Neutral Citation Number: [2013] EWHC 694 (Fam)

Case No: FD09D03901

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/03/2013

Before :

MRS JUSTICE PARKER

- -

Between :

NP	**Applicant**
- and -	
KRP	**Respondent**

- -
- -

Mr Bartholomew O'Toole for the **applicant wife**
Ms Tina Villarosa for the **respondent husband**

Hearing dates: 16-18, 20-22 May 2012

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MRS JUSTICE PARKER

This judgment is being handed down in private on 27 March 2013. It consists of 27 pages and has been signed and dated by the judge. The judge does not give leave for it to be reported until the parties have had an opportunity to consider whether it should be anonymised; but it may be reported once that has taken place.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

Mrs Justice Parker :

1. W was married to H in India in 2003. On 25 June 2009 she applied for a declaration of non-recognition pursuant to s.55 Family Law Act 1986 ("FLA 1986") of a "panchayat" divorce registered in Gujarat, India on 13 September 2005 in respect of the marriage. She contends that the divorce should not be recognised on public policy grounds. Although it now appears effectively to be conceded on her behalf that this divorce was obtained not through judicial proceedings but through "other proceedings" within the meaning of the FLA 1986, this was a major issue before me, and I shall rule on it.

2. The resolution of this case has involved examination of a number of disputed areas of evidence; examination of the law of this jurisdiction and of the Republic of India; and expert evidence on Indian Law from well known expert Professor Menski. The proceedings have taken years first of all to be launched and secondly to be brought to a conclusion. The final hearing came before me on 16 May 2012 with a three-day time estimate which turned out to be grossly inadequate, and it took five days to complete the evidence. It is fortunate that time could be made available to continue with the case: although it is fair to say that other short matters also needed to be considered. One of the problems was that inadequate arrangements had been made for vital witnesses to give evidence by video link from India (and half a day was wasted making arrangements for a video suite hearing); further documentation in particular in relation to W's immigration proceedings was produced during the hearing; additional witnesses were required; and each of the lay witnesses gave evidence either through an interpreter or with considerable assistance by interpretation. After the hearing ended I gave time for counsel to file further written submissions: which they did over the next few weeks. Those detailed submissions also make reference to a bundle of 14 further authorities, all of which I have considered: although I have not referred to them all. I have also added to the delay. I have found this factually and legally a difficult case to resolve and have over time read and re-read the papers and my notes, and reflected and re-reflected on what I should make of conflicting and often uncorroborated evidence.

3. Major issues as to credit arise in respect of the evidence of each of the lay witnesses: some, in my assessment, created or contributed to by interpretation difficulties; but some of which undermined the evidence of the parties either in whole or in part. This is a paradigm case for me to direct myself in accordance with *R v Lucas* [1981] 1 QB 720, that is to ask myself whether a lie affects credibility as to a fact in issue, taking into account that there may be many reasons for a person to lie, which I bear in mind throughout my assessment of the evidence.

4. It is not in dispute that in reliance on the Gujarati divorce and before W indicated her intention to dispute its validity that

   i) H married Arvindaben on 23 August 2006 in India;

   ii) Both the Indian and British authorities have accepted the divorce as valid in permitting H to remarry;

iii) Both the British and Indian authorities regard H's marriage to Arvindaben as valid;

iv) On that basis she has been granted a spousal visa permitting her to come to England as his wife, where she lives as part of his household in a fully functioning marriage.

The marriage and divorce

5. H and W both originate from the panchayat: a class of "dalit" caste in Gujarat, India. H, born in Kenya, now 55, but brought up in India from the age of 7, came to the UK, of which he is now a citizen, in 1978. He is a member of a large close family, living in a predominantly Indian area of west London. He runs, with his brother, a successful small business, a shoe repair and key cutting shop in Hampstead, North London. He also owns some rental properties in west London. He speaks and communicates in English, albeit not entirely fluently. He gave evidence with a little assistance from an interpreter: he could have just managed without.

6. W, now 32, was born and brought up in rural Gujarat, the daughter of a builder, and one of 4 children. She learnt some English at school and is improving her language skills some more. I asked her to try to give her evidence in English; she did quite well, but needed a lot of assistance from time to time.

7. H had been previously married to Ilaxi, by whom he has two sons, until her death in 1991. He remains close to her father Jagjivandas, resident in India, who features in these proceedings. He was then briefly married to Nirmala. This marriage was unsuccessful and he asserts that she left him and disappeared and that he had to bring proceedings in the Brentford County Court for dissolution determined after service on her had been dispensed with because she could not be found. Jagjivandas lives in India, and W's family lives about 2 kilometres distant.

8. In 2003 H visited India. He says that Jagjivandas had wanted him to remarry for some time. W was a friend of Dipika, wife of Jayesh: brother in law of H's deceased wife: is thus the daughter-in-law of Jagjivandas. Through Dipika a marriage was arranged between H and W. The couple met only briefly before the wedding. The wedding took place in the Temple and was registered: with the local register office. The marriage was consummated. H arranged for and sponsored W's entry to the UK on a two year spousal visa, and undertook to support her and provided details of his means. H's friend Anilkumar, another son-in–law of Jagjivandas, who W says is H's representative or agent in India, dealt with the arrangements for her UK visa.

9. This was obviously a good match for H and W in their respective circumstances. I am satisfied that this was a genuine marriage and that W committed herself to the role of H's wife in a traditional Indian context. I accept that W came to this country intending to spend the rest of her life here. It is not disputed that she is domiciled as well as habitually resident here and has been at all material times after her arrival.

10. On 13 September 2005 whilst both W and H were visiting India, the Registrar in Chikli in Gujurat witnessed and registered a deed of divorce, and H and W signed this

document. That is the only undisputed and documented event concerning the divorce in India. The background, the reasons for each travelling to India, who instigated the divorce, who obtained the draft deed and arranged for the completed deed to be drawn up and in what terms, what preceded it, how it was registered, what was the role of family and community members, are all in dispute, as are some of the subsequent events.

11. W's case is that the Indian divorce was engineered by H without her knowledge and consent but with the assistance of Anilkumar and others: including in the obtaining and preparation of the divorce deed: and that she was inveigled into attending a venue which may or may not have been the registrar's office, and there presented with papers which she did not realise constituted a deed of divorce, which she was required to sign. Her case is that H cynically engineered the divorce in order to get rid of her because the marriage had run into problems, and in order to avoid potentially expensive English divorce proceedings and a financial claim. She says that one of the features is that H knew that her spousal visa was about to expire at the end of the period of 2 years and that if he divorced her she could not rely on the marriage to secure her immigration status here.

12. H says that W sought the divorce and instructed the lawyer to prepare the deed and that he was asked to attend the registrar's office and when he did so found that W wanted to divorce him and he just went along with it. His case is that W divorced him because she was having an affair with a young Sikh builder, who himself was an illegal immigrant to England. He says that W has only latterly challenged the divorce because her application for leave to remain alleging domestic violence was unsuccessful.

13. I have come to the conclusion that neither is telling me the truth about what happened, and that both have elaborated and embellished their accounts and omitted relevant evidence in pursuit of their respective cases. Those untruths, which are enumerated below, go to the heart of the issues and it is impossible for me to conclude that they can have an "innocent" explanation. Indeed the untruths themselves have given me some help as to where the truth does or may lie.

14. I will consider the factual issues and my findings, and then turn to the law.

15. The evidence is complicated by side issues, changes of case, and late evidence from W and from relatives of H in response.

16. The relevant documentation is:

- W Petition dated 25 June 2009
- W affidavit 24 June 2009
- H Answer to Petition 2 January 2010
- H affidavit 4 January 2009
- H "statement of the case" 22 July 2010

- H Application to strike out the petition 21 October 2010 (not progressed)
- W Amended petition 20 December 2012
- W "final statement" 16 January 2012
- W statement 9 May 2012
- Statement of Jagjivandas 14 May 2012
- Statement of Dipika 14 May 2012

17. I have two reports from Professor Menski

- 31 March 2001
- 5 May 2011 (in the form of response to questions)

18. I have read a bundle of correspondence between the parties' solicitors and Advocate Chetan Desai who practises in Gujarat: including his response to questions. These documents were treated as his statements.

19. W has had problems maintaining her public funding to make this application, although she is now represented by solicitors and counsel. When not represented W was assisted by her friend Mr C. His role in these proceedings was originally rather opaque. Through the W's counsel, Mr C asked to sit in on the hearing before me. I refused this: with justification as it turned out since an issue arose on which he was required to give evidence in order to explain how one of W's statements came to be drafted. As a result of his evidence it became apparent that W is in fact living with Mr C. He assures me, and it has not been challenged, that this is not a sexual relationship: he is much older than her and tells me that he regards her as the daughter he never had. He plainly adores her: she can do no wrong in his eyes and as far as he is concerned she has been done a great wrong by H and everything that she says is absolutely true. He is very emotionally involved with these proceedings and their outcome. This has not necessarily always been helpful for W. W is dependent materially and emotionally on Mr C.

20. I heard evidence in court from:

- W
- H
- Mr C
- Professor Menski

21. I heard via video link from Gujarat:

- Jagjivandas
- Dipika
- Advocate Desai

22. W's immigration status is not resolved. She is desperate to stay here. She says that there is nothing for her in India, where she cannot work, cannot make a good second marriage, and will be ostracised as a divorced woman. From all the history I assume that she wants to be in a position to support her family in India.

The litigation history

23. W came back to this country on 6 October 2005. There is a dispute whether she knew that she was divorced, whether she tried to come back to H's family home and if so for what purpose, and where she lived after then. At that point her spousal visa was about to expire. She instructed immigration solicitors. On 2 December 2005, the day before her visa expired, she applied for leave to remain on the ground that the marriage had broken down within the first two year period because of domestic violence: which is a ground for a spouse to seek to remain.

24. Her application for indefinite leave to remain in the UK was refused on the ground that it did not fulfil the relevant requirements. She appealed to the Asylum and Immigration Tribunal.

25. W's appeal was not allowed. In its judgment of 1 August 2006 the Tribunal did not reject W's allegations, but ruled that she had not produced corroborative evidence as required. The Tribunal records that her case was that she had been duped into travelling to India and that the divorce had been obtained without her knowledge or consent. Whether this reflects the totality of W's account I do not know. The Tribunal expressed the view that W was ill-advised and urgently needed to take advice as to the validity to the divorce: and to bring divorce proceedings here on the basis of H's unreasonable behaviour including domestic violence, and to seek interim maintenance. The Secretary of State was invited to exercise his discretion so as to allow W to remain in the UK until the resolution of the family proceedings "within a reasonable time": that cannot be said to have happened.

26. The first hint that there were to be proceedings in relation to the divorce came when on 14 March 2007, 18 months after it was pronounced and over 10 months after H's marriage to Arvindaben (although I accept that W may not have known of his remarriage). Her solicitors wrote to H stating that the divorce had been obtained by "deception and duress" since W had not been served with notice of the proceedings and was unaware of their nature until she met H outside the register office on 13 September 2005. It was asserted that she had been told that unless she acquiesced in the proceedings her passport would not be returned to her. It was stated that

    a) The divorce was not of such a nature that it would be recognised in this jurisdiction

    b) W sought financial provision

c) In any event W was entitled to apply for financial relief pursuant to Part III Matrimonial and Family Proceedings Act 1984.

27. Her Petition pursuant to s.55 Family Law Act 1986 was not issued until over 2 years later. Her reasons for bringing these proceedings are in issue. She sought declarations that (i) the Indian divorce was not valid under Indian law and (ii) it is not entitled to recognition under English domestic law. An amended petition withdrawing was filed on 20 December 2010.

28. One of the District Judges in the PRFD directed that W be permitted not to disclose her address. The basis upon which the judge made that determination and the information on which she did so is not clear. As far as I can see there was no evidence that H or any member of his family had pursued her: just W's statement that H had been seen near where she was working. I do not know how genuine her fear was. In the light of H's assertions about her affair with the builder she may well have wanted to protect herself against a similar assertion about Mr O' Connor.

29. H responded with a report from Indian experts. This opinion has been superseded by Professor Menski's opinion.

30. On 13 July 2010 W lost her legal aid certificate, and shortly afterwards on 21 October 2010 H issued an application to strike out her petition. This did not proceed.

31. On 14 March 2011 H issued an application in the Indian Civil Court in Gujarat for a declaration that the divorce was valid in India.

32. At a hearing before Roderic Wood J on 13 May 2011 it was acknowledged in the court order that H's Indian proceedings had been adjourned generally. The order included a request that the LSC give consideration to restoring public funding in these proceedings. H gave an undertaking to apply for a stay of his Indian proceedings.

33. After a hearing before Sir Peter Singer on 8 July 2011 H undertook to withdraw his Indian Proceedings. I am told that at that hearing Sir Peter queried why the case was proceeding. I am told by Ms Villarosa that W indicated that :

a) She will ultimately seek a financial remedy;

b) She was not seeking a reconciliation with H;

c) She had been advised by the immigration adjudicator that she should apply for a declaration as to the validity of the divorce;

d) She had been told by Professor Menski that this was a test case.

34. Final directions were given by DJ White at the PRFD on 22 September 2011, including for setting down, on which day W's legal aid was reinstated and her present solicitors Hornby and Levy came on the record.

35. The listing before Sir Andrew Kirkwood on 19 January 2012, intended to be the final hearing, was adjourned. H had asserted in his 2010 statement that W had purchased a draft form bearing a government stamp in August 2010, to which the divorce deed was later attached. In her "final affidavit" dated 16 January 2012 she denied this. H

had produced at an earlier hearing the entry of the shop register showing that W did appear to have purchased the draft deed. She had not responded or given an explanation for this. Sir Andrew gave her permission to file a further statement within 14 days "regarding the purchase of the divorce deed on 22 August 2005". He gave directions for a list of written questions to be sent to Advocate CD.

36. W's statement was not served until 9 May 2012. In it she stated that JP had purchased the deed in her presence and that of Dipika, and got her to sign it.

37. As a result JP and Dipika, who were both in rural Gujarat, made statements, which were prepared in some haste, and signed on 14 May 2012, two days before the hearing commenced.

The background, the evidence, and some conclusions

38. On arrival in the UK at the end of 2005 W moved in to live with H in his spacious family home in west London. W's case is that she was not expected to exercise very much independence in the home. Her role was to keep house, cook, and care for H's elderly infirm mother. She was registered as H's mother's carer and H obtained a national insurance number for W and claimed carer's allowance on her behalf. H was predominately in charge of the family shopping. W rarely went out, unaccompanied, although she sometimes shopped for bits and pieces locally. She says that her allowance was £40 pw, he says £80. H says that W saved from her allowance and sent money back to her family, and this seems to me very likely.

39. W's case was that H retained control of her passport including on trips abroad. H denies this: it was kept in a filing cabinet with other family passports**.**

40. I accept that W was expected to confine her activities to the home and immediate environment: and that in any event she was in a strange land with limited English language. Whether her passport was actually locked away or not H kept the family passports and he kept control of the passports on trips. Taken on its own this is not particularly unusual or sinister.

41. W says that in 2004 H's elder brother sexually molested her by showing her pornographic pictures and touching her bottom, and that she asked H to speak to his brother and ask him to desist. W says that this complaint caused great upset which led to her mother in law moving out to stay with another brother. There were then complaints about W's cooking and the relationship between W and her mother in law became very tense. He says that as a result his brother drew attention to W's relationship with the young Sikh builder.

42. W says, and it has not been challenged, that in spite of the family tensions normal sexual relationships continued between her and H.

43. I am not in a position to decide whether the allegations against H's brother are true or false. But I accept, as was later commented in W's immigration proceedings, that there is nothing inherently incredible about them. Also, the very fact that they were made, whether true or false, I accept gave rise to a great deal of family unhappiness and tension. Professor Menski commented, whilst being careful not to express a belief in the allegations or otherwise, that "Unfortunately, such kind of evidence is

often found in Asian families, and it is quite often the case that an Asian woman who complains about such matters becomes victimised".

44. H denied in his oral evidence that he had known about W's allegations. He was reminded that in his affidavit of 4 January 2010 he had referred to what he described as the "false allegations" against his brother, and had accepted that the family had known about them, although he asserted that the allegations were baseless and that W was lying. When confronted with his affidavit he said that he was confused. I did not accept this, and I considered that this was a significant part of his evidence. I think that he was trying to present a false case that he had no reason to want to get rid of W as a wife at that time.

45. W's case is that in mid 2005 H persuaded her that she needed a holiday and to visit her family in India. She arrived in India on 15 July 2005. Her ticket had a fixed return date of 6 October 2005. H says he had not persuaded W to take a holiday in India but she demanded to go because she wanted to see her mother. He asked her to wait so that they could go together but she insisted that she should travel immediately: so he bought her a ticket, intending to join her there later. They were in contact, either directly or through Jagjivindas.

46. W says that about there weeks after her arrival Anilkumar asked her to visit him and when she did so he asked for her passport, asserting that he needed it for "Documentation purposes", and she gave it to him.

47. W says in her first statement that as a result of discussions with family and a government official known to her she went back to see Anilkumar Anilkumar a few days later with her sister and her school friend and asked for the passport back. She said that he refused and told her that H was coming to India the next week to obtain a divorce from her, and advised her to talk to H and then he would return her passport. As she was upset she went to stay with a friend in Mumbai. While she was away her sister rang her to say that H had arrived.

48. H says that when he arrived in early September he discovered that W was in Mumbai and then friends and relatives started talking about her abnormal behaviour, and he learnt that she had already approached Advocate Desai, who at her suggestion had been present at the marriage registration, about a divorce. He says that therefore he approached the community members to hold a meeting which took place at Jagivandas' house. W was not there: but her father was: and was very upset with her because she had brought shame on him and the community: since she had decided to divorce H and marry someone else: he asked that the meeting be put off to a later date when his daughter was there.

49. H says that the resumed meeting took place: W was there with her father: the majority of the community members who had been present at the marriage were there: registration and traditional prayers were said and formalities of divorce were pronounced. W gave H back the mangal sutra, a symbolic ornament worn round the neck and given by a husband to a wife on marriage, and also the ring given on marriage. W says that she had given H the mangal sutra back because the chain was broken, in England, and it had never been returned: and that he had never given her a ring. She denies this meeting in its entirety. There is no other evidence.

50. H's case is that W proposed and sought the divorce, in India, because she wanted to marry the Sikh builder. He says that she instructed Advocate Desai to prepare the deed for her without his knowledge. H has been at pains to state that he was the passive party, which I do not accept. I conclude against all the background, from his attitude to W, from his evasiveness in evidence particularly as to W's allegations against his brother, that her allegations were a cause of great family difficulty.

51. I reject both parties' cases as to the circumstances in which W came to India. I do not think that H persuaded her to come for a holiday. I think that he sent her back to her family whilst he decided with the community and, quite possibly, her family, what to do. I do not accept that W thought that all was well when her trip to India was arranged. I think that the marriage was in crisis. Her accusations against her brother in law had led on her own case to an extreme reaction: she now describes it as domestic abuse. W knew that H would not support her. She must have realised that H was considering his position. She had sought the assistance of the West London Asian women's organisation Southall Black Sisters. He must have wanted her out of the house and she must have known this. She did not have to go to India. She may have been glad of the opportunity for a breathing space herself, to seek the support of her family, and to think about what she should do. I am not satisfied that either was expecting H to join her when he came to India. I am not satisfied that she did not know of his movements when he did.

52. I shall deal with Advocate Desai's evidence after considering the evidence of the parties about the circumstances of the divorce, because it needs to be looked at in context. I commence my analysis of the evidence about the preparation of the divorce deed with the deed itself. The deed is typed, in English: not terribly good English, but is fairly clearly understandable. There is nothing about the spelling and linguistic mistakes which leads me to believe that the deed was not prepared on information given by W as opposed to H or one of his associates. Professor Menski says that it is very typical of such Indian documents. Various complaints are made by W which she says cast doubt on its authenticity. They are of minimal relevance: most important is perhaps the fact that it says that "we could not gain any property": and W says that this is untrue because H has lots of property. It seems to me that this intends to express that there is no "matrimonial property". The Deed is highly consistent also with information from H or his associates: but that does not mean that that information was not conveyed by W:-

    a) The deed has a government 500 rupee stamp affixed to it together with a photograph of W;

    b) It names W;

    c) It is described as a "deed of divorce";

    d) W is described as the "first part party" and H as the "second part party";

    e) It records that there had been matrimonial differences and the parties had started to live apart;

f) It states that the parties and members of their community had decided and the parties had decided on divorce;

g) It is asserted that the parties have executed the deed together;

h) It records the date of the marriage;

i) It records that marital gifts had been handed back;

j) It records that the "first party" has no concern in the property of the second party;

k) It bears signatures, and a further photograph of W and a photograph of H;

l) It bears signatures purportedly of JP and Anilkumar;

m) It is counter signed by the registrar at Chikli;

53. W's first case was that she knew nothing of the deed until 13 September 2005.

54. W says that she had remained in Mumbai with her friend all this time and tried to ring H at JP's house, but he refused to speak to her, but asked her to meet him at the local register office in Chikli the following day. She travelled back from Mumbai. Her father met her at the railway station but was angry with her and did not want to be involved so he dropped her off at the address given. She met H at the register office: present also were Anilkumar and his wife; Jayesh and Dipika; and another man she did not know but who had been at her wedding. (H says that this was Advocate Desai). She was sent across the street to get her photograph taken and it was affixed to the deed. H told her that she must sign the paper and that she had to do this to get her passport back, in her statement she said that he told her that it was to do with a separation. She was assured that there was nothing bad in it for her. She also says that she understood that she would be able to come back to the UK and continue living with her husband. She does not explain how that is consistent with separation. She believed him and then she signed it in three places without any further enquiry and that was that.

55. Thus W's case was originally that she signed the deed. In oral evidence she initially denied this. This was one of a number of areas where it seemed that she was rather desperately saying anything that might undermine H's case. It is now accepted on her behalf by her counsel that she did sign it.

56. W's account as to where this meeting took place has not been consistent. In her statement she said that she went to the register office. In her oral evidence she denied this: she said that there was a table and chairs in the street and she did not know whether it was the register office or not. I note that she had been to the register office to register her marriage, and she accepted that where she went on this occasion was in the same street as the place where her marriage had been registered. W again seemed to be grasping at straws in order to undermine the case that this was an officially sanctioned procedure conducted by a government official. Her account as to her lack of knowledge of the office was contradictory and contrived. She seemed at one stage

to be suggesting that the whole thing was a set up by H and not the register office at all. This case is, sensibly, not pursued by Mr O'Toole since is conceded on her behalf that the marriage was indeed properly registered.

57. In her oral evidence, in contrast to her written accounts, she said that she just assumed that the deed related to separation, but that she was not told that, nor indeed given any explanation about what she was doing, but just signed without asking any questions. She did not explain how that tallied with having understood that she would be able to return to live with her husband.

58. Even in the context of W being in India, on her case without her passport, and unsupported, with her powerful husband and his coterie, W's account begged many questions as to :

a) Why she did not suspect that H was engineering a divorce, since she had been told by Anilkumar that this was what he wanted;

b) Why, however beleaguered she felt, W did not ask H, or Dipika, her friend, or the registrar what was going on, or according to her, even hesitate or express any surprise at what was happening;

c) W has changed her account about whether she was told, or whether she believed, that the deed related to separation since on her own account she knew that H was talking about divorce with his family and community members;

d) Her explanation that she did not think that H could get a divorce 'just like that' did not ring true;

e) She could not explain why her father did not accompany her to the venue and why she did not tell her father that H was talking of divorce: why he was angry with her: and why, having been commanded to attend the register office, he did not accompany her to support and protect her.

59. I have no idea why she changed her previously firmly stated account to state that she had just assumed that the document related to separation, rather than that H induced her to sign the deed representing that it related to separation. She did not of course know what other witnesses might say about this. But this change of case gives me even more cause to doubt the likelihood of W's version of events, and her credibility overall.

60. Although Mr C was anxious to impress on me that she was unconfident and downtrodden when he met her, Mr C sees W as a victim and it is difficult for me to have confidence in his perception. I found W to be quite spirited and she is certainly intelligent. I do not think that she would have signed a document without making some attempt to find out what was in it, or without making an attempt to read it. She does have some education in the English language. She knew that her marriage was in great difficulty.

61. W's father's anger with her and refusal to attend the register office could be consistent with disapproval of the divorce, or equally, of having given her husband cause to seek a divorce. If told the story about her complaint about H's brother, her father might well have been angry with her for not putting up with marital difficulties and for rocking the boat. He is likely to have perceived her as jeopardising her good English marriage to a man who was wealthy and powerful in Indian terms and probably in his community in England too. It has also occurred to me when reflecting on this unsatisfactorily presented history (and I accept that this possibility was not raised in the proceedings) that W's account of his anger may be false, and that there may be any number of reasons or inducements why he was prepared to persuade his daughter to go along with the divorce, or why she considered, in the Indian context, that she was prepared to do this, particularly if her main focus of concern was immigration.

62. H says that after the consent was received from the community he went to the registrar's office where to his surprise Mr Desai was present with the typed divorce deed in his hand. I do not accept that H was surprised when the deed was presented to the registrar when that was the whole purpose of the meeting at the register office and the community had approved the divorce. He instigated the divorce process. It seems obvious that he wanted to end this marriage as cheaply and simply as possible. There is no other sensible explanation.

63. The most critical piece of evidence, as H well knows, is in relation to the purchase of the government form. I think that H knew, and has known for a long time, that to demonstrate that W had purchased the form would make it very difficult for her to challenge at least some degree of participation in the process.

64. In his statement made in 2010 H asserted that after the registration of the divorce it was "noticed" that the divorce deed had been typed on a pre-stamped government form, widely available for purchase in India, and required for official documents. At a hearing on 29 April 2011 counsel showed a copy of that document to Mr C: he was not given a copy. No admissions were made at that time, and W did not respond to the statement: she was of course unrepresented.

65. In her January 2012 statement, drafted by Mr O'Toole, she stated that "I have no idea whether the deed stamp bearing the date 28 August 2005 on page 2 confirms the date of purchase, but I did not purchase it then or at any time."

66. H then raised the matter of the register entry and served the copy at the hearing before Sir Andrew Kirkwood.

67. In her May 2012 statement, served very late and just before the hearing, W gave a wholly unheralded and different account.

68. W now says that on 22 August 2005 she received a message that Dipika wanted to see her so she went to her house, assuming it was for a social gathering. Instead Dipika invited her to go shopping. They were at a street stall when suddenly Jagjivandas arrived on his motor scooter and asked the stall holder for a 500 rupee government stamped paper which he paid for. He asked her to sign the purchase form, and she did so, without thinking. In her statement prepared by Mr C she just said it was like a "reflex action". She said that she did not feel able to challenge or question Jagjivandas as a person in authority. She also says that she assumed that it was in

connection with the return for her passport by Anilkumar. I do not follow that point, since there was no discussion about it. She says that Jagjivandas also asked her to sign the form itself, and she did so without asking what it was about: the form did not mention anything about divorce. She again says that she thought that Jagjivandas was helping her with her passport. Jagjivandas took the form and drove away. She went off with Dipika: there was no conversation about this incident. The next time she saw the paper it was signed by others and was attached to the divorce deed.

69. W was inevitably challenged as to why she did not give this account until just before the hearing. I was then told by Mr O'Toole that the account had already been in existence in hand written form written out by Mr C sometime in 2011, when Mr O'Toole drafted her January 2012 statement. A copy, which I think Mr O'Toole had in his papers, was then produced to me. When asked why she had not responded in her January statement with that account she told me that Mr O'Toole had advised her that she should not do so. Mr O'Toole said that he had indeed given this advice. Mr O'Toole told me that he had been forwarded Mr C's draft but had drafted W's statement in the terms outlined above: subject to a time limit, and he advised W to sign the version drafted by him because he had had too much paperwork to deal with in this case and he wanted to consider all the material. In his written submissions he says that he did not have the copy of the vendor's purchase record and did not appreciate the significance of the statement, amongst many issues requiring a response when drafting the statement.

70. I do not accept Mr O'Toole's submission that nothing in the previous accounts was strictly untrue. In the context it was highly misleading by omission to say without more that W's case was that she first saw the divorce deed at the register office when she now says that she had been present when the government form which accompanied it was purchased. She knew what had happened, she did not need to see the vendor's documents to give her account.

71. In these circumstances it was a lie, and she must have known it was a lie, for her to state in January 2012 that she did not know whether the date stamp of 22 August 2005 confirmed the date of purchase. It was highly misleading by omission for her to state without more that she did not purchase the form when her case was that she had been present when it was purchased and signed the register as purchaser.

72. I of course assume that Mr O'Toole, as counsel with a duty to the court, accurately informs me that he did advise his client to sign the 16 January 2012 statement. I think this was an error, and he was not doing his client any favours in so doing so. This issue had to be confronted. Also this was exceptionally unfair to H and his legal team.

73. But I do not think that acting on advice detracts from the point that on any analysis W's explanation was given only when she was forced to deal with the fact of the register entry as to purchase of the form in her name.

74. Mr. C told me that he drafted the handwritten statement sometime in 2011 on the basis of discussions which he had with W, after the purchase record was produced at the February hearing, and that she had not given this account previously.

75. I cannot accept that W would not have raised this issue before if it were true: since it would have been highly relevant to her case as to deception, coercion, pressure, and a family plot or plan.

76. The story itself also does not ring true: it was too chancy: W might not have agreed to go shopping with Dipika, she might have asked questions, she might have refused to sign: and she could give no plausible reason why she did sign.

77. The story has all the flavour of a desperate late invention to try to address inconvenient facts which she had sought to conceal or to gloss over. It is simply inconceivable that W would not have given this account earlier, if it were true.

78. I have no good explanation as to why W's statement with the new account was produced so late, rather than within the restricted time period ordered by Sir Andrew, so that H had to marshal his evidence in reply at great speed. It could have made it very difficult for H to obtain the evidence without another expensive adjournment since he is paying privately. Indeed the statements were signed so late that the evidence in reply was produced in an unsatisfactory rush, compromising its quality, as I shall set out.

79. Dipika and Jagjivandas denied W's account, and, notwithstanding other problems with their evidence with which I shall later deal with, I believed them.

80. It may be but I cannot find that that there is some truth in W's account of a shopping trip in which the deed was purchased: but I do not accept her account of the engineered encounter with Jagjivandas. It seems to me highly likely that someone, perhaps a member of H's coterie, assisted in the purchase of the deed and provided her with the funds to purchase it: I accept that it is unlikely that she had the funds herself. I am not prepared to find that it was Jagjivandas and Dipika. It seems highly likely that H or someone on his behalf knew where to obtain the vendor's record.

81. The evidence of Jagjivandas and Dipika was unsatisfactory in a number of respects. Their statements say that W had had contacted them from England and said that she wanted a divorce. When challenged about that they speedily volunteered that this was just simply not correct. It is not a complete explanation that H's solicitors had drafted their statements in aspirational terms in haste and they just signed what was put in front of them; Jagjivandas reads some English and told me that he would have understood that document. But each readily volunteered corrections.

82. Each remained adamant that their statements were accurate that there was a meeting when W had come with her father to Jagjivandas's house to discuss divorce. They both say that both W's father and her father talked about a divorce.

83. W was given the opportunity to have her father called. He had not filed a statement. He was available to give evidence over the video link. Mr O' Toole submitted to me that this was not necessary: the backtracking by Jagjivandas and Dipika was such that their evidence was completely undermined. I made it absolutely clear to him that this was a matter as yet undecided, and that I might find their account of the meeting with W's father credible. I invited him to reconsider this decision. Through him W maintained her position that she did not seek to call her father.

84. I find that there was such a meeting and that W and her father talked about a divorce. I am not able to find that W said that she "wanted " a divorce in terms of desiring it, or whether she said that she was obtaining it, and I do not know what her father's attitude was. I do not accept W's evidence that her father was ignorant of the fact that there had been talk of divorce and it is quite inconceivable that she did not tell him that Anilkumar had told her that there was talk of divorce.

85. Ms Villarosa makes much of a passage in W's cross-examination when it was put to W that she had gone to JP's house with her father. She denied that. She was then interpreted as then saying that she had gone there because she was invited to collect papers: and she referred to 2 August. When this was put to her again she almost immediately denied having said this. The interpreter was clearly struggling at times and the quality of the interpretation was very poor. I have looked carefully at the transcription of this part of the tape, which Miss Villarosa confirms is accurate. I think that W was attempting to elaborate on her answer to the question by repeating her evidence about the visit to the house which she did admit, when she says that she had been taken to get the papers, on 22 August. It does not form any part of H's case that she did collect papers from Dipika's house and Dipika specifically agreed in evidence (contrary to their statements) that she had not. I place no adverse weight on this piece of evidence.

Mr Desai's evidence

86. Advocate Desai says that he prepared the divorce deed on the instructions of W. He does not have his file. He says in his first letter (28 July 2007) that H and W consulted him with a view to divorce in August 2012. H was in England at the time. In later letters he asserts that W came to see him alone and gave him instructions about the divorce.

87. When Mr Desai appeared on the video screen W immediately exclaimed something. Mr O'Toole then told me that she asserted that she had never seen him before: he was not the man who had been at the register office. There was then a digression in the evidence for Mr Desai to prove that he was who he said he was. He produced various documents including his Bar certificate, of seeming authenticity. I have no reason to doubt that he is who he said he was. Mr O' Toole does not finally suggest that the man who gave evidence was not Mr Desai. He says in his written submissions that W did not recognise him. It seems to me that this was another attempt by W to undermine the crucial evidence as to what happened at the registration.

88. I accept that 7 years after these events that Mr Desai's evidence was hazy on the precise sequence of events and the dates but I thought that he was trying his best to help. English is not his first language. He has not retained his file. He said that W first came to see him on 13 September and he prepared the deed then. In fact he must be wrong about that. He says that he met her once at his office and once at the register office. He says that she brought the stamped, signed deed to him. The dates are consistent with the purchase of the deed. I do not think that he sent her to get the deed. He said that he had been introduced to the parties at the time of their marriage by Anilkumar, who he volunteered, without hesitation, was his friend. The envelope which contained his first response bears Mr Anilkumar's address. Mr Desai explained that Mr Anilkumar posted the letter and the post office required a return address. That is perfectly plausible, and does not impeach Mr Desai's independence or credibility. I

do not take from this that Mr Desai is a stooge of H or Mr Anilkumar. Had he been primed I think that he would have given a slicker account, consistent, particularly on the dates, with H's case.

89. I do not regard his evidence as unsatisfactory because he did not explain why he did not answer all the questions put to him: even indeed if that is an accurate criticism. It seems to me that he did broadly provide an account as requested.

90. The deed is in English which W is unable to read, or at least to read fluently. Mr Desai said that he explained the deed and also provided a Gujurati translation: he gave it to her but did not keep a copy. I am not concerned about the discrepancy about whether he or his typist typed the Gujurati translation. Nor is it a material inconsistency that he also said that there was no Gujarati version of the deed: since there was no official Gujarati version. Mr O'Toole submits that the only person who stood to gain from an English deed was H. Professor Menski says Indian deeds in English are in common, particularly if needed to prove status in an English speaking country. H and W were resident in England and both would have required the deed. So I am not helped by that point. I accept that he explained what the deed contained, and even if his recollection that he provided a translation is incorrect.

91. Mr Desai accepts that he did not discuss with her financial provision or advice W about divorcing in England. He says that this was because these were Indian proceedings: this would not have been expected.

92. I believed Mr Desai in the essentials of this evidence: I think that W came to his offices and told him that she and her husband wanted a divorce, he regarded himself as acting for them both. That is what the deed reflects. That explanation is consistent with his written answers. There is no discrepancy between his statement that both Mr and Ms Parmar instructed him: i.e. she asked him for a consensual divorce deed: with his statement that W first instructed him. He did in fact explain that, if in a rather convoluted way. I am satisfied that W knew what was in the deed, and what it was intended to provide.

93. Mr Desai's account is strongly corroborated by the fact that I am satisfied that W was actively involved in the purchase of the government form with knowledge of what she was doing.

94. Irrespective of what Mr Desai understood I reject H's account that he did not know about the deed. The only sensible explanation for this sequence of events is that he was instrumental in its purchase and preparation, although not directly.

95. W had no means. It seems to me highly likely that moneys were provided by H's associates or family. I think that W was sent to Mr Desai's offices with the deed, with broad instructions from H or his associates as to what she was to tell him to include in the document. I accept that H did not attend his offices in connection with the preparation of the deed.

96. I find W's account that she was pressurised by the retention of her passport hard to accept. She says but I do not find that she had been to see an official. There is no independent evidence of this. She does not say why he or the police, or her father, could not assist. She does not say that she had previously been threatened with the

retention of her passport so it is difficult to see why she reacted without question to H's alleged statement that she had to sign to get her passport back. W was in possession of her passport when she returned to England on the return portion of her ticket, as planned, on 6 October: relying on her spousal visa: which seems to undermine W's case that the whole plot was engineered to keep her out of England until her visa had expired. Taking W's evidence as a whole, the matters on which I find that she has not told me the truth, and my findings above, I therefore cannot find that W was induced to sign by Anilkumar's retention of her passport. Nor, since I find that W gave her details to Mr Desai, can I find that Anilkumar said that he required her passport for "documentation purposes".

97. Mr Desai says that he was informed that there was a meeting of the community elders to approve the divorce before the divorce documents were drafted and signed. The deed reflects that. I accept that he was told that: he did not claim to have attended any such meeting: some small further support for the conclusion that he is not simply being wheeled out to provide corroboration. He also says that on 13 September 2005 at the register office the registrar asked them individually whether they understood the nature of their visit; whether they knew the documents they were going to sign, the consequences, and whether they both gave consent. This seems to me to be very likely and I believe him.

98. I find that there was a community meeting to approve the divorce: and that W's father was there. It is important to H that he should be validly divorced. I do not think that he would have omitted this necessary step. I am inclined to believe that there was a pre-meeting as well and that W was invited to attend a second meeting. It seems likely that H was anxious to evidence W's participation. I was not satisfied by H's evidence that W gave back the mangal sutra at that time. It may well have been handed over to H in London. It is certainly possible that divorce was being discussed as early as that. It seems to me quite likely that the deed accurately reflects that in recording that marital gifts have been returned. I have no evidence that this is a formal requirement of the divorce. I am not satisfied that W handed it over for mending. I have no account other than the husband's as to what happened at that time. I am not able to find that W did attend such a meeting. The timing, after H arrived in India, coincides with the time when W says that she was in Mumbai, because she was so upset about what was happening, and I am not prepared on the present evidence to reject her evidence that she was away at this time. She may have absented herself.

Events after W returned to England.

99. W has said that as soon as she got her passport back she returned to England using her return ticket. She has said both that she telephoned H from India and from the airport. I do not regard that as an important discrepancy. She says that he refused to speak to her. I accept this.

100. I am not prepared to find on the balance of probabilities on the present evidence that W was intending to pursue a liaison with the Sikh builder, although he rejected her after a week. This would have been a very provocative thing for a Hindu wife, even a divorced wife, to do. They had no right to reside in the UK. W strikes me as a practical-minded person and I find it very difficult to accept that she would have jeopardised her position by rejecting her husband before her immigration status was

secured. I am not prepared to dismiss W's account about having obtained the telephone number of the builder from neighbours, and although it would be curious for a respectable Hindu woman to stay with an unmarried man, she had nowhere else to go. I accept that she stayed with him for a week and then was put in touch with her uncle in Luton.

101. W certainly came to H's house on 15 November 2005. She claims not to have known that she was divorced. There was a very unpleasant scene and the police were called. H had disposed of W's saris: some quite costly: I think that was an unpleasant, and probably vindictive, thing to do. She says that she did not realise that she had been divorced. That I do not accept. Her actions do not necessarily demonstrate that at that stage she did not consider herself to be divorced. She may have been asking for another chance, or to be accommodated whilst she tried to regulate her status and her affairs. Her actions in going to the house are inconsistent with her assertion that she believed herself to be separated from H. They are certainly consistent with a woman who did not wish to be regarded as divorced in this jurisdiction. I accept that W went to her uncle in Luton: and that she was then homeless and was rescued by Mr. C. He has satisfactorily explained the sequence of events which were somewhat muddled in the immigration judgment.

102. I do not find that W lied to the immigration authorities on domestic violence, and nor did she admit this in evidence to me. She said that she had been subject to verbal abuse by her mother-in-law and husband after her complaint about his brother: she relied on the sexual assaults as domestic abuse. That is consistent with her present case. The history may well have been elided or summarised by the tribunal: it is not obvious to me that a different account was given.

103. One final matter with which I must deal is the reason for this application being made.

104. It is not clear to me whether W does indeed intend to apply for financial provision. If she does wish to there is no inherent bar on her applying for leave to commence financial remedy proceedings. I accept the submission on behalf of H that the immigration aspect of this case is of some importance, perhaps crucial importance, to W. When I raised this question Mr O'Toole submitted to me that it was a very serious thing for a wife to be divorced against her will as a matter of justice and that she was entitled to pursue her own divorce proceedings in the jurisdiction in which she was resident and domiciled.

Conclusions

105. I therefore approach the law on the basis of these findings

a) H instigated the divorce. I do not accept H's case that W instigated the divorce, nor that she had personal reasons to do so.

b) W assented to the divorce and facilitated it by instructing Mr CD. Her father knew about the process. He must have known about the divorce registration. There are many reasons why her father may have gone along with the divorce and many reasons why W may have assented and participated.

c) I accept that there was a family meeting attended by W's father, in the presence of community members, at which the divorce was approved. I cannot find on the balance of probabilities that W was present at a meeting.

d) I accept that the divorce was validly registered by the registrar in proper form at his offices, in the presence of family and community members, after the registrar had explained the process and confirmed assent.

e) H had no expectation that there would be any challenge to the divorce by W in this jurisdiction, and remarried on that basis.

Professor Menski's opinion

106. Professor Menski is highly qualified to advise the court on issues of Indian family law. He is Professor of South Asian law at the School of Oriental and African studies and teaches the customary law of India. He has considerable knowledge of India and social circumstances in India. He reported on behalf of W. He plainly feels very considerable sympathy for her on what he has been told; he has expressed his views about what ought to be rather than what is the law for women in her position. His advice on Indian law is clear and authoritative.

a) This is a customary panchayat divorce;

b) In India registration does not create the divorce: "the customary solemnisation in accordance with the community Hindu custom is the decisive criterion";

c) There is no legal requirement for formal legal proceedings;

d) There is no fixed and definite procedural requirement to obtain a customary divorce;

e) S 29 (2) of the Hindu Marriage Act 1955 specially preserves the right recognised by custom to obtain an extra judicial divorce: these account for 80% of Hindu divorces "Nothing contained in this Act shall be deemed to affect any right recognised by custom ... to obtain the dissolution of a Hindu marriage...";

f) The deed is executed under that statutory provision. "Such document would be accepted and recognised by any court in India as documentary evidence of the fact that a customary divorce was agreed between the parties and sanctioned within their community context Some documentation is usually called for but there is no rule that this should be in any particular form still less that it should be registered";

g) The deed is entirely typical of many he has seen and would be accepted and recognised by any court in India as documentary evidence of the fact that this customary divorce was agreed;

h) The document records the presence of community members on the pronunciation of the divorce;

i) The involvement of community members is sufficient but it is impossible to define quite what happened: it is sufficient "if there is evidence of involvement of elders and there is a document of divorce";

j) In oral evidence he said that the involvement of community members at the registration stage is sufficient;

k) It is unlikely that W could claim maintenance in India;

l) Hindus living overseas can have recourse to the customary divorce procedure in spite of long residence abroad;

m) A deed documents status and ensures that the parties are free to remarry.

n) An elective customary divorce can be achieved unilaterally without notice. "Dr Livia Holden demonstrates the continuing fluidity of the various customary patterns and does not event attempt to suggest that there are fixed procedural requirements". This means that any alleged absence of consent to divorce by the parties to a Hindu divorcee remains more or less irrelevant. Hindus are able to unilaterally divorce their spouses if they choose.

o) Hindu women can institute divorce: "A woman asking for a divorce deed is nothing unusual… both husband and wife can divorce." And "it is wrong to presume generally that Hindu women cannot or would not initiate divorce in all kinds of circumstances".

p) The customary divorce "would not be readily challengeable in an Indian forum" on grounds of undue influence or duress: the Indian court would consider that "too much water had gone under the bridge".

The law

107. This application is governed by Family Law Act 1986 (FLA 1986). Section 45 provides that a divorce shall be recognised (subject to the exceptions in sections 51 and 52, provided that:

a) The divorce is effective under the law of the country in which it was obtained: it is common ground that this so;

b) At the date of the commencement of the proceedings, either party is habitually resident, domiciled in or a national of that country: in this case both H and W are Indian citizens.

108. By s51. (**Refusal of recognition)**

> (3) Subject to section 52 of this Act, recognition by virtue of section 45 of this Act of validity of an overseas divorce, annulment or legal separation may be refused if –
>
> a) in the case of a divorce, annulment or legal separation 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
>
> ii) without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given; ...

109. By **s 54 (Interpretation of Part II)**

> (1) in this part - ….. "proceedings" means judicial or other proceedings.

110. H does not rely on this being a divorce "otherwise than by means of proceedings": because to do so he would have to establish that both he and W had Indian domicile, and were not habitually resident in England at the time. It is common ground that this is not a divorce by judicial proceedings. The question is, is this a divorce obtained by way of "other proceedings"?

111. I have been referred to a number of authorities pre 1986, concerning the previous statutory provisions now essentially contained in FLA 1986.

112. The starting point is *Quazi v Quazi* 1980 AC 744. H pronounced a talaq which was registered in Pakistan under the Muslim Family Law Ordinance 1961 (a legal requirement in most but not all parts of Pakistan). The House of Lords concluded that the talaq should be recognised. It was also relevant that W was domiciled in Pakistan. The wife had contended that the words 'other proceedings' meant proceedings which, by application of the ejusdem generis rule, were quasi-judicial. The critical point was that the divorce was officially recognised. Lord Diplock stated that:

> "other proceedings included all proceedings for divorce, other than judicial proceedings, which were legally effective in the country where they were taken".

113. The House of Lords specifically recommended that statutory provisions be introduced into English law which would enable a party to claim financial relief after a foreign divorce: thus ensued Law Commission Report 177, and the enactment of Part III of the MFPA 1984. At that time it was contemplated that Part III relief was to be confined to cases where otherwise the court might feel contained not to recognise a foreign decree.

114. In *Chaudhary v Chaudhary* [1985] Fam 19 the husband had travelled to Pakistan to grant a talaq with the specific purpose of depriving his wife, resident and domiciled in England, of financial provision. The Muslim Family Laws Ordinance 1961 did not apply. Part III MFPA had not yet been implemented. The Court of Appeal stated that

> - The primary criterion for recognition of a divorce / legal separation was that it had been obtained by judicial or other proceedings. It had to be recognised in the country in which it was obtained: it does not have to be quasi–judicial
>
> - The question of whether it is effective in the other jurisdiction is a separate question
>
> - The pronouncement of a bare talaq in front of three witnesses could not be described as a "proceeding": the witnesses play no part in the process: it is essentially a "private act"
>
> - Not all divorces obtained abroad are to be regarded as having been obtained by "judicial or other proceedings"
>
> - Official recognition is essential: it must import a degree of formality and at least the involvement of some agency, whether lay or religious, or recognised by the state as having a function which is more than simply probative.
>
> - Initially one must ask what kind of ceremony the party has chosen to go through: what are the essential elements.
>
> - The word "proceeding" must cover consensual arrangements for informal divorce

115. But in *Chaudary* the Court of Appeal found that the divorce should not be recognised in any event since not only was it a bare talaq, it was pronounced for the sole purpose of depriving the wife of a financial remedy: but lack of notice or lack of opportunity to participate in the proceedings did not constitute a ground for non-recognition in circumstances where local laws precluded notice or participation.

116. The only authority on the status of "panchayat" divorces in this jurisdiction is ***Office of Social Security and Child Support Commissioners, decision of the Social Security Commissioner, CP/11496 /95 ,*** in which Professor Menski's opinion was accepted that "panchayat proceedings are - admittedly informal and procedurally inflexible and unregulated... which the state legal system itself has explicitly sanctioned and recognised... Indian law purposefully recognises "panchayat" divorces as a valid form of divorce proceedings": and held that such a divorce, as opposed to a bare talaq, qualified as a "proceedings" divorce for the purposes of s.46 (i) FLA." This decision is persuasive but not of course binding on me.

Non-recognition: public policy

117. The Petitioner relies on the public policy argument under **s.51(3) (c) FLA 1986** which provides that an overseas divorce may be refused if:

> By s.51 (3) (c) recognition of the divorce, ….. would be manifestly contrary to public policy.

118. Recognition may be refused if the divorce has been effected "without such steps having been taken for giving notice of the proceedings to a party to a marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken" (s 51 (3) (a) (i)), or "without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably been given" (s 51 (3) (a) (ii)). These provisions cannot avail a party where a divorce may validly be granted without notice or participation.

119. The test is essentially whether to recognise the divorce offends against substantial justice. I accept that the test must be narrowly interpreted and stringently applied.

Both parties rely on *Kendall and Kendall* 1977 Fam 208. The divorce had been obtained by fraud: W's case was that she had been inveigled into signing documents on the pretext that they were for quite another purpose: Hollings J found that this was deceit by the husband's lawyers, quite possibly instigated by the husband, which W had no opportunity to discover or address. W's case here is no longer that she was misled into signing documents: and I have rejected her case as to what happened in any event.

The wife relies on *Chaudhary v Chaudhary* [1985] Fam 19 and *King* (formerly *Kureishy*) v *Kureishy* [1983] 13 Fam Law 82, where the husbands pronounced bare talaqs in order to avoid having to make financial provision for the wives.

In *D v D* [2005] 2 FLR 1042 the Court refused to recognise the Husband's divorce in Nigeria granted in W's absence, in proceedings issued after W had issued in England: W had not been given notice: the husband having failed to tell the court of her address: notice was a requirement, and the court had been misled by H.

In *Eroglu v Eroglu* [1994] 2 FLR 287 where there was fraud by both the Husband and Wife in order to protect the Husband from extended military service and on the basis that they would remarry: this did not justify the court refusing to recognise.

In *El-Fadl v El-Fadl* [2000] 1 FLR 175: husband divorced W by talaq in Lebanon 16 years earlier and no notice had been given: none was required: the court refused to exercise its discretion under s.51: W had known of the divorce for some time and only challenged the divorce when H ceased paying maintenance. Lebanon was the natural forum, and the talaq, without notice, was the prescribed form of divorce. Notice would have availed her of nothing. The principle of comity was important. In the light of my findings as to participation *El Fadl* does not assist me.

In *H v H* (Queen's Proctor (Intervening) [2006] the court rejected the public policy argument since the divorce had been obtained "more than 20 years previously and W had since remarried twice and had children. The divorce was recognised in Japan where H had also remarried…. although the Wife's evidence lacked credibility, that was insufficient to raise public policy issues and in the interests of comity the divorce should be recognised".

In *A v L* [2010] Sir Mark Potter refused to recognise the Husband's Egyptian divorce under s.51(3)(a). The Husband ignored the Hemain injunction granted in the ancillary

relief proceedings prohibiting him from issuing in Egypt and he did so without notice to the Wife.

120. Mr O'Toole's submissions are made on the basis that W was misled as to the nature of the document and "non est factum", as well as specific duress, which I have not found proved: I have found that she knew of the divorce proposals and was instrumental in obtaining the divorce deed.

Conclusions on the law on these facts

121. I am satisfied that this was a proceedings but non-judicial divorce:

a) The essential requirements of a panchayat divorce are that

i) One at least of the parties wishes to divorce,

ii) Family and community members endorse the divorce and are involved in the process: this is not a unilateral action by one party or a private agreement.

b) Registration is available to evidence and confirm status.

c) The fact of lack of notice (if there had been lack of notice) and/or participation is not relevant. The fact that W may not have been present at the earlier community meeting is not relevant in a jurisdiction where notice and participation is not a pre-requisite.

d) I accept that the law of India specifically sanctions and provides for customary divorces, and thus there is state participation in the process.

122. Professor Menski accepts that the presence of community members at the register office was in itself part of the community involvement in the divorce, notwithstanding that the divorce itself may have been agreed earlier. The registrar's explanation and participation in the process also entitles me to treat the registration in this case as more than a mere administrative record. In a jurisdiction where the only essential elements are (i) divorce and (ii) community involvement, and there are no prescribed procedures, I am entitled to and do treat this as an important part of the process. Even if there had been no earlier community meeting I conclude that the involvement of the community at this stage in a procedure of which all recognised the importance is sufficient. This was a public affirmation of the parties' divorce by members of the community.

123. I have found the public policy argument the most difficult to resolve. Mr O'Toole accepts that it is for W to prove her case on the balance of probabilities, and that if she fails to establish it on the evidence that she puts forward, then she fails. In my view that is the correct analysis. I have rejected the major elements of W's case as to fraud, deception, lack of knowledge, and pressure.

124. For whatever reason W took part. W has not told me the truth about

i) The purchase of the deed

ii) Her knowledge of what was intended

iii) The involvement of her father

iv) The reasons for her participation.

125. I accept that India was not the most natural forum for this divorce (in contrast to *El Fadl*): but that taken on its own is not a reason for refusal to recognise. W's participation puts this case into a different category from *El Fadl*. India was not a wholly unnatural forum, being the forum of the parties' origins and community.

126. There are reasons here from which I could well conclude that W, as the weaker party, must have been under some kind of pressure from some kind of source. But since I am not satisfied as to her account of lack of notice and as to the specific events which she alleges, I cannot find that she acted under specific duress, although I accept that her assent may well have been reluctant. W's reasons for participating in the divorce process must encompass a whole range of possibilities. I accept that, had I found duress properly so called - an overbearing of the will or fraud - I might have held that it would offend substantial justice to recognise the decree, although I would also have had to take into account delay. The fact that H has not been honest either and has distanced himself from what happened, and that I have found that he had obvious reason to repudiate the marriage and to reduce his exposure to English proceedings, is not a ground to refuse to recognise.

127. I cannot specifically find that W was pressurised into relinquishing any financial claim in India and thus that this should persuade me to refuse to recognise the divorce, even though she may have been reluctant to agree this provision which advantaged H and her not at all. She may well have been aware that she could not resist a unilateral divorce and that, as Advocate Desai confirms, there really was no scope for her to seek financial provision. But I cannot say. The Part III route is available to her, in contrast to cases such as *Chaudhary*. It is also of significance in my view that apart from the initial letter from her solicitors in 2007, referred to above, she has not been focussed on a financial remedy.

128. W does not want to remain married to H, and there can be no objective advantage to her in respect of her status to refuse to recognise the decree so as to permit her to institute proceedings in this jurisdiction.

129. As in *H v H* and *El Fadl* I must pay regard to the principle of comity.

130. It is certainly not for me to say whether W could now, or could ever, have attacked the Indian divorce in Indian proceedings: which Professor Menski says she could not, and which she has not attempted to do.

131. Delay is important in this context, just as it was in *El Fadl*. It is one of the public policy considerations. Mr O'Toole submits that the delay here is nothing compared with the 20 years in H and 16 years in *El Fadl*, But delay must be looked at in the context of this case: and I find it to be significant: and inconsistent with challenge to the divorce. My reading of the history is that W would not have challenged the divorce had she been given leave to remain. W's inactivity gave H the impression that she accepted the divorce. W did not challenge the divorce until after he

remarried, as he was entitled to do, and as was highly foreseeable. H and his wife have built their lives on the assumption that H was free to form new attachments and take on new obligations. If that marriage is now treated as invalid, untold havoc may result to them and H's family.

132. I dismiss W's application.