



Neutral citation: [2024] EWHC 1418 (Fam)

Case No: 1669-8045-0502-2868

IN THE HIGH COURT OF JUSTICE
SITTING AT THE READING DISTRICT REGISTRY

Before :

HHJ MORADIFAR
(SITTING AS A JUDGE OF THE HIGH COURT)

In the matter of;

SK V RR
(Divorce : Forum Conveniens)

SK (Applicant) appeared in peron
Ms Rebecca Davies (instructed by Barrett and Thomson) appeared on behalf of RR
(respondent)

Hearing dates: 1 May 2024

Judgment

HHJ MORADIFAR:

1. There are two sets of divorce proceedings arising from the marriage of the parties. The first was issued by SK (husband) on 26 April 2022 in the Courts of Kaitha in India and the second application was issued by RR (wife) on 12 December 2022 (reissued on 28 April 2023) in the Courts of England and Wales. SK defends the latter divorce proceedings. At first, he contended that the Courts of England and Wales had no jurisdiction to hear the divorce, and latterly that the proceedings in England and Wales should be stayed or dismissed as the Courts in Kaitha are best placed to hear the divorce and ancillary issues arising from their separation. Therefore, the primary issue in this case is one of forum and convenience.

The law

2. Schedule 1 of the Domicile and Matrimonial Proceedings Act (1973) provides two routes through which proceedings in England and Wales are stayed in favour of proceedings in another jurisdiction. Subject to paragraph 10(2) of the said schedule, if the conditions in paragraph 8 are met, the court is mandated to stay the proceedings. These conditions are not satisfied and paragraph 8 does not apply to this case. By contrast, paragraph 9 gives the court with a discretion to stay the proceedings in England and Wales in favour of proceedings in another jurisdiction. It provides that:

“(1)Where before the beginning of the trial or first trial in any matrimonial proceedings which are continuing in the court it appears to the court—

(a) that any proceedings in respect of the marriage in question, or capable of affecting its validity or subsistence, are continuing in another jurisdiction; and

(b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings in the court or in those proceedings so far as they consist of a particular kind of matrimonial proceedings,

the court may then, if it thinks fit, order that the proceedings in the court be stayed or, as the case may be, that those proceedings be stayed so far as they consist of proceedings of that kind.

(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all factors appearing

to be relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being stayed, or not being stayed.

(3) In the case of any proceedings so far as they are proceedings for divorce, the court shall not exercise the power conferred on it by sub-paragraph (1) above while an application under paragraph 8 above in respect of the proceedings is pending.

...”

3. The leading authority on the issue of the grant of a stay on the grounds of *forum non conveniens* is *Spiliada Maritime Corporation v Consulex Ltd (The Spiliada)* [1987] AC 460. The applicable principles that were set out in *Spiliada* have since been further clarified. The sum of those principles may be summarised as follows:
 - a. A stay on this ground may be granted if the court is satisfied that there is another available competent jurisdiction that better meets the interests of the parties.
 - b. The statutory criteria that must be satisfied is ‘*the balance of fairness*’. This is not altered by *Spiliada* (per Sir Stephen Brown P in *Butler v. Butler* [1997] 2 FLR 311) and does not fetter the broad discretion of the court that is enshrined in statute (*De Dampierre v De Dampierre* [1988] AC 92e).
 - c. The court is tasked with undertaking a summary assessment of the ‘*connecting factors*’ that include but not limited to those that are set out in 3.d. below.
 - d. The natural forum will be the one to which the case has the most substantial connection. The factors that may assist with assessing such connection include accessibility to the court by the parties and witnesses, language, costs, where the parties reside and where the wrongful act or omission occurred. (see *Vedanta Resources PLC v Lungowe* [2019] UKSC 20 referring to *Altimo Holdings and Investment Ltd v Kyrgyz Mobile Tel Ltd* [2012] 1 WLR 1804).
 - e. Generally, the burden of proof rests on the person applying for a stay. However, each party must establish the factors that they seek to rely on in support of their case. If it is established that there is an alternative forum that is *prima facie* appropriate for trial, the burden of proof shifts to the person who

seeks to establish that justice requires the case to be heard in England and Wales.

- f. Advantage to one party of continuing proceedings in England and Wales is not decisive and the court is tasked with assessing the interest of all of the parties and justice of the case.

Background

4. The parties originate from India, with SK having lived in the UK for some time and RR coming to this jurisdiction on a spousal visa. They were married in India on 11 March 2019 and RR joined her husband in the UK on 11 September 2019. Having travelled back to India in February 2020, both parties remained there until September of the same in observation of the COVID restrictions that were in place at that time. The parties do not agree the date of separation. RR states that she went to India in April 2021 and remained in contact with SK until April 2022. She says she was abandoned there by SK. SK states that they separated in April 2021 and have not had contact since. RR returned to the UK in March 2022 and has since remained living here.
5. Both raise serious allegations of abuse against the other. RR alleges that the marriage was abusive and she was forced to live with in the same house as SK's same sex partner. She further states that SK has a powerful family in India and that she may be the subject of shame, ridicule and abuse should she return to India. SK denies the allegations and alleges an ulterior motive on the part of RR for marrying him and lying about his sexuality so as to cause shame and division within his family. He makes further serious allegations about the conduct of RR and her family towards his elderly mother who may also be starting proceedings in India.
6. On 26 April 2022, SK issued divorce proceedings in India with subsequent hearings in July, August and September of the same year which RR did not attend. She was summoned to attend a further hearing in October but failed to do so. In the intervening months, in June RR applied for a non-molestation order in this jurisdiction which was resolved by SK giving undertaking at a hearing in March 2023.
7. On 12 December 2022 RR petitioned for divorce in this jurisdiction. The Indian proceedings continued in 2023 and on 23 March 2023 the Indian court refused RR's application for adjournment of those proceedings. In the meantime, there were some

difficulties with RR's application in this jurisdiction which was reissued on 28 April 2023, and SK responded to the same in May 2023. RR's subsequent application for a conditional order was refused and the matter has proceeded on a contested basis with jurisdiction and forum conveniens requiring the court's determination.

Analysis

8. At a hearing on 20 February 2024 SK accepted that this court has jurisdiction to hear this matter. In my judgment he was entirely correct to do so as the issue of the jurisdiction of this court was beyond argument and had this issue remained contested, I would have readily found that this court has jurisdiction to hear the parties divorce.
9. Turning to forum conveniens, SK argues that any divorce granted in this jurisdiction is unlikely to be recognised by the Indian authorities given that the parties have a substantial connection to India and were married in India under its subsisting laws. He further argues that allegations between the parties that are likely to require the court's determination involve family members who live in India and assets that are in India. Furthermore, he has already incurred the costs of proceedings in India and the ongoing cost are likely to be far less than those that would be in this jurisdiction. Although he has not argued the issue of translation and language, I also take into account that there is likely to be an additional costs associated with these if witnesses from India are required to give evidence in proceedings in this jurisdiction.
10. On behalf RR, Ms Davies sets out a number of factors that support the continuation of proceedings in this jurisdiction. These include the parties residence and intention to permanently reside in the UK. SK conducts his business and works in the UK. RR was in the UK when the Indian proceedings were issued. Her travel to India and participation in those proceedings are curtailed by her limited financial resources and health difficulties that are supported by medical evidence. The only matrimonial asset is in the UK. RR fears for her safety if she is required to return to India. The relevant allegations of conduct of the parties took place in this jurisdiction and not India.
11. There are a number of serious allegations that involve the extended family members in India and in my judgment this is one SK's strongest arguments that are also relevant to the issues of costs, witness availability and language. However, I cannot see how these allegations would be relevant to the issue of divorce and Financial Remedies proceedings in this jurisdiction. Any action by any of the extended family

members in India is not the subject of my considerations in these proceedings as they do not seem to be at all relevant. Furthermore, whilst the relevance of the interparty conduct is yet to be determined, the alleged conduct took place in this jurisdiction.

12. Whilst I recognise that he has already incurred the costs of proceedings in India, I must balance this against the streamlined process of divorce that is available to the parties which has been delayed by SK defending the same. I further weigh into the balance the likelihood of ongoing financial remedy proceedings when both parties reside and work in this jurisdiction and where the only matrimonial asset is.
13. I note that SK has not provided any reliable evidence about the lack of recognition by the Indian Courts of a decree of divorce in this jurisdiction. If his assertion is correct, these must be balanced against the other relevant factors that include those that are submitted on behalf of RR, in particular the impact upon her access to justice in the Indian courts where the unchallenged evidence illustrates the limited financial resources that are at her disposal and the impact upon her health should.

Conclusion

14. Having considered the evidence that is before me and the parties' respective submissions, in my judgement the evidence of the connections to this jurisdiction and the balance of fairness clearly fall in favour of the continuation of the proceedings in this jurisdiction. Accordingly, I dismiss SK's application for a stay of these proceedings and order him to take steps to withdraw the proceedings in India.