



MOOT PROBLEM

Sunita and Mahesh (a Major in Indian Army), both resident of Jalandhar, belonging to Ravidasia community of Punjab, who are Hindus by religion, got married in 2007 in Anand Karaj form of marriage, which is the marriage ceremony of Sikhs. The couple got their marriage registered as per the provisions of the Hindu Marriage Act, 1955 and in effect a marriage certificate was issued by the authorities. Out of this wedlock two children were born in the year 2008 and 2011 respectively.

In 2008, after taking retirement from Indian Army, Mahesh went to England for higher studies and stayed there for two years. Then in April 2010, he moved to Canada and called his wife to join him along with their first child. In January 2011, their second child was born in Canada. In February 2011, he went to New York. Thereafter he asked Sunita to go back to India. In March 2011, Sunita along with her children came back to Punjab (India).

After moving to New York, Mahesh severed all his contacts with Sunita. He has developed an extra marital affair with a lady named Elizabeth Prescott. In January 2012, Sunita wrote a letter to Mahesh expressing her willingness to join Mahesh in New York. Mahesh in reply wrote to Sunita that she should not come to New York, as he was interested in getting their marriage dissolved. In April 2012, he filed a petition for divorce in Trial Court of New York on the ground that his marriage has irretrievably broken down.

Sunita could not contest these proceedings, she having no means to go to New York. Meanwhile in July 2012, the Trail Court of New York granted a divorce decree in favour of Mahesh. Further, the court ordered that the husband would pay to the wife and children an amount of Rs. 50,000 per month for their maintenance. Since Mahesh failed to pay maintenance to wife and children, Sunita approached the Trial Court of New York through a letter and prayed that she be provided legal aid. Thereafter, proceedings were initiated and warrants of arrest were issued against Mahesh. She further said that the ex parte decree of divorce obtained by the husband was not binding on her and was illegal and that she continues to be the wife of Mahesh. She further asserted that as per the provisions of Hindi Marriage Act, 1956, the grounds of divorce (on the basis of adultery, cruelty and desertion) under Section 13 of the Act are available to the wife under the given set of circumstances. In fact, she is the actual victim, who was being further victimized by the order of the New York, Trial Court.



Dr. N.N. JAIN NATIONAL MOOT COURT COMPETITION 2019

In April 2013, Sunita filed a petition under Section 9 of the Hindu Marriage Act, 1955 for Restitution Of Conjugal Rights in the District Court, Jalandhar, Mahesh appeared in the court and filed an application for dismissal of petition. He did not file any written statement and he referred to the decree of divorce granted by the Trial Court of New York and said that despite of notice, Sunita did not consent the same and by not raising any objection she is deemed to have accepted the jurisdiction of Foreign Court in trying the petition and thus making the decree nisi-absolute by the Foreign Court and is thus estopped from filing the present petition (Under Section 11 read with Section 151 of Code of Civil Procedure, 1908). The case is pending for adjudication in District Court, Jalandhar.

Prepare memorials and argue from both the sides.

*Legal Issues**

1. Whether the marriage of Sunita and Mahesh is valid as per the provisions of The Hindu Marriage Act, 1955?
2. Whether non-contest by wife of divorce petition filed by the husband in a Foreign Court implied that she had conceded to the jurisdiction of the Foreign Court?
3. Whether the principle of Res-Judicata under Section 11 of Code of Civil Procedure, 1908 is applicable to the proceedings being initiated in District Court, Jalandhar?

Statutes to be referred

1. The Code of Civil Procedure, 1908
2. Hindu Marriage Act, 1955
3. International Comity of Courts

***It is compulsory to frame these legal issues. Participants may add further legal issues.**