

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.25 OF 2015**

Mrs. Savia Torres,
33 years of age
Daughter of Baptista Celeste Torres
Residing at S-4, B-1,
Kamat Plaza, St. Inez, Panaji-Goa.

.... Appellant

V/s

Mr. Leslie Trodoro Saldanha
40 years of age
Son of Maria Anneiacao Fernandes
Residing at House No.1/2,
St. Francis Vaddo,
St. Estevam Goa 403 106.

....Respondent

Mr. V. Menezes, Advocate for the Appellant.
Mr. Rohit Bras De Sa, Advocate for the Respondent.

CORAM : K.L. WADANE, J.

Reserved on : 17th November, 2015

Pronounced on : 27th November, 2015

JUDGMENT :

Heard. Admit. Learned Counsel appearing for the respondent waives service. Heard forthwith with the consent of the learned Counsel.

2. This appeal is preferred by the appellant against the judgment and order passed by the Senior Civil Judge, 'A' Court, Panaji in Matrimonial Petition No.54/2012/A dated 31/10/2014, by which the appellant seeking

divorce from the respondent is dismissed. Therefore, the present appeal.

3. The brief facts of the case may be stated as follows:

The appellant is legally wedded wife of the respondent. Their marriage took place at Panaji on 22/12/2010 and it was registered in the office of the Civil Registrar of Panaji under registration no.31/11 of the year 2011. The appellant is serving as Assistant Professor of Chemistry in Carmel College at Nuvem. The respondent is serving as an Accounts Teacher at Dubai.

4. It is contended by the appellant that the respondent is not performing his matrimonial obligations. At the time of settlement of the marriage the respondent represented the appellant that he would search for the job for the appellant at Dubai. After the marriage, the respondent went to Dubai and was/is residing in a bachelor's flat. Therefore, according to the appellant it is difficult for her to go to Dubai and reside with the respondent and, as such, non-performance of the conjugal rights and duties of the spouses amounts to ill treatment and, therefore, the appellant sought divorce on the ground of ill treatment as well as other grounds.

5. The contentions of the appellant are denied by the respondent. He also filed a counter claim claiming divorce from the appellant on the ground that the appellant herself abandoned the society of the respondent and started to reside with her parents.

6. In support of their respective pleadings the appellant as well as respondent have adduced their oral evidence which is in the line of their contention in the petition as well as written statement.

7. Considering the pleadings of the parties, evidence on record and upon hearing both the sides the following point arises for my determination:

Point for determination	Finding
(i) Whether the appellant is entitled to have a divorce from the respondent on the ground of the ill treatment?	Affirmative
(ii) What order?	Appeal is allowed.

8. Mr. V. Menezes, the learned Counsel appearing for the appellant has argued that the respondent is residing at Dubai, having permanent job there. The respondent is residing in a bachelor's flat and therefore

there is no separate house for the respondent to reside with the appellant. According to Mr. Menezes, the learned Counsel the non-performance of the conjugal rights for a long period amounts to an ill treatment to the appellant. In support of his contentions, the learned Counsel has relied on the decision of the Hon'ble Supreme Court in the case of *A. Jayachandra V/s. Aneel Kaur* reported in the case of (2005) 2 SCC 22.

9. Mr. Rohit Bras De Sa, the learned Counsel appearing for the respondent has no objection to grant the divorce as prayed for.

10. I have gone through the reasons recorded by the learned Trial Court from which it is seen that the Trial Court has observed that the appellant has failed to make out any ground for the divorce as contemplated under Article 4 of Law of Divorce. But on perusal of the various grounds mentioned in Article 4, it reveals that the party who seeks divorce in a contested petition can seek the divorce on the ground no.4 i.e. ill treatment or a serious injuries. From the pleadings and evidence on record, it appears that the respondent is unable to take the appellant to Dubai and reside with her due to nonavailability of the accommodation at Dubai. Therefore, in my opinion the non-

performance of a conjugal right for a considerable period amounts to an ill treatment to the appellant. Apart from the above aspect, it appears from the record that the respondent had made certain remarks on the conduct of the appellant. Not only this, the respondent has made certain comments on the appellant regarding her character. Thus, from the record, it appears that the conduct of the respondent constitute the ill treatment to the appellant. The ill treatment may be physical as well as mental. The mental ill treatment is a conduct that makes another person suffer but does not involve physical assault. So the evidence adduced by the appellant is sufficient to hold that there was ill treatment at the hands of the respondent by way of his conduct, attitude and false representation so also due to non-performance of conjugal rights for a long time.

11. In such circumstances, the Trial Court has taken the limited meaning of the word “ill treatment” and, therefore, held that there was no ground established by the appellant to grant divorce. For the reasons stated above, the evidence available on record is sufficient to hold that respondent ill treated the appellant and, therefore, she is entitled for grant of divorce on the ground no.4 at Article 4 of Law of Divorce.

12. Th judgment and order of the Trial Court is hereby set aside and

the marriage between the parties held on 22/12/2010 before the Civil Registrar is hereby dissolved. Point for determination is answered in the affirmative. The appeal is allowed.

K.L. WADANE, J.

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