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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PARSI SUIT NO. 14 OF 2011
WITH
CHAMBER SUMMONS NO. 1 OF 2012
AND
NOTICE OF MOTION NO. 3 OF 2017
AND
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 345 OF 2013**

Sohrab Anklesaria ...Plaintiff
Versus
Firoza Anklesaria ...Defendant

Ms Sanober Nanavati, i/b Mulla & Mulla & Craigie Blunt & Caroe,
for the Plaintiff.
Mr Taubon Irani, i/b Amit Karkhanis, for the Defendant.

CORAM: G.S. PATEL, J
DATED: 9th May 2017

PC:-

1. The trial in this Parsi Matrimonial Suit commenced before me in 2014. The Plaintiff-husband Sohrab led evidence of five witnesses: himself, his brother and his mother; and an additional two witnesses were examined on a summons in regard to certain

documents. The Defendant-Wife Firoza led no evidence at all, not even her own. That was always her prerogative.

2. The entire trial was conducted before delegates or a jury as required by the Parsi Marriage & Divorce Act 1936. Arguments began on 23rd August 2016. The arguments could not be completed at a single stretch. They were resumed later in April 2017 and finally concluded on 4th May 2017.

3. On that day, I briefly addressed the delegates in the form of a summation, instructions or summing up. This was in the presence of the Advocates on both sides, Ms Nanavati for the Plaintiff and Ms Irani for the Defendant. The Plaintiff was present in Court on that day. However, as the Defendant could not remain present due to other personal engagements, I requested the delegates to return to Court today, i.e., 9th May 2017 with their decision. In any case, on 4th May 2017 it was already 5.00 p.m. by the time I concluded my summation.

4. The delegates today before me confirm that they have found in favour of the Plaintiff to grant him a divorce. The decision is not unanimous. It is by a majority of 3:1.

5. Under Section 46 of the Parsi Marriage & Divorce Act 1936 the decision on facts is the decision of the majority of the delegates before whom the case is tried. It is only where the delegates are equally divided in opinion that the presiding Judge can make a decision.

6. The prayers in the Suit are these:

"(a) In view of the true facts mentioned in the Application and the submitted documents, an order and Jaypatra be passed in the interest of justice, for dissolving the marriage solemnized between the Plaintiff and the Defendant on 28th December 1995 at Indore.

(a)(i) that the Plaintiff be granted divorce under the section of the Parsi Marriage and Divorce Act.

(a)(ii) that the Plaintiff be granted custody of both the minor children viz. Khushnam aged approx. 15 years and Rushad aged approx. 10 years.

(b) The costly ornaments of gold and silver, ornaments of diamonds and pearls and other costly goods, which were removed by the Defendant from the Joint Locker of both the parties at Bank of Baroda, Station Road, Ratlam, and kept the same with her mother-father, all these ornaments etc. be given to the Plaintiff from the Defendant and the Plaintiff reserves his right to submit the same in detailed particulars in Appendix.

(c) If, the Defendant raises objection in respect of the present proceedings, then in that event all the Court expenses be provided to the Plaintiff from the Defendant.

(d) In view of the facts and circumstances of the case, this Hon'ble Court may grant any other and further reliefs which this Hon'ble Court may deem fit and proper."

7. The verdict of the delegates is in terms of prayer clauses (a) and (a-i). The prayer for custody has not been pressed. The question

of return of ornaments etc is not a decision the delegates are required to take.

8. During the course of my summation, and I say this now only for the record, I pointed out to the delegates the ambit and scope in law of the concept of cruelty as a matrimonial wrong. I told them that this does not admit of any rigid or precise definition. It varies from case to case. Regard must be had to the totality of factors, the parties' background, their cultural upbringing and many other factors. At the broadest level, cruelty as a matrimonial wrong speaks of a consistent pattern of conduct that makes it unreasonable to expect the party alleging cruelty to continue to live with the other party. There are peculiarities in this case, on facts, some of which I pointed out, including that the parties have been apart for a considerable period of time already and that while there are counter allegations by the Defendant, she herself has sought no relief in a matrimonial proceeding such as herself seeking divorce, restitution of conjugal rights etc. I also instructed the delegates to carefully consider all the material on record because, as Ms Nanavati and Ms Irani for the Plaintiff and Defendant so very ably demonstrated, the same set of facts can have quite different implications depending on the perspective. I touched upon some factual aspects, advising caution. For instance, one of the grounds of cruelty cited by Ms Nanavati was of the Defendant's improper or inappropriate conduct with another man. Ms Irani was at pains to point out that there was no case made out on adultery, and the third party in question had not even been joined or given an opportunity to defend himself or his own reputation. Ms Nanavati's response was that the Plaintiff was not in fact seeking divorce on the grounds of adultery; that the

Defendant could always have led her own evidence and that of the other party to show there was nothing amiss; and that her only attempt was to show, in the context of the parties' social milieu, that the Defendant's conduct was of such a nature as to have constituted 'cruelty' in the meaning of the law. Ms Irani submitted that even if that were so, admittedly the parties cohabited thereafter, and the wrong, if any, must be deemed to have been condoned and could not survive to the Plaintiff as a ground for divorce. I set out the rival submissions for the delegates on this (and several other) factual matters, linking them to the position in law, and advised the delegates to be circumspect and cautious. They should not, I said, return a verdict on the basis of whether or not they believed anything survived in the marriage, or whether the parties should be divorced. I instructed them to consider whether they believed the Plaintiff had made out a case that he was entitled to divorce on the grounds of cruelty.

9. I have only broadly indicated the overall frame of my summing up and instructions to the jury, and this is by no means a verbatim reproduction of what I said to them. Even this much, I find, is not common in decisions in this branch of the law. Most decisions simply record the verdict returned.

10. My summing up was in open Court. The delegates have had time to consider the matters since.

11. Today the delegates sought leave to put a question to both Ms Irani and to Firoza herself. Both of them in Court responded to the

delegates. Thereafter, the delegates sought a word with me in the absence of all others. Their only question, which I see no harm in now disclosing, was whether they were required to be unanimous in their final decision. I pointed out that, according to the statute, the decision was not required to be unanimous but by majority. It was after this clarification they have rendered their verdict. The delegates emphasized, and requested me to note, which I now do, that they came to their decision after a great deal of reflection and much internal discussion.

12. My sincere thanks to the delegates for their untiring efforts in this matter and their contribution and service to the community to which they belong.

13. The result, therefore, is that the Suit is decreed in terms of prayer clauses (a) and (a-i). In the facts and circumstances of the case, there will be no order as to costs.

14. As to prayer clause (b) for return of ornaments etc, Ms Nanavati on instructions states that she will press her application, if any, as part of the companion proceedings under the Domestic Violence Act. There is a separate Criminal Revision Application that is assigned to me and which I have to hear between the same parties. I will be taking that up at the Advocates' earliest convenience.

15. The delegates are discharged. Once again my thanks to them.

16. It only remains for me to thank Ms Nanavati and Ms Irani for their invaluable assistance in this matter. The trial itself took nearly three years, though sporadically, and the resultant record is considerable, running into six volumes and nearly 3,000 pages. The material has been extremely well-organized, and on both sides the arguments were focused and accurately collated. Without the assistance of Ms Nanavati and Ms Irani, the task of the delegates and the Court would have been, in my view, infinitely more difficult.

17. Decree to be drawn up accordingly.

18. Ms Irani requests for a stay of the decision. She says that this is on a point of law. I am unable to see what this means because under Section 46 the decision of the delegates is to be on facts. It is final. A decision on facts justifying a divorce is all that the delegates have returned. There is no concept in this Act of a judicial decision on law overriding the jury's decision on facts. The Act does not allow for a decision of a jury to be over-turned by a Court. A Court can render a decision only when the delegates are equally divided.

19. It is however true that an Appeal, albeit on limited grounds, is available to a party and that Appeal must be filed within three months. The grounds of Appeal are set out in Section 47(1)(a). I do not believe that I cannot grant the kind of stay that Ms Irani seeks. I however direct that the decree shall not be drawn up for three months from today. The "stay" that Ms Irani seeks is one I believe she will have to obtain as an order of the Appellate Court.

20. However, in addition, the Defendant is not to be asked to vacate Flat No. A-62 that she is currently occupying with the parties' children. Pending the decision in the separate DV proceedings all existing payments being made to the Defendant are to continue. Further, the ownership status of Flat No. A62 is not to be changed or altered in any way without prior leave of the Court obtained after at least two weeks' prior notice to Ms Irani for the Defendant.

21. In view of this order in regard to the flat, Notice of Motion No. 3 of 2017 is infructuous and is allowed to be withdrawn with liberty to file a fresh Notice of Motion, if necessary, and keeping all rights and contentions open.

CRIMINAL REVISION APPLICATION NO. 345 OF 2013

22. This is an Application filed by the husband against two orders. The Magistrate exercising powers under the Protection of Women from Domestic Violence Act 2005 made an order of maintenance in favour of the wife in the amount of Rs. 50,000/- per month. The order was confirmed by the Sessions Court. The Revision is against that order.

23. Having regard to the circumstances of the case, I have made it clear to Ms Nanavati for the Petitioner that I will not hear her on his behalf unless the orders of the lower Courts are first complied with and the entire amount is deposited in Court. If no amount is deposited, I will dismiss the Revision Application *in limine*. Upon a

deposit being made I will consider a withdrawal a whole or part of that amount with or without security after hearing parties.

24. Ms Nanavati seeks time to take instructions. List the matter on 29th May 2017.

(G. S. PATEL, J.)