

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 280 OF 2017**

Mr. Nakul M. Dhawasker,
Son of late Shri Mukund Dhawasker,
40 years of age, Occupation Service,
Indian National and R/o H. NO.220,
Parvati Nagar, Near Adhar Hospital,
Sarvan, Bicholim, Goa.

..... Petitioner

V e r s u s

Mrs. Sharmila Nakul Dawasker,
Daughter of Shri Shrikant Gauns,
34 years of age, housewife,
Indian National and R/at H. No.455,
Ambeshi Wada, Amona-Goa,
Taluka of Bicholim, Goa.

..... Respondent.

Shri Deepak Goankar, Advocate for the Petitioners.

Shri M. Amonkar, Advocate for the Respondents.

CORAM: M. S. SONAK, J.

DATE: 27th April, 2017.

ORAL JUDGMENT:

Heard Mr. Deepak Goankar, the learned counsel for the petitioner and Mr. Mahesh Amonkar, the learned counsel for the respondent.

2. Rule. With the consent of and at the request of the learned counsel for the parties rule is made returnable forthwith.

3. The challenge in this petition is to the orders dated 19/10/2016 and 2/12/2016, in terms of which the learned trial Judge has dismissed the suit instituted by the respondent and the counter claim instituted by the petitioner in the context of the matrimonial dispute between them by resorting to the provisions in Article 18 of the Law of Divorce as applicable in the State of Goa.

4. The respondent/wife instituted a suit for divorce under Article 4(4) on 4/10/2013 inter alia, on the ground of ill treatment by the petitioner. The petitioner on 4/12/2013 filed his written statement denying the allegations of ill treatment but raised a counter claim seeking divorce, inter alia on the ground that the respondent has abandoned the matrimonial home and adulteress conduct. The respondent filed a written statement to the counter claim on 12/2/2014. Based upon the pleadings of the parties the learned trial judge cast issues on 4/7/2016. On 22/8/2016 the respondent no.1 filed her affidavit in lieu of examination in chief and the matter was posted on 19/10/2016 for deposition. On 19/10/2016, the learned trial judge made the following order :

Order

“ Since both the parties are in agreement of getting divorce parties/petitioner to follow Article 18 of Family Laws.”

5. Thereafter, when the matter was taken up on the next date i.e

2/12/2016, the learned trial Judge has made the following order:

Order

Till no steps are taken. The petition as well as Counter Claim is hit by Article 18 of Family Laws. Hence stands dismissed, the petition as well as Counter Claim.

6. Whatever the disputes between the parties, the learned counsel for both the petitioner as well as the respondent no.1 are *ad idem* that the impugned orders are clearly in excess of jurisdiction and deserve to be set aside. In fact, Mr. Amonkar, the learned counsel for the respondent no.1 points out that the respondent no.1 has also instituted a Regular Civil Appeal to impugn the order dated 2/12/2016 before the District Judge at Mapusa. However, since, there was some delay in institution of the appeal, the same is accompanied by an application seeking condonation of delay. The application is numbered as Civil Misc. Application No.29/2017 in the Court of Adhoc District Judge-I FTC, Mapusa. Since, the delay is yet to be condoned, the appeal remains to be numbered.

7. Article 18, referred to by the learned trial Judge reads thus:

The suit of divorce shall not be decreed on the basis of admission by the defendant but the plaintiff may withdraw the suit up to the stage of judgment in the trial Court; and the spouses may always reconcile as long

as the judgment has to become final, whatever may be the stage and the Court where it has reached.

Sole paragraph. For the purpose of the last part of this Article, a record of the reconciliation shall be drawn up and signed by both spouses or by their attorneys, holding special and express powers, which record shall be sanctioned by the judgment of trial Court or Appellate Court.

8. In this case, merely because both the parties seek to obtain a divorce, it cannot be said that there are admissions as contemplated by Article 18. Besides, Article 18 provides that a suit of divorce shall not be decreed on the basis of admission by the defendant but, the plaintiff is given the option to withdraw the suit up to the stage of the judgment in the trial Court and the spouses may always reconcile as long as the judgment has not become final, whatever may be the stage to which the proceedings may have reached. In order to facilitate reconciliation, the sole paragraph to Article 18 provides that the record of conciliation shall be drawn. For the purpose of the last part of this Article, a record of the reconciliation shall be drawn up and signed by both spouses or by their attorneys, holding special and express powers, which record shall be sanctioned by the judgment of trial Court or Appellate Court.

9. It is quite clear that the provisions of Article 18 were not at all

attracted to the circumstances of this case. The learned Trial Judge was not justified in invoking the provisions of Article 18 and on that basis, insisting that the parties either withdraw their proceedings and reconcile or, thereafter, to dismiss the suit itself for non compliance of the order dated 19/10/2016. The learned counsel for the parties are right that this is clearly a case of gross misreading of the provisions contained in Article 18 as aforesaid. The impugned orders are clearly in excess of jurisdiction or in any case, it is clear case of failure to exercise jurisdiction and proceed with the suit and the counter claim in accordance with law.

10. Taking into consideration the extraordinary circumstances, this is a fit case for exercise of the extraordinary jurisdiction under Article 227 of the Constitution of India., rather, go into the issue as to whether the impugned orders were appealable or not. In any case, the respondent, has already preferred appeal to question the impugned order dated 2/12/2016. Since, the impugned orders dated 19/10/2016 and 2/12/2016 are required to be set aside in this proceedings itself, the application for condonation of delay and the appeal instituted by the respondent can also be disposed off, since, this precisely is the relief which even the respondent seeks in the application/appeal instituted by her before the Adhoc District Judge at Mapusa.

11. Rule is accordingly made absolute in the terms of prayer clause

(a) It is clarified that even the respondent shall have the benefit of this order.

On this basis the proceedings taken out by the respondent by way of Civil Mis. Application no.29/2017 and accompanying appeal before the Adhoc District Judge-I, FTC, Mapusa are also disposed off. The parties to produce authenticated copy of this order before the learned Adhoc District Judge and obtain formal orders for disposal.

12. The parties to appear before the learned trial Judge on 5/5/2017 at 10a.m. and produce authenticated copy of this order, so that the suit and the counter claim can proceed in accordance with law.

M. S. SONAK , J.

Ap/