

IN THE HIGH COURT OF BOMBAY AT GOA

Misc. Civil Application (Main) No.730 OF 2015

Ms. Samira Ibrahim Shah,
Daughter of Nazurullamia Patait,
Aged 31 years, occupation Housewife,
Residing at Flat No.F2,
"Shivneri Complex", Housing board,
Gogol, Margao, Salcete, Goa.

.... Petitioner

V e r s u s

1. Mr. Ibrahim Shah,
Son of Usman Shan,
Aged 33 years, occupation service,
Permanent resident of H. No.181,
Near Forest Training School,
Ward No.5, Valpoi, Sattari,
Goa 403 506.

2. The Civil Registrar cum
Sub Registrar of Salcete,
Office of the Civil Registrar,
Cum Sub Registrar of Salcete,
Margao, Goa.

..... Respondents

(All the above addresses are
registered addresses for the
purpose of service)

Petitioner in person.

Shri S. N. Joshi with Ms. S. Shetye, Advocates for the
Respondent No.1.

Shri A. Gomes Pereira, Additional Government Advocate for
Respondent no.2.

CORAM: C. V. BHADANG, J.
DATE: 20TH OCTOBER, 2016.

ORAL ORDER:

Apparently a simple application under Article 1101 of the Portuguese Civil Code, 1867 for confirmation of a decree of dissolution of marriage has been seriously contested on behalf of the respondent no.1. I have heard the petitioner in person and Shri Joshi, the learned counsel for the respondent no.1. I have also heard the learned Additional Government Advocate for the respondent no.2.

3. The petitioner and the respondent no.1 both are Indian Nationals and permanent residents of Goa and were married in Goa and their marriage is registered in the Office of the Civil Registrar of Salcete under entry No.809 of 2009 on 16/4/2009. The first respondent was then employed in Dubai UAE. After marriage the respondent no.1 was in Goa for about a month and then left for Dubai for work. The petitioner stayed back with her in laws in Valpoi. According to the petitioner she was subjected to harassment. On

6/12/2009, the petitioner went to Dubai to join the respondent no.1. The petitioner was also working there. Subsequently disputes and differences arose between the parties. The petitioner returned to Goa somewhere in May 2011 and gave birth to a girl child, Aleena on 22/8/2011. It appears that after the birth of the child, the petitioner again took up employment in Dubai in the same company.

4. It appears that the respondent no.1 approached the "Personal/Status (Muslims)" Court in Dubai for restitution of the conjugal rights in which the present petitioner raised a counter claim for dissolution of marriage on the ground of ill-treatment. It appears that as per the procedure applicable in Dubai the matter was referred to Arbitrator who decided to separate the petitioner and the respondent no.1 with "one irrevocable divorce without a compensation" and to reject the request of the petitioner to receive alimony for the preceding period. The Personal Status Court in Dubai by a judgment and order dated 30/10/2014 ruled as under:

First in the Cross-Claim:

1. To enforce the decision of both

arbitrators to separate Cross-claim (Samira Ibrahim Usman Shah) from Cross-Defendant (Ibrahim Usman Shah Shah) with one irrevocable divorce, without a compensation, and to reject her request to receive an alimony for the preceding period. Accordingly, Cross-Claimant shall count her waiting period from the date of the irrevocable divorce.

2. To approve the Cross-Claimant's request to take her daughter (Aleena Shah) to her custody and to obligate Cross-Defendants to deliver the same.

3. To obligate Cross -Defendant to pay a Child Support, equal to AED (1200) monthly, for Cross-Claimant so as to fulfill the whole needs of the daughter, including the costs of housing, as of the date of taking the daughter into her custody.

4. To obligate Cross-Defendant to pay all charges, expenses and attorney fees.

Second: In the Original Claim:

To reject the claim and to obligate Claimant to pay all charges, expenses and attorney fees."

5. The original claim referred therein is of the

respondent no.1, while the cross claim is of the petitioner for dissolution of marriage.

6. It appears that the respondent no.1 challenged the said decision in Appeal No.800/2014 before the Appellate Court (Personal Status and Inheritance) in which a hearing was held on 22/1/2015. The Appellate Court by a judgment and order dated 22/1/2015 has rejected the appeal directing the respondent no.1 to pay all the 'expenses and remunerations'.

7. The present petition is filed by the petitioner under Article 1101 of the Code for confirmation and ratification of the said Decree.

8. The respondent no.1 has filed a reply. It is submitted that the parties are governed by the Family Laws as applicable to the State of Goa. Neither Muslim Personal law nor the Shariat law is applicable here, as the parties has not accepted the jurisdiction of the Court in matrimonial dispute. It is contended that the judgment is in violation of

the principles of natural justice. UAE is not notified as a reciprocating country as per the provisions of Section 44A of the Code of Civil Procedure. It is also contended that the order of the Dubai Court can at the most be considered as evidence in support of the petition for divorce being Matrimonial Petition No.8/2016 filed by the respondent no.1 and which is pending before the learned Civil Judge Senior Division at Margao. It is contended that the impugned order cannot be confirmed in view of the provisions of section 13 of C.P.C. and the application is liable to be rejected.

9. The petitioner has filed a rejoinder denying the contentions raised in the reply. She has produced a copy of the Agreement between the Republic of India and The United Arab Emirates in order to show that UAE is a reciprocating country. It is submitted that the respondent no.1 is also seeking dissolution of the marriage and as such cannot justifiably oppose the petition for confirmation.

10. I have carefully considered the circumstances and the submission made.

11. The present petition is filed under Article 1101 of the Portuguese Civil Code, which falls in Chapter 13 pertaining to Revision of Foreign judgments. Article 1102 provides for requisites necessary for confirmation. It has been held by this Court in the case of **Saturanino Epifanio Ralph Barros Vs. Tina Noronha Barros and anr** (1997) (2) Goa L.T. 343 that Article 1102 stands repealed on coming into force of the Code of Civil Procedure 1908 as Article 1102 corresponds to Section 13 of the C.P.C. It has been held that section 13 lays down substantive law and not mere procedure. It was not disputed on behalf of the respondent no.1 that in such circumstances the matter would be governed by provisions of section 13 of C.P.C., which read as under:

13. When foreign judgment not conclusive.

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

(a) where it has not been pronounced by

- a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of ¹[India] in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in India.”

12. Going by the various requirements of section 13 (a) to (f) it cannot be accepted that the judgment which is sought to be confirmed is not pronounced by the Court of competent jurisdiction. In fact it was the respondent no.1 who had initially approached the Personal Status Court in UAE for restoration of conjugal rights. A perusal of the summary of the judgment of the Court of First Instance and the judgment of the Appellate Court (of which a translation is produced on record at pages 25 to 35) it also cannot be accepted that it was not given on merits. A perusal of the Appellate Court judgment also does not show that there was any ground about breach of principles of natural justice

raised in the appeal. In fact the Court of First instance had passed the judgment in a petition filed by the respondent no.1 in which the present petitioner had raised a counter claim. It is nobody's case that the judgment has been obtained by fraud.

13. Shri Joshi, the learned counsel appearing for respondent no.1 in all fairness does not dispute that the ground of dissolution of marriage is also a ground available as per law applicable in Goa. He also fairly submits that the respondent no.1 has filed a petition for dissolution of marriage against the petitioner which is pending before the competent Court at Margao and thus he has no serious objection for confirmation of the decree to the extent it pertains to dissolution of marriage. The contention is that in addition to the ground of relief of dissolution of marriage the order also grants maintenance to the child at the rate of Rs.1200/- AED which according to the respondent no.1 is equivalent to Rs.20,000/- per month as per the prevailing conversion rate.

I do not find that on such a ground the

confirmation/ratification can be refused. In this regard it is significant to note that the respondent no.1 had filed a Portuguese Civil Misc. Application No.112/2013/I before the Additional Senior Civil Judge at Margao in which the following order is passed on 12/1/2016:

Order:

The respondent no.1 is allowed to have custody of the child provided that she does not leave India. The restriction on the travel of respondent no.1 outside India is subject to the following conditions:

- (i) The applicant shall deposit on or before the 15th day of every month a sum of Rs.15,000/- in the account of respondent no.1 in State Bank of India in account no.20316212169.
- (ii) The first payment should be made by the 15th February, 2016.
- (iii) After every 12 months the amount payable will be increased by 10 percent i.e. Rs.1500/-.
- (iv) The maintenance shall be paid till the child attains age of 18 years.
- (v) If the maintenance is regularly paid and the respondent no.1 leaves India she should hand over custody of the child to the applicant.

(vi) If the maintenance is regularly paid and the applicant and the respondent no.1 leave India then the custody of the child should be handed over to respondent no.2.

(vii) If two consecutive defaults are made in the payment of maintenance within the above mentioned time respondent no.1 will be at liberty to take her child and go abroad for work.

This is not an order for maintenance. These are conditions which are placed to fulfill the legitimate aspiration of the applicant to see that his daughter grows up within the territory of India. Parties shall bear their own costs.

14. This has not been challenged by the respondent no.1.

15. It is not disputed on behalf of the respondent no.1 that as long the as the child is in India and is not taken abroad the respondent no.1 is liable to pay sum of Rs.15,000/- towards the maintenance of the child (Respondent no.1 in Portuguese Civil Misc. Appln. No.112/2013/1). If that be so even otherwise as per the

order passed by the competent Court at Margao, the respondent no.1 has been held to be liable to pay a sum of Rs.15,000/- per month towards the maintenance of the child subject to periodical revision as indicated in the order. Thus the respondent no.1 cannot conceivably rely on the order granting maintenance to the child while opposing the confirmation of the decree. In any event the decree primarily concerns the aspect of dissolution of marriage between the petitioner and the respondent no.1.

16. The learned Addl. Government Advocate does not dispute that the order sought to be confirmed is passed by a competent Court.

17. In such circumstances, the petition is allowed in terms of prayer clause (a) and (b), with no order as to costs.

C. V. BHADANG, J.

Ap/-