

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 540 OF 2016

MS. ZARINA CHRISTALINA VAZ. ... Petitioner
Versus
STATE OF GOA, THROUGH THE CHIEF
SECRETARY STATE OF GOA AND 2 ORS. ... Respondent

Mr. Vivek Angelo Rodrigues, Advocate for the Petitioner.
Mr. Pravin Faldessai, Addl. Government Advocate for the
Respondents.

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 9th June, 2016

P.C.

Heard Shri Vivek Rodrigues, learned Counsel appearing for the
Petitioner and Shri Faldessai, learned Addl. Government Advocate
appearing for the Respondents.

2. Upon hearing the learned Counsel, the main contention of the
Petitioner is that the restrictions imposed under Article 15 and Article
55 of the Law of Divorce, as in force in the State of Goa, putting a
ban on the wife to re-marry for a period of one year after a Decree of
Divorce is unconstitutional and unreasonable as, according to him, as
far as the husband is concerned, he can marry within six months
whereas the wife can re-marry only after a period of one year from
the date of the Decree. The learned Counsel, as such points out that
the Petition deserves consideration to consider the constitutional

validity or otherwise of such provisions in the law of Divorce considering the change of times and the modern technology.

3. Mr. Faldessai, learned Government Advocate appearing for the Respondents, submits that as far as the Petitioner is concerned, the Petitioner satisfies the exception carved out under Article 55 of the Law of Divorce which provides that in cases in which there is desertion, etc., such bar to re-marry would not apply. Article 55 of the Law of Divorce, paragraph (1), clearly provides that the provisions imposing a restriction to contract a new marriage will not operate and remarriage is immediately possible when the divorce is granted on any grounds as specified therein. The grounds contemplated, inter alia, are when there is complete abandonment of conjugal domicile or absence where nothing has been heard for a period of not less than 4 years; or de facto separation, freely consented for 10 consecutive years. This clearly shows that exception can be availed off when there is abandonment or separation from the conjugal domicile for different periods of three years and above. In the present case, on perusal of the Judgment passed in Matrimonial Petition No.71/2012/B, decreeing the suit for divorce, there is a specific finding that the petitioner last stayed at the matrimonial house upto the year 2007 and that the petitioner is residing permanently at Mercas, Goa since the year 2008. This finding of fact clearly shows that the purpose for which the restrictions have been imposed is duly satisfied in the present case.

This aspect has not been disputed by the respondent. Consequently, we find that the petitioner is not subject to the restriction to remarry as provided in Article 55 of the Law of Divorce.

4. In view of the above, as the petitioner comes within the exception to the bar to remarry in terms of Article 55 of the Law of Divorce, the question of examining the broader issue raised by the petitioner in the present petition with regard to the constitutional validity of such restriction would become merely academic.

5. With the above observations, the petition stands disposed of. All contentions of the parties are left open.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

arp/*