nor communicated with the [respondent]."*
>
> *"the last known residence of the [applicant] was [Jakarta] yet at this time her whereabouts, whether within the country or abroad, is unknown"*

72. Contrary to what the respondent in fact knew, he told the court that the applicant's last known address was in Jakarta and that he did not know her current whereabouts. Consequently, the steps taken by the Indonesian court to bring the proceedings to the attention of the applicant, i.e. the summonses, were ineffective. The summonses could

not have been directed to the applicant's actual place of residence in London, or to her e-mail address or by text/WhatsApp etc. to her phone number, none of which the Indonesian court knew. They were deliberately hidden from the court by the respondent.

73. If the respondent had informed the court of his true awareness of the applicant's address and whereabouts in London, then the court would have taken the proper steps to attempt to contact the applicant via diplomatic channels, as set out in the expert opinion of Mr Sriro. The decision of the court dated 7 November 2017 demonstrates that this was not done, and the case proceeded on the false basis that the whereabouts of the applicant was unknown.

74. I am reinforced in this conclusion by the contents of the decision of the District Court of South Jakarta in July 2023 from which it is clear that the respondent was still presenting a false case to the court as to his knowledge of the whereabouts of the applicant. It is stated in that decision that the applicant's "*whereabouts are unknown, both outside and within the Legal Territory of the Republic of Indonesia*".

75. I therefore find that the conditions of s.51(3)(a) are made out: such steps were not taken as 'should reasonably have been taken'. The reason that such steps were not taken was because the respondent deliberately prevented such steps being taken by hiding from the court the applicant's whereabouts and the means of communicating with her, which he knew. The 'gateway' is therefore open to the second stage and I therefore have a discretion as to whether or not to recognise the Indonesian divorce.

**FINDINGS - STAGE 2**

76. In exercising the discretion, I bear in mind the words of Holman J, cited by Peel J at ¶65 above. The factors which I consider relevant are, using the 'for' and 'against' presentation adopted by Peter Jackson J in *Ivleva v Yates* [2014] 2 FLR 1126, are:

77. In favour of recognition:

i) Not recognising the Indonesian divorce risks creating a "limping marriage", that is to say the prolonging of a marriage which both parties agree has broken down irretrievably.

ii) The marriage has indeed broken down and, even on the applicant's case, the parties are going to be divorced anyway.

iii) As a matter of comity, decisions of an overseas court should be respected and inconsistent decisions between jurisdictions, especially relating to the marital status of the parties, should be avoided.

iv) Because the applicant did not refer to the Indonesian divorce in her original English divorce petition, there has been undue delay.

v) The applicant would be able to bring proceedings under Part III of the Matrimonial and Family Proceedings Act 1984 in any event.

78. Against Recognition:

i) The reason why such steps were not taken as should reasonably have been taken is that the respondent deliberately misled the Indonesian court. He misrepresented that the applicant's whereabouts were not known to him and/or that he had no means of communicating with her, when he knew that was not true; in the words of Holman J in *Olafsoye*, the respondent "*effectively cheated*" the applicant.

ii) It matters that an order of the significance of a divorce order affecting individuals' marital status is obtained fairly and that due process rights, including notice to the other party, are properly observed;

iii) As a result of the respondent's dishonesty before the Indonesian court, the court was not able to take effective steps to serve or otherwise notify the applicant and the applicant was therefore deprived of the opportunity of participating in the Indonesian divorce proceedings, which may have included making representations as to jurisdiction and, according to Mr Sriro, would include the applicability of English law principles to what was, after all, the dissolution of an English marriage.

iv) Any "limping marriage" will be short-lived because the applicant seeks, within the English divorce proceedings with due notice to the respondent, to have the stay lifted to enable her to proceed to the pronouncement of a final order of divorce.

v) As noted by Hollings J in *Kendall v Kendall* [1977] 3 WLR 251, the principles of comity do not require the court to recognise a decree which would surely have been set aside by the foreign court if that court were apprised of the facts as this court finds them to be.

vi) Although the applicant's failure to refer to the Indonesian divorce in her divorce petition has incurred some delay, this is outweighed by the delay incurred by the

consequences of the respondent's deliberate failure to inform the Indonesian court of the whereabouts of and means to contact the applicant, which he knew.

vii) Although the applicant would have the ability to make an application under Part III of the Matrimonial and Family Proceedings Act 1984, the issue of permission is currently before the Supreme Court whose decision may change her entitlement to such relief. Furthermore, there is a material difference between the fundamental basis of a financial remedy application under the Matrimonial Causes Act 1973 and an application under Part III. As Cohen J said in *Radseresht v Radseresht-Spain* [2018] 1 FLR 1443 at ¶36,

> *"…it does not follow that if the wife did get leave under Part III, … that the relief she obtained would be the same as she would obtain under a financial remedy application under the Matrimonial Causes Act 1973. Thus, her interests are not protected."*

79. Balancing these points, I am of the view that I should exercise my discretion to refuse to recognise the Indonesian divorce obtained by the respondent in November 2017. Adopting the words of Mostyn J in *Liaw v Lee* [2016] 1 FLR 533:

> *"…there is the compelling argument that to decline to refuse recognition in this case would be grossly unjust and would in effect reward dishonesty and sharp practice. It would send out a signal that conduct such as I have described is tolerable. As Lord Hewart CJ in R v Sussex Justices ex parte McCarthy [1924] 1 KB 256, at 259 famously stated 'justice should not only be done, but should manifestly and undoubtedly be seen to be done'. No-one could conclude that justice had been done or been seen to be done were I to decline to refuse to recognise this … divorce."*

**CONCLUSION**

80. Therefore, and with full respect to the Indonesian court which was misled by the respondent in 2017, I refuse recognition of the Indonesian divorce between the parties pronounced on 14 November 2017. The marriage between these parties is therefore still subsisting under English law.

81. Consequently, I lift the stay on the divorce and financial remedies proceedings.