EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SUIT NO: NEVHMT2014/0026

BETWEEN:

Shilpika Saxena

and Petitioner

Vishal Saxena

Respondent

Sheldon Noble

Cited

Appearances:

Ms. Midge Morton and Ms. Anmarieta Staines for the Respondent/Applicant.

Ms. Cindy Herbert for the Petitoner/Respondent.

2015: May 28
2015: October 21

DECISION

[1] **WILLIAMS, J.:** This Matter is before the Court by way of **Summons to Judge** dated the 7th April 2015 pursuant to Rule 3 (3) Matrimonial Causes Rules 1937 filed by the Applicant/Respondent Vishal Saxena for an order that;

a) The Court decline jurisdiction in the matter and grant a stay of proceedings to facilitate the initiation of Divorce and all matters ancillary thereto in India, the jurisdiction that is the most convenient forum for determination of these matters.

b) Alternatively that the Petition filed on the 6th November 2014 be struck out.

[2] According to the Applicant the grounds of the summons are:

1. That the Petitioner commenced Divorce proceedings in the Jurisdiction of St. Kitts and Nevis on the 6th day of November 2014.
2. That the parties are Indian Nationals and both spouses previously resided in St. Kitts and Nevis. However as of December 2014, the Respondent ceased to be resident in St. Kitts and Nevis having lost his job with the Medical University of Americas.
3. That the Petitioner is still employed with the Medical University of Americas.
4. That the children of the marriage reside in India and attend school there.
5. That the spouses have no property in St. Kitts and Nevis, but own properties in India.
6. That the Petitioner has stated in her Petition that "once she obtains a Divorce in this jurisdiction, she will go back to India to institute proceedings there for the Court to determine their interests in their properties."
7. That during the spouses sojourn in St. Kitts and Nevis, they never acquired any property here.
8. That the Petitioner will not be inconvenienced if the Court refuses jurisdiction here.
9. India is the most appropriate forum for determination of these Divorce proceedings and matters ancillary thereto.
10. The Court does not have jurisdiction over any Ancillary matters to the Divorce.

11. Before the Court can grant a Divorce it must satisfy itself, once there are children, that proper arrangements have been made for their support or otherwise.
12. Since the children are not within the jurisdiction of St. Kitts and Nevis it will be difficult for the Court to satisfy itself of this.
13. The jurisdiction of St. Kitts and Nevis does not provide for stand-alone Divorce proceedings under the Divorce Act and Matrimonial Causes Rules 1937, if the spouses have children.

[3] The Respondent also filed an Affidavit in Support of his Application by Ariann Maynard Legal Assistant to Morton, Robinson L.P. on the 22nd April 2015, the Petitioner filed an Affidavit opposing the **Summons to Judge** of the Respondent with twenty one exhibits attached.

[4] On the 26th May 2015, the Respondent field an Affidavit in response, requesting that the Affidavit of the Petitioner be struck out as it is an attempt by the Petitioner to file a Reply which the Court has already determined she has no leave to so do.

[5] The Respondent/Applicant states further that while both India and St. Kitts & Nevis have jurisdiction to hear the Petition, India is the most convenient jurisdiction for the determination of these issues as it is the jurisdiction which has the closest and most real and substantial connection to both the Petitioner and the Respondent.

[6] The Respondent/Applicant also states that whereas the Petitioner and the Respondent/Applicant were ordinarily resident in St. Kitts and Nevis, they were never domiciled there; and at all times were domiciled in India.

[7] On the 22nd April 2015, the Petitioner filed an Affidavit in opposition to the summons of the Applicant/Respondent in which she avers and takes issue with the supporting Affidavit filed by the Legal Assistant of the Applicant's attorney.

The Petitioner also avers that in May 2009, the Applicant and herself moved to Nevis from India and took up employment with the Medical University of the Americas in Newcastle, Nevis. The Petitioner states further that her employment with the University is permanent as her contract is automatically renewed annually and she has surpassed the probationary period. Also she has been employed for over five years and her contract has not been terminated nor has she resigned from her employment.

[8] The Petitioner also states that she has been granted a Work Permit I.D, a driver's license and a National Identification Card and voted in the last local elections in Nevis in 2013.

[9] The Petitioner also contends that the Applicant is also the holder of a St. Kitts and Nevis National Identification card and voted in the last local elections in Nevis in 2013, which constituted prima facie evidence that they were ordinarily resident and/or domiciled in St. Kitts and Nevis.

[10] The Petitioner asserts that her decision to take her children out of Nevis was necessary for their safety and wellbeing.

[11] The Petitioner also asserts that it would be unfair and unreasonable for her to bring Divorce proceedings in India for the reasons set out in paragraph 45 (i)-(vi) of her Affidavit.

[12] The Petitioner also filed a supplemental Affidavit dated the 26th May 2015 in which she avers that the children of the marriage were only temporarily residing in India, and are now back in Nevis attending the Nevis Academy school. The Petitioner claims that the Respondent communicates with the children regularly by telephone.

[13] **The Law relating to Divorce in St. Kitts and Nevis** is contained in Part II of the Divorce Act 2005 - Jurisdiction of the Court, Section 3 and reads as follows;

"The Court may hear and determine any Divorce proceedings if either spouse has been ordinarily resident in Saint Christopher and Nevis; for at least one year immediately preceding the commencement of the Divorce proceedings."

[14] The phrase ordinary resident is defined in **Halsbury Laws of England 5th Edition Volume 19 at Paragraph 359** as;

"residence adopted voluntarily and for a settled purpose as part of the regular order of life for the time being as opposed to such resident as is casual temporary or unusual."

[15] Counsel for the Applicant Ms. Midge Morton in her oral submissions to the Court argued that the Petitioner works with the Medical University of the Americas up to the time of filing the Petition, and was the only one resident in Nevis, while the Respondent lives in India. Learned Counsel contends that the Petitioner has a practice of uprooting the children and deciding where they should live without regard to the Applicant/Respondent.

[16] Learned Counsel Ms. Morton further submits that the Petitioner has no right to determine whether the children live in India or Nevis and cited the case of **Santos Calderon Perez vs Minister of National Security et al NEVHCV2010/0042** as authority for establishing the meaning of "ordinary residence".

[17] Learned Counsel further argued that in the event that the Court did not agree that the Petitioner was ordinarily resident, the Court had the power under Section 20 (a) of the Eastern Caribbean Supreme Court Act to direct a stay of proceedings.

Counsel also submitted that the Court would not strike out a matter for use of a wrong from and procedure and cited the case of – **Hannigan vs Hannigan**[1].

[18] Learned Counsel submitted that a primary issue for determination is whether there is another Forum with closer connection to the parties, and if there is such other forum

[1] [2000] A11 ER (D) 693 (CA)

whether the balance of convenience lies in favour of the other party. Learned Counsel argued that the Applicant/Respondent is not asking the Court to decline jurisdiction out of a mere balance of convenience, but he has provided evidence to assist the Court in determining that India is a more appropriate forum to hear the matter over the jurisdiction of Nevis.

[19] Learned Counsel contended further that the Petition for Divorce is not properly before the Court, as the Act did not provide for "standalone" Divorce orders; and that there are ancillary matters which the Court had to exercise jurisdiction over.

[20] Learned Counsel argues further that both parties are amenable to the jurisdiction of India which is their country of original domicile and celebration of their marriage.

Learned Counsel contends that the Petitioner is employed at the Medical School of the Americas in Nevis, but would travel to India on breaks from school.

However on a balance of convenience it would be an inconvenience for the Applicant/Respondent to travel to St. Kitts and Nevis where he has no connection.

Additionally learned counsel states that if a stay of the matrimonial proceedings in St. Kitts and Nevis were granted it would not deprive the Petitioner of any legitimate or juridical advantage.

Counsel cites in support of her contention the case of **Spiliada Maritime Corporation vs. Consulex Ltd.**[2]

[21] Counsel strongly contends that the main issue before the Court is whether the Court in St. Kitts and Nevis is the proper forum for determination of these Divorce proceedings and ancillary matters and also whether India is the most convenient jurisdiction for the

[2] [1987] AC 460

determination of these issues as it is the jurisdiction which has the closest and most real and substantial connection to both the Petitioner and the Respondent.

[22] Learned Counsel for the Petitioner Ms. Cindy Herbert in her oral submissions in response submits that when an application is brought before the Court, the summons has to state the statute or rule that the Applicant is relying on.

Learned Counsel argues that this is not stated in the affidavit and that the first time the Court was put on notice that the Applicant was relying on the inherent jurisdiction of the Court was on the 26th January 2015. Counsel further stated that the grounds for the application do not state whether the Application is brought under a statute, rule, or power, and cites Rule 3:3 of the **Matrimonial Causes Rules 1937** and the case of **Choo Loi Poi & Choo Liu Yuexin vs. Donald Frederick**[3] per Michel J. in stressing the importance of a properly drafted application.

[23] Learned Counsel Ms. Herbert argues that there is no relevant legislation or rule which gives an indication or guidance as to the Court's power to decline jurisdiction, stay proceedings or strike out the Petition in relation to this matter.

[24] Learned Counsel further submits that it is the **Matrimonial Causes Rule 1937**, in particular **Rule 13 (2)** which sets out the procedure for challenging the jurisdiction of the Court in Divorce proceedings. Ms. Herbert contends that in the case of Divorce proceedings, the Respondent who wishes to dispute or challenge the Court's jurisdiction must file an appearance under protest stating concisely the grounds of protest and (2) file a summons applying for directions which may include direction for a stay of proceedings before the expiration of time allowed for filing an answer.

[3] GDAHCV2008/0556

[25] Ms. Herbert contends that in the case at Bar, the Applicant/Respondent has not filed an appearance under protest challenging the jurisdiction of the Court pursuant to Rule 13 (1) of the **Matrimonial Causes Rules**; and has not filed a summons applying for a stay of proceedings or for the Court to decline jurisdiction before the expiration of time allowed for filing an answer.

Learned counsel also submits that the Respondent instead filed an answer on the 9th December 2014 and an Affidavit in Support and took part in proceedings over four months before filing a summons asking the Court to decline jurisdiction and to grant a stay of proceedings.

[26] Learned Counsel submits that the Applicant/Respondent has failed to comply with Rule 13 of the **Matrimonial Causes Rules 1937** and is therefore barred from challenging the jurisdiction of the Court at this late stage of the proceedings, and therefore the summons of the Respondent should be dismissed.

[27] Learned Counsel Ms. Herbert further contends that the Burden of Proof lies on the Respondent/Applicant to show that he would be unduly prejudiced or there would be an Abuse of the process of the Court if the Court did not grant his application.

Issues

[28] The issues therefore for determination by the Court are;

1. Whether there is another Forum with closer connection to the Parties and
2. If there is another forum, whether the balance of convenience lies in favour of the other party
3. Whether the Court should grant a stay of proceedings to facilitate the initiation of Divorce Proceedings and all other ancillary matters in India as the most convenient forum

4. Whether the Respondent/Applicant has complied with the **Matrimonial Causes Rules 1937** Section 13 (1) and (2) bringing these proceedings.
5. Whether the Petition for Divorce should be struck out as it does not disclose an irretrievable breakdown of the marriage.

[29] The principles that a judge should apply in exercising a discretion whether to stay proceedings on the ground of Forum non conveniens has been well articulated by Gordon J.A in the case of **IPOC International Growth Fund Ltd. vs LV Finance Group Limited et al**[4]

"As always the starting point is **Spiliad Maritime Corporation vs Consulex Ltd. [1987] 1 AC 460,** a decision of the House of Lords, the learning within which has on more than one occasion been accepted by this Court. In the lead judgment Lord Goff of Chieveley summarized the Law in the following way, and I take the liberty of paraphrasing the learned Law Lord:

1. The starting point or basic principle is that a stay on the grounds of **Forum non conveniens** will only be granted where the Court is satisfied that there is some available forum having competent jurisdiction, which is the appropriate forum for the trial of the action. In this context, appropriate means more suitable for the interests of all parties, and the ends of Justice.
2. The Burden of proof is on the Defendant who seeks the stay to persuade the Court to exercise its discretion in favour of a stay; once the Defendant has discharged that Burden, the Burden shifts to the Claimant to show any special circumstances by reason of which Justice requires that the Trial should nevertheless take place in this jurisdiction. Lord Goff opined that there was no presumption or extra weight in

[4] BVI Civil Appeal No. 20/2003 & 1/2004

the balance, in favour of a Claimant where the Claimant has founded jurisdiction as of right in this jurisdiction, save that "where there can be pointers to a number of different jurisdictions", there is no reason why a Court of this Jurisdiction should not refuse a stay. In other words the burden on the Defendant is two-fold.

Firstly to show that there is an alternate available jurisdiction and secondly to show that the alternate jurisdiction is clearly or distinctly more appropriate that this jurisdiction.

3. When considering whether to grant a stay or not, the Court will look to what is the "natural forum" as was described by Lord Keith of Kinkel in **The Abidin Daver**[5] "that with which the action has the most real and substantial connection." In this connection the Court will be mindful of the availability of witnesses, the likely languages that they speak, the law governing the transactions or to which the fructification of the Transactions might be subject, in the case of actions in Tort, where it is alleged that the Tort took place, and the places where the parties reside and carry on business. The list of factors is by no means meant to be exhaustive, but rather indicative of the kinds of considerations, a court should have in exercising its discretion.
4. If the Court determines that there is some other available and prima facie more appropriate forum, then ordinarily a stay will be granted unless there are circumstances by reason of which Justice requires that a stay should nevertheless not be granted.

   Such a circumstance might be that the Claimant will not obtain Justice in the appropriate forum; Lord Diplock in the **Abdidin Daver** made it very clear that the

[5] [1984] A.C 398

Burden of proof to establish such a circumstance was on the Claimant and that cogent and objective evidence is a requirement.

[30] The Applicant/Respondent urges that India is clearly the most appropriate forum for the following reasons;

- That the Petitioner has commenced Divorce proceedings in the jurisdiction of St. Kitts and Nevis on the 6th day of November 2014.
- The parties are Indian Nationals. Both spouses previously resided in St. Kitts and Nevis. The Respondent ceased to be resident in St. Kitts and Nevis having lost his job with the Medical University of Americas (MUA).
- The Petitioner is still employed with the MUA.
- The children of the marriage reside in India and attend school there.
- The spouses have no property in St. Kitts and Nevis but own properties in India.
- The spouses have never acquired property in St. Kitts and Nevis.
- The Petitioner has stated in her Petition that once she obtains a Divorce in this jurisdiction, she will go back to India to institute proceedings there for the Court to determine their interest in their properties.
- The Petitioner will not be inconvenienced if the Court refuses jurisdiction here.
- The Court does not have jurisdiction over any matters ancillary to the Divorce.
- Before the Court can grant a Divorce, it must satisfy itself, once there are children that proper arrangements have been made for their support and or otherwise.
- Since the children are not within the jurisdiction of St. Kitts and Nevis, it will be difficult for the Court to satisfy itself of this.

- The jurisdiction of St. Kitts and Nevis does not provide for standalone Divorce proceedings under the **Divorce Act** and **Matrimonial Causes Rule 1937**, if the spouses have children.

[31] Learned Counsel for the Petitioner however points to the **Divorce Act of St. Christopher and Nevis 2005** which provides that either party can present Divorce proceedings provided **that either party has been ordinarily resident in St. Christopher and Nevis for at least one year immediately before filing the Divorce.** **(My emphasis**)

[32] Learned Counsel also cited the cases of **Kapur vs Kapur** [6] and **Ikimi vs Ikimi**[7]**.**

The facts of which cases are already stated in the Petitioner's written submissions and need not restate them here.

The learned Justices of the Court of Appeal in **Ikimi vs Ikimi** stated that the appropriate test was whether the residence in question had been adopted voluntarily and for a settled purpose throughout the relevant period apart from Temporary or occasional absences; that the bodily presence required to form a basis for habitual residence had to be more than merely token in duration, but that in the circumstances, the wife had spent a sufficiently appreciable time in the country to found the jurisdiction for her petition.

At paragraphs 30 and 31 of the said judgment the Court of Appeal referred to the dicta of Lord Scarman in **R v Barnet Londom Borough Council Ex P Nilish Shah**[8] where he stated and approved a definition of Lord Denning MR:

"that the person must be habitually and normally resident here apart from temporary or occasional absences of long or short duration. The significance of the adverb habitually is

[6] Fam. Law 22
[7] [2001] 1 F.L.R 913
[8] [1983] 2 AC 309

that it recalls two necessary features, namely residence adopted voluntarily and for settled purposes."

[33] To bolster her submission as to "ordinary residence", learned counsel refers to the following exhibits of the Employment contract of the Petitioner with the Medical University of the Americas in Nevis, the Petitioner's Work Permit I.D's, her passport, local licenses, Social Security Board Registration and Identification cards, utility bills and letter from the Petitioner's landlady.

[34] Learned Counsel also submits that the affidavit of the Petitioner states that she has voluntarily settled into life and politics in St. Kitts and Nevis and has taken part in community activities, school activities and voted in local elections.

[35] Learned Counsel strongly argues that all the Court requires for Jurisdiction is that either party to the Divorce Proceedings have been ordinarily resident for at least one year immediately preceding the presentation of the Divorce Proceedings according to the **Divorce Act 2005.**

Stay of Proceedings

[36] Learned Counsel for the Petitioner submits that there is no reference in the summons by the Respondent to any rule or statue which provides for the stay of Divorce proceedings, and the Respondent has not proffered any legal basis for the Court to stay the proceedings.

Further that such a summons may be brought under Rule 13 of the Matrimonial Causes Rules challenging jurisdiction of the Court and requesting a stay of proceedings, but there must be strict compliance with the procedure laid down by that Rule.

The Petitioner submits that the Respondent has not complied with this Rule as there has been no protest in the appearance as to jurisdiction, and the summons was not filed before the Respondent entered his Answer.

The Respondent is therefore deemed to have entered unconditional appearance and is barred from contesting the Court's jurisdiction at this stage of the proceedings.

[37] Learned Counsel Ms. Herbert further submitted that concurrent proceedings dealing with ancillary matters can be determined by another Court and cited the Case of **D vs P**[9] in support of her contention.

According to counsel in that case Connell J. echoed the dicta of Lord Goff in the well-known case of **Spiliada Maritime Corp vs Consulex Ltd.** where he stated in relation to applications for a stay.

"The basic principle is that a stay will only be granted on the ground of forum non conveniens where the Court is satisfied that there is some other available forum, having competent jurisdiction which is the appropriate forum for the trial of the action (i.e.) in which the case may be tried more suitably for the interests of all the parties and the ends of Justice… In general the burden of proof rests on the Defendant to persuade the Court to exercise its discretion to grant a stay."

[38] The Respondent Vishal Saxena in his answer to the Petition for Divorce filed on the 9th December 2014, states that both the Petitioner's and his employment contract with the Medical University of the Americas (MUA) is tenuous and fleeting for the most part, and that his employment contract with the MUA was terminated by the Institution.

He also states that having relocated to India, he is in a better position to give love, care and support to his children. He states further that both his family and that of the Petitioner

[9] [1998] 3FCR43

reside in India and the children would be better off in India as opposed to returning to Nevis where their Education and wellbeing are interrupted by the Petitioner.

[39] Learned Counsel for the Respondent Ms. Morton contends that the Petitioner seizes direct control of the children when it suited her and that the Guardian ad litem of the children resides in the Court.

Learned Counsel also submitted that the Petitioner has to show that there is juridical advantage to her to have the Divorce proceedings held in Nevis.

[40] **Court's Analysis –**

In relation to the 1st Issue I have considered the submissions of Counsel for both parties to this matter and having regard to Gordon J.A's paraphrase of the governing principles enunciated by Lord Goff for Forum non conveniens applications, it appears that Lord Goff in the **Spiliada case** considered the extent of the Burden of proof or the standard of proof to be on a defendant in a Forum non conveniens application.

[41] At page 476 F, Lord Goff said;

"The question being whether there is some other Forum which is the appropriate Forum for the Trial of this action, it is pertinent to ask whether the fact that the Plaintiff has ex hypothesis, founded jurisdiction as of right with the Law of this country, or itself gives the Plaintiff an advantage in the sense that the English Court will not lightly disturb jurisdiction so established."

Lord Goff concluded at page 477;

"In my opinion, the burden of proof is on the defendant, and it is not just to show that England is not the natural or appropriate forum for the Trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English Forum."

[42] In my considered opinion, the legal authorities establish with clarity, a burden of proof on the Defendant and the nature and quality of what is to be proved. I adopt the reasoning of the learned Justice of Appeal Edwards in the case of **Management Services Ltd. vs Cukurova Holdings A.S (2) Cukurora (BVI) Limited**[10] ;

"It seems sufficient that the authorities merely emphasise the requirements that the Defendant is to prove, and inferentially what conclusion the Court should arrive at from such evidence in order for the proceedings to be stayed. (i.e.) the Court should be able to conclude that another available forum is clearly or distinctly more appropriate. The Defendant's duty is to adduce evidence which fulfils the criteria established by the authorities."

[43] Although there may be factors connecting these Divorce proceedings with another jurisdiction such as India I am of the view that Nevis is not only an available forum, but is the forum "with which the action has the most real and substantial connection."

There have been no concurrent proceedings commenced in India and therefore the Court will not concern itself that if it allows the Petitioner's Petition to proceed that either of the two undesirable consequences as enunciated by Lord Brandon in **Adidin Daver** will ensue.

[44] I am therefore satisfied on a review of the authorities the submissions and the circumstances in this case that the jurisdiction of Saint Kitts and Nevis (Nevis circuit) is the Forum conveniens, and is not only an available Forum but is the Forum "with which this action has the most real and substantial connection." The Petitioner and her children live here. The children go to school here, and their education and wellbeing is of paramount importance to the Court.

[10] HCVAP2007/025

[45] I further concur with learned counsel for the Petitioner, Ms. Herbert that the legal basis for jurisdiction of this Court is **that either party has been ordinarily resident for at least one year immediately preceding the presentation of the Divorce proceedings.**

The Petitioner has provided ample proof through her Affidavit evidence and exhibits that she voluntarily resides in St. Kitts and Nevis with a degree of settled purpose, and I am therefore of the considered view that it would be iniquitous for the Forum in which the Petitioner Shilpika Saxena is entitled to seek relief against the Respondent Vishal Saxena to be dictated by what appears to be the Respondent's choice of Forum.

Stay of proceedings

[46] In relation to the Application for a **stay of proceedings,** learned counsel for the Petitioner referred to the **Matrimonial Causes Rules 1937** in particular Section 13 (1) (2) which provides that "an appearance to a petition may be **under protest** and shall state concisely the grounds of protest and the party so appearing under protest shall before the expiration of the time allowed for filing an answer, apply for directions as to the determination of any question arising by reason of such Appearance under protest, and in default of making such application shall be deemed to have entered an unconditional appearance. Counsel contends that this summons protesting jurisdiction was not filed before the Respondent entered his Answer, therefore the Respondent is deemed to have entered an unconditional Appearance and is barred from contesting the Court's jurisdiction at this stage of the proceedings.

[47] Learned Counsel for the Respondent Ms. Morton cites Section 20 (a) and Section 21 of the **Supreme Court Act 1981** as the Court's authority to stay proceedings. Learned Counsel states that the Court will not strike out a matter on the use of a wrong form since the Petitioner has not been prejudiced. Learned Counsel cites the case of

Hannigan vs Hannigan.[11]

[48] In his judgment in that case Lord Justice Brooks referred to the revised version of the **Rules of the Supreme Court (1965)** order 2 Rule (1) which provides as follows;

"Where in the beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been a failure to comply with in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein."

[49] The learned Law lord further opined on the striking out of the application to stay proceedings as follows;

"I am in no doubt that the manner in which the Judge exercised his discretion was seriously flawed, because he wholly failed to take into account the fact that in these proceedings sealed by the County Court within the relevant limitations period, the Defendants were given all the Information they required in order to be able to understand what order the Appellant was seeking from the Court. The judge concentrated exclusively on all the technical errors the solicitor made, the lack of a Coat of Arms, the lack of a 3.5cm margin, the absence of the legend on the top right hand corner and so on, and in so doing lost sight of the wood from the trees. The sanction he imposed was also a quite disproportionate response to the procedural irregularities he was considering.

Lord Justice Brooks at paragraph 36 of his judgment stated quite succinctly that "the interests of the Administration of Justice would have been better served if the Defendant's solicitor's had simply pointed out all the mistakes that had been made,

[11] [2000] A11 ER 693

and Mrs. Hannigan's solicitor had corrected them quickly and agreed to indemnify both parties for all the expense unnecessarily caused by his incompetence.

CPR 1:3 provides that the Parties are required to help the Court to further the overriding objective, and the overriding objective is not furthered by squabbles about technicalities."

[50] I am in complete agreement with the dicta of Brooke L.J as stated in paragraph 36 of his Judgment above, and the scales of my judgment are tipped in Mr. Saxena's favour on that issue, and by the interests of the Administration of Justice, and that to strike out his claim for a stay of proceedings in these circumstances is a totally disproportionate response to the error that was made.

[51] Notwithstanding my finding above I am not satisfied that there are circumstances adverted to by the Applicant Vishal Saxena by reason of which Justice requires that a stay of proceedings should be granted.

[52] According to the **Halsbury Laws of England Vol. 37 paragraph 437,**

"A stay of proceedings arises under an order of the court, which puts a stop or "stay" on the further conduct of the proceedings in the Court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the action taking place, where the Court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the other party or to prevent the abuse of process. The order is made generally in the exercise of the Court's discretionary jurisdiction, and at any rate in the exercise of its inherent jurisdiction **an order for the stay of proceedings is made very sparingly and only in exceptional circumstances" (my emphasis).**

See: Dyson vs A.G. [1911[1KB 410CA.

[53] At paragraph 439 of the said **Halsbury Laws** it states;

"In all cases, the grounds on which the application is made must be clearly specified, stating whether it is made under a particular statute or rule of Court or under the Court's inherent jurisdiction or a combination of these. Unless the facts are clear it is desirable to support the application by affidavit evidence, setting out all the facts relied on and exhibiting all relevant documents."

[54] The Respondent/Applicant's affidavit filed on the 26th May 2015 does not disclose whether there are special circumstances by reason of which Justice requires that Mr. Saxena's claims should be dealt with in India, when there is not a shred of evidence that there are proceedings that have commenced or continuing in India. Whilst Mrs. Saxena and her children are nationals of India, they live in Nevis and the children attend school in Nevis. I refer to "Exhibit SS1" from the Nevis Academy principal Lucia Wilkinson which has not been refuted by any evidence from the Respondent/Applicant.

[55] In the case of **Re L. (Minors)**[12] the dicta of Buckley L.J is instructive;

"Every matter having relevance to welfare of the child should be taken into account and placed in the balance. Other matters which may not directly relate to the child's welfare, but are relevant to the situation may be proper being treated as paramount."

[56] Again **Re H (Minor)**[13] Waite J held that a child's residence was a factor of high importance in determining the issue of **Forum non conveniens.**

In this case I am satisfied that the habitual residence of the children is in Saint Kitts and Nevis (Nevis) and further it is my respectful opinion that the Respondent/Applicant has not persuaded this Court to exercise its discretion in favour of a stay of proceedings. The

[12] [1974] 1WLR 250
[13] The Times 28th February 1992,pg 806

Court therefore considers the Natural Forum to which this action has the most real and substantial connection to be the jurisdiction of St. Kitts and Nevis (Nevis Circuit).

[57] This Court under its inherent Jurisdiction will exercise its discretion to hear this matter and will refrain from directing a stay of proceedings in this matter.

[58] There is a further procedural matter to be dealt with which was raised by Learned Counsel for the Respondent/Applicant in her written submissions.

Learned Counsel submits that Section 12 of the **Divorce Act 2005** provides that;

"The Court shall in any Divorce proceedings do the following, that is to say (b) satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and if such arrangements have not been made, to stay the granting of the Divorce until such arrangements are made."

[59] Learned Counsel Ms. Morton contends that it is the practice in this jurisdiction that such arrangements for the support of the children of the marriage should be documented in a separate document titled "Statement of Arrangements for the children of the marriage" and cites the case of **Keisha La-Georgia vs Floriziel Al Bailey**[14] where the Court refused to grant a decree nisi, as the Petitioner had failed to satisfy the Court that reasonable arrangements as to support had been made with respect to the children of the marriage."

[60] In determining this issue, I refer again to the already cited case of **Hannigan vs Hannigan.** I agree that the Statement as to arrangement of the children should have been filed with the Petition and other supporting documents in accordance with the **Divorce Act 2005** and that learned counsel for the Petitioner made an error in not filing the said document. However I will not lose sight of the duty that is placed upon the Court to deal with cases justly, taking into account the interests of the Administration of Justice.

[14] (Jamaica) Claim No. M 1029 of 2007

In taking into account the interests of the Administration of Justice, the factor which appears to be paramount importance in this matter is that both parties and their solicitors know what this matter is about and know that "defective" petition had been served.

If I may adopt and modify the reasoning of Buckley LJ in the said case;

The interests of the Administration of Justice would have been better served if the Respondents solicitor Ms. Morton had simply pointed out the mistake to the Petitioner's solicitor Ms. Herbert when the documents were filed and served on her instead of squabbling about technicalities. This is an obvious irregularity and to strike out the Petition in these circumstances is a totally disproportionate response to the errors that was made. The Petitioner can seek the leave of the Court to file the Statement as to arrangements for children out of time since the **Matrimonial Causes Rules 1937** do not preclude her from doing so.

[61] Learned Counsel Ms. Morton has raised the issue of a failure by the Petitioner to prove irretrievable breakdown of the marriage because the evidence represented in the Petition is not grave in nature. In my respectful opinion, this is an issue for the Court to determine at the hearing of this matter and Counsel's submission to the Court is obviously misguided and misplaced. I will say no more on this issue.

[62] Before I conclude, I must caution that nothing in this Judgment must be taken as giving any latitude to slipshod and inefficient practices emanating from lawyers offices.

Conclusion

[63] In summary therefore, I am satisfied on the totality of the evidence and the circumstances in the case that;

1. The jurisdiction of Saint Kitts and Nevis is the correct Forum for this case and the forum with which this action has the most real and substantial connection and the Court will not decline jurisdiction in the matter.
2. Secondly the Respondent's application for a Stay of proceedings to facilitate the initiation of Divorce and all matters ancillary thereto in India is hereby dismissed.
3. The Respondent's application for the Petition filed on the 6th November 2014 to be struck out is hereby dismissed for reasons already given.
4. The Petition for Divorce is to take its normal course.
5. Cost to the Petitioner in the sum of $1500.

Lorraine Williams

High Court Judge.