



[2023:RJ-JD:39420]

RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 17477/2023

[Redacted text block]



-----Petitioner

Versus

- 1. Union Of India, Through Secretary, Ministry Of External Affairs, Government Of India, New Delhi.
- 2. The Regional Passport Officer, Regional Passport Office, J-14, Jhalana Institutional Area, Jhalana Doongri, Jaipur (Raj.).

-----Respondents

For Petitioner(s)	:	Mr. Rakesh Arora Mr. Hardik Gautam
For Respondent(s)	:	Mr. Mukesh Rajpurohit, Dy. Solicitor General

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

17/11/2023

all of a 11 years old minor, abandoned by his father and separated from his mother much against his and his mother's wishes, by force of unfortunate circumstances which are compounded by the action/inaction of the respondent passport



authorities, is before this court seeking issuance/renewal of his passport.

2. Succinctly stated the facts of the case are:

2.1 The marriage between the parents of the petitioner was solemnized on [REDACTED] in India. Later they moved to live in USA. On account of differences that arose between them, their marriage was dissolved vide a consent order dated 26.08.2014 passed by the competent Court in California. After dissolution of marriage, the petitioner's mother continues to live in USA. She is currently working as [REDACTED] specialist at [REDACTED] and residing at [REDACTED] USA. The petitioner earlier applied for his passport on 18.09.2017 and the passport authority issued him passport bearing [REDACTED] which was valid upto 17.09.2022. Petitioner's mother applied for renewal of petitioner's passport on 08.07.2023. The said application for renewal of the passport moved on behalf of the petitioner is objected by the respondents stating that declaration of both the parents as per Annex.D of the passport instruction booklet of the application form has not been provided.

2.2 The petitioner's mother approached the respondent authorities on 12.10.2023 and produced certified copy of the order showing dissolution of her marriage. However, the respondent authorities declined to renew the petitioner's passport.

3. Learned counsel for the petitioner argues that the action on the part of the respondents is totally arbitrary, illegal and against the fundamental rights guaranteed to the petitioner under the Constitution of India.



4. I have heard the competing arguments of both the learned counsel.

5. It is a very peculiar and unsavory case in hand where a minor is being deprived of the love and affection of his mother on the one hand, while on the other hand, his father has totally abandoned him. It is stated that even the whereabouts of the father are not known since June, 2018 after the order dated [REDACTED] was passed in his favour quashing the FIR registered by the mother against him, which arose out of the matrimonial difference between the couple. Compelled by the circumstances, the minor is currently forced to live in the custody of his maternal grandparents since his mother is working and residing in America.

6. While a decree of divorce was granted by mutual consent dated 26th August 2014 (Annex. 4) by the competent Court in California, the marriage between the parents of the minor son was dissolved. The terms of the settlement arrived between both of them, forming part of the judgment and decree passed by the Family Court in California, dissolving their marriage, being apposite, are being reproduced herein below:

"Stipulated Judgment

The parties to this action, Petitioner, [REDACTED] (hereinafter referred to as [REDACTED] and the Respondent, [REDACTED] (hereinafter referred to as [REDACTED] hereby stipulate and agree to the following to resolve all issues of their pending dissolution of marriage action.

STATISTICAL INFORMATION

1. Court Filings: The parties were married on [REDACTED] 2010 and permanently separated on [REDACTED] [REDACTED] filed a Petition for Dissolution of Marriage in the Superior Court of California, County of [REDACTED] case number [REDACTED] on [REDACTED] The Court acquired jurisdiction over [REDACTED] when she was served [REDACTED]



2. Minor Children: There is one minor child of the parties marriage, [REDACTED] (DOB [REDACTED])

3. Intent to Remain Separate and Apart: Irreconcilable differences have arisen in the marriage and no amount of counseling can repair the marriage. The parties have chosen to dissolve the marriage and live permanently apart.

4. Voluntary Execution: The parties further acknowledge and agree that they enter into this Stipulate Judgment voluntarily, free from duress, fraud, undue influence, coercion, or misrepresentation or any kind.

XXXXXXXXXX

CHILD CUSTODY & VISITATION

7. Custody: Pending Family Court Services mediation or further Court Order, [REDACTED] shall have temporary sole physical custody, and sole legal custody, of [REDACTED] (DOB [REDACTED])

8. Visitation: Pending Family Court Services mediation or further Court Order, [REDACTED] shall have professionally supervised visitation with [REDACTED] (DOB [REDACTED]) two times per week, for up to two hours each visit. [REDACTED] shall be responsible to transport [REDACTED] (DOB [REDACTED]) to and from the supervised visitation.

9. Family Code Section 3048: Pursuant to the Family Code Section 3048, the parties warrant this Court has jurisdiction over the child as the parties agree that California is the child's home state and no other state has assumed jurisdiction or is the home state of the child. The parties also agree that the habitual residence of the child is the United States of America. The parties agree that they are giving up their right to a hearing on the issues included within their prior custody and visitation agreement. The parties also agree that they have been informed and are aware that any violation of the custody and visitation Order may result in civil or criminal penalties, or both.

CHILD SUPPORT

10. Child Support: Commencing August 1, 2013, [REDACTED] shall pay [REDACTED] the sum of \$1,568 per month in child support. A Dissomaster support calculation is attached hereto as Exhibit "A" for purpose of child support.

11. Duration of Support Obligation: The parties' obligation for the support of their child shall cease upon the occurrence of any one of the following (i) the child dies; (ii) the child marries; (iii) the child is in active duty with the military service; or (iv) the child reaches the age of 18, except that if at the age of 18 the child is a full-time high school student and resides with a parent, support continues until the child completes the 12th grade or reaches the age of 19, whichever occurs first.

XXXX

RESERVATION OF JURISDICTION



28. Jurisdiction Retained: The Court retains jurisdiction to make orders and determinations that are necessary and/or appropriate to enforce this Stipulated Judgment.

EXECUTION OF INSTRUMENTS:

29. Execution of Instruments: Each Party is ordered, at the request of the other, to execute and deliver any instrument, furnish any information, and perform any other act reasonably necessary to carry out the provisions of this Stipulated Judgment without undue delay or expense. Any Party who fails to comply with this section is ordered to reimburse the other party for any reasonable expenses, including attorney's fees and court costs that as a result of this failure become reasonably necessary to carry out the terms of this Stipulated Judgment."

7. A perusal of above clearly reflects that the parents had not only foregone their rights and obligations contained in the Hindu Marriage Act, 1956 but had consciously conceded to the jurisdiction of the competent Court in California.

8. At the relevant time, since the parents as well as the minor son were living in California, I am also of the view that the competent Court in California had got the jurisdiction to entertain the petition preferred by the parents to seek divorce by mutual consent. Be that as it may, I cannot find any fault in the decree passed by the competent Court in California once the parents of the minor son had consciously submitted to the jurisdiction of the Court i.e. at a place where they were residing at the relevant time.

9. It is the inherent right of every human being to seek legal recourse for mitigation of his grievances by approaching the nearest competent Court, provided of course, the Court is vested with the jurisdiction to adjudicate upon the claims of the parties who are under *lis*.

10. What seems to be causing the hurdle in issuance of the passport is a provision contained in the Compendium of Instructions Guidelines regarding issuance of passport dated



31.05.2022. The relevant Clause 3.3, which is being extraneously relied upon the by the respondents to decline the claim of the minor son for issuance of the passport, is being reproduced herein below:

"3.3. Foreign divorce judgments not valid in India.

3.3.1. *The Supreme Court in its judgment dated 9/7/1991 in Y. Narasimha Rao and Ors vs. Y. Venkata Lakshmi and Anr. Held that the decree dissolving the marriage passed by the foreign court is without jurisdiction according to the Hindu Marriage Act as neither the marriage celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that Court. Further, irretrievable breakdown of marriage is not one of the grounds recognized by the Act of dissolution of marriage. The Supreme Court's order is broadly based on Section 13 of the Civil Procedure Code in India. Hence, PIAs may refuse to accept any ex-parte foreign divorce judgment even if it's duly apostilled/authenticated by foreign Government or Indian Mission/Post abroad for purpose of grant of any passport service.*

3.3.2 *In case of mutually agreed or mutually properly contested divorces cases also, an application must be submitted by the parties at the competent Indian civil court and a declaratory order authenticating and confirming that the foreign divorce decree is in accordance with Indian Law must be obtained by the concerned parties, before the mutual/contested foreign divorce is accepted by PIAs for grant of any passport service."*

11. A perusal of the aforesaid provision clearly reflects that the same has been incorporated pursuant to the judgment rendered by the Apex Court in Y. Narasimha Rao and Ors vs. Y. Venkata Lakshmi and Anr.. No doubt in a case where neither the marriage was solemnized nor the parties last resided together in a foreign country, in such a case, if a decree of divorce is obtained from a



foreign Court, the same would require declaratory authentication by an Indian Court.

12. Stand taken herein by the respondents is totally contrary to the letter and spirit of the aforesaid provisions. In the present case, not only the parents were residing together in California at the relevant time but even the minor son was also living with them. It is only after the dissolution of marriage (mutual consent) by the Court in California that the earlier passport was indeed issued to the minor son in the year 2017. I find it rather unfathomable that if the passport could be issued in the year 2017 to the minor son after the parents had obtained a decree of divorce, why at this stage when he is merely seeking to renew passport, such an over-pandemic approach has been taken by the competent authority that a fresh decree from Indian Court be obtained by the parents that too after a lapse of 9 years by approaching the Family Court and to file fresh proceedings all over again to get authentication of the decree granted by the competent Court in California.

13. Furthermore, it is rather intriguing as to how would a divorced wife would be able to compel her ex-husband, whose whereabouts are not known to her, and expect him to come and submit to the jurisdiction of the Family Court, once he has himself, out of his own violation, conceded and submitted to the jurisdiction in the competent Court in California.

14. Attention of this Court has been drawn to a special Chapter i.e. Chapter No. 4 which governs the issuance of passport to minors. The relevant provisions contained therein that applies to the minor child is reproduced herein below:





"4. SPECIAL CASES OF MINORS REQUIRING PASSPORTS

Exclusion of father/mother name from passport of minor in single parent custody

4.1. The online passport application form now permits that an applicant may provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and get passport(s) issued where the name of either the father or the mother is not required to be printed at the request of the applicant.

4.2. In case of minor children of unwed single parent, the name of father or mother is not to be mentioned in the passport application and in the passport. In case of unwed parents submitting Appendix-12, name of both the parents is to be mentioned in the application form and in the passport.

4.3. In case of minor children of married parents, the name of father/mother shall be furnished by the other single parent having the custody of the child, irrespective of the status of their marriage, such as, divorced, divorce pending, separated or deserted, with or without visitation rights to the estranged parent.

Children of divorced parents

4.4. Application from divorced parents for issue of passports to their minor children has to be processed with care and diligence. Whereas the divorce of parents does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child, the child's right to have a passport and travel abroad cannot be denied on such grounds. Children also have a fundamental right to travel and the other parent cannot wilfully prevent them from travelling abroad. These realities have been taken into account while processing applications for passports from children in the custody of single parents.

4.5. A court decree granting divorce would normally award custody of the minor child/children to either parent. The PIA must ensure that the application for the minor's passport is entertained only from such parent who has been granted custody by the court. While doing so, the PIA must also satisfy himself that the period of limitation for appeal against such decree has expired before issuing the passport. PIA must also ensure that if the other parent has visitation or other rights on the child as per court order, the consent of the other parent is also furnished. However, in rare cases where one of the parents wilfully refuses to give consent or inordinately delays consent or objects in writing to the PIA against issue of passports to his/her children residing with other parent without any cogent reason, and thus denying the fundamental right of the children to travel, passports may be issued to the child/children, after receipt





of an affidavit in the form of Annexure 'C' obtained from the parent having the custody of the children, stating that the other parent is wilfully denying or not granting permission for issue of passports to the children. The other parent should be informed in writing in advance by the PIA of the proposed issue of passport to children at the request of the parent who is having the custody of the children. It will then be the responsibility of the other parent to approach the courts for suitable redressal.

xxx

Single divorced parent with exclusive custody of child without visitation rights for the other parent

4.7. Where the custody of the child has been given exclusively to either parent without any visitation rights to the other parent, the question of obtaining consent of the other parent would normally not arise. A certified copy of the court order has to be submitted with the application and Annexure 'C' signed by the single parent.

xxx

4.12. Annexure 'C' and 'D': Their applicability and differentiation:

Annexure 'C': This declaration is applicable in cases where for any reason whatsoever the married parent applying for passport for the minor child is notable to obtain the consent of the other parent for obtaining passport for the child. The reasons also include – wilful denial of consent by the estranged parent; desertion; absence of communication between the divorced/not divorced but separated parents, ex-parte divorce proceedings etc., but exclude cases where both the parents are involved in divorce proceedings in which case, the permission of the court or consent of both the parents in Annex 'D' is required.”

15. A perusal of aforesaid, particularly, Clause 4.4 read with 4.5 leaves no manner of doubt that the envisaged requirement on the part of a single parent is to submit an affidavit in form 'C' for issuance of the passport in favour of minor. Concededly same has been duly fulfilled by mother of the petitioner herein. I see no reason, why in compliance thereof necessary steps to process and issue passport to the minor are not being taken by competent authority.

16. I may hasten to add here that the high handedness and callous attitude of the respondents is also reflected from the fact





that they have given complete short shrift to the no objection dated 19.11.2014 given by the father as contained in Annex. 5 wherein he has stated as below:



"I, [REDACTED] [REDACTED] give my full consent to [REDACTED] to take the custody of the passport of our Son [REDACTED]. I also do not have any objection if she wants to remove the child from the state of California. She has my consent to take [REDACTED] to India as we are all the citizens of India."

17. It is not even a case where father is objecting to the issuance of the passport. On the other hand, he has chosen to abandon the child. Father of the minor has not even cared to pay any child care support money in terms of the settlement arrived as per the divorce decree.

18. In totality of circumstances, this Court refrains to comment any further on the conduct of the respondents, suffice it is that the present writ petition is allowed. Respondents are directed to issue the passport to the minor child forthwith, since it transpires that the delay is entirely attributable to the respondents. The minor child may lose his chance to not only miss his education in America which is going to be the foundation for the rest of his life, as also the benefit of naturalization, which cannot be offered to him in the absence of passport. The child will not only be deprived of the prospects to a bright career which awaits him, on the other hand, he shall forever suffer the adverse consequences of not being with his mother, deprivation of her love and affection, which is so essential at this tender age which will never come back.

19. It is, therefore, expected that when the minor son approaches along with his maternal grandparents, the passport



issuing authority shall take forthwith steps to give passport of the minor to enable his grandparents to sent him to America to restore his custody with the mother.

20. Before parting, I may also observe that given the peculiar facts and circumstances, in case, there is any deficiency which comes to the notice of the competent authority while issuing the passport, the same shall be put on hold and the passport shall be issued to the minor child subject to the completion of formalities within a certain time period, failing which the competent authority shall be at liberty to seek cancellation of the passport.

21. Ordered accordingly.

(ARUN MONGA),J

24-Jayesh/-

Fit for reporting- Yes / No