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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION (MAIN) NO. 2 OF 2022

RENETTA RODRIGUES

... PETITIONER

VS

LEVINO MARIANO FERNANDES & ANR ... RESPONDENTS

Ms. Susan Linhares, Advocate for the Petitioner.

Mr. Geetesh Shetye, Additional Government Advocate for
Respondent No. 2.

CORAM: G.S. KULKARNI, J.

DATED: 8 SEPTEMBER 2022

ORAL ORDER.

1. This is an application under Article 1101 of the Portuguese Code of Civil Procedure, 1939 (for short, PCCP) praying for confirmation of the judgment and decree dated 23.02.2021 (Decree Nisi) issued by the Family Court at Birmingham, United Kingdom, whereby the divorce Petition as filed by the petitioner against the respondent no. 1 on the ground that the respondent no. 1 had treated the petitioner with cruelty has been decreed in terms of such orders. The said decree was thereafter made absolute by an order dated 07.04.2021. The Decree Nisi and the order dated 07.04.2021 are annexed to the present application as Exhibit-C and Exhibit-B respectively.

2. It is the case of the petitioner that the petitioner got married to respondent no. 1 in Goa on 13.01.2017. The certificate of registration of marriage issued by the Civil Registrar dated 24.01.2017 is annexed at Exhibit-A in original. It is the

petitioner's case that after the marriage, the petitioner along with respondent no.1 migrated to the United Kingdom, where they resided during the period 01.06.2017 to 30.06.2017. During such period, there were serious issues of compatibility between them. It is the petitioner's case that the petitioner was treated with cruelty by respondent no. 1. Consequently, the petitioner instituted divorce proceedings before the Family Court sitting at the Courts & Tribunals Service Centre, HM Courts & Tribunals Service sitting at Birmingham (for short, the U.K. Court) praying for a decree of divorce. The proceedings before such Court proceeded ex-parte as respondent no. 1 did not appear in the said proceedings. Ultimately, the learned Judge proceeded ex-parte and decreed the petitioner's divorce petition by issuing a Decree Nisi dated 23.02.2021. In granting such decree, the learned Judge categorically observed that *"the respondent has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent"*. The learned Judge held that the marriage solemnized between the parties on 13.01.2017 at Civil Registration office of Tiswadi, Panaji, Goa, has broken down irretrievably and accordingly, granted a decree of divorce in favour of the petitioner as per the laws in U.K. The Court also ordered that the petitioner could apply for decree to be made absolute after 07.04.2021. The petitioner, accordingly, had taken steps for the decree to be made absolute. An order making the decree absolute, came to be granted by the U.K. Court on 07.04.2021.

3. On the above premise, the petitioner has approached this Court praying that the decree dated 07.04.2021 passed by the U.K. Family Court [sitting at the Courts & Tribunals Service Centre, U.K.] in Case No. ZZ20D75707 be finalized as also, for a further relief that a direction be issued to the Civil Registrar of Tiswadi, Panaji, Goa, for cancellation of Entry No. 62/2017 in the Marriage Registration Book for the year 2017.

4. When this Petition was listed before this Court on 02.03.2022, notice was issued to the respondent. It is seen from the record that steps have been taken by the petitioner to serve respondent no. 1. An affidavit of service dated 24.05.2022 has been placed on record. Respondent no. 1 despite service has not appeared nor is represented. It appears that respondent no. 1 is not interested to contest the present proceedings. In fact, even before the U.K. Court, he was not interested to contest the proceedings.

5. In the circumstances, the adjudication of the present proceedings cannot be delayed any further. Accordingly, I have heard learned Counsel for the petitioner and with her assistance, I have perused the documents as placed on record.

6. At the outset, the legal position in the context in hand is required to be noted. Firstly, the position under the Portuguese Code of Civil Procedure, 1939 can be considered. Insofar as the applicability of the PCCP is concerned, it is required to be noted that Chapter XIII of the PCCP provides for revision of foreign judgments. The relevant Articles in the context of the present proceedings are; (i) Article 1100 which provides that no judgment on private rights, passed by a Foreign Court or Foreign Arbitrators shall have effect regardless of the nationality of the parties, without the foreign judgment having being revised and confirmed; (ii) Article 1101 (under which the present proceedings have been filed) *inter alia* provides that it shall be the jurisdiction of the High Court to hear proceedings where the person against whom the judgment is sought to be enforced is domiciled or the High Court within whose jurisdiction, the petitioner is domiciled or residing shall have jurisdiction; (iii) Article 1102 provides the jurisdiction of the High Court to entertain the proceedings for revision and confirmation of the foreign decrees. Article 1102 stipulates the necessary requirements for the enforcement of the foreign

judgment. It would be appropriate to note Articles 1101 and 1102 of the PCCP, which read thus:

ARTICLE 1101

For the purposes of Revision and Confirmation the “Relação” of the Judicial district (High Court) in which the person against whom the judgment is sought to be enforced is domiciled, shall have jurisdiction to hear the matter.

If such a person is not having either domicile or residence within Portugal, the “Relação” (High Court) within whose jurisdiction, the Petitioner is domiciled or residing shall have jurisdiction, except where the judgment is of patrimonial character and it is to be enforced against the person who has properties in Portuguese territory, because in such case Revision can be asked in any “Relação” where the property is situated.

When none of the requirements foreseen in the previous Paragraphs are satisfied, any “Relação” will have jurisdiction to entertain the matter.

ARTICLE 1102

In order that a judgment may be confirmed, it is necessary:

Clause 1: That there must be no doubt as to the authenticity of the document containing the judgment nor over the understanding of the decision.

Clause 2: That the document has become final as per the law of the country where it was passed.

Clause 3: That the judgment is passed by competent court as per rules of conflict of law as per Portuguese Law.

Clause 4: That there is no case of lis pendens or res judicata in respect of any case connected with Portuguese Court except where the Foreign Court provided the jurisdiction.

Clause 5: That the Defendant is duly summoned except where the Portuguese Law has dispensed with initial summons. If the decision was passed ex-parte, the summons has been duly served on the Defendant.

Clause 6: That the decision passed is not contrary to the principles of Portuguese public order.

Clause 7: When the decision against Portuguese subject is not contrary to the provisions under Portuguese Law when the matter ought to have been decided as per Portuguese Law according to Portuguese rules of conflict.

7. Thus, insofar as the applicability of the PCCP was concerned, the Court was required to apply the requirements of Article 1102 in considering prayers as made by the petitioner for enforcement of the foreign decree.

8. A learned Single Judge in **Dr. Roy Andre Sales de Andrade & Another Vs. State of Goa**¹ was considering a revision under Article 1102 of the PCCP. In the context of applicability of Articles 1100 and 1102 of PCCP, the Court made the following observations.

“Article 1100 of the Portuguese Civil Procedure Code, 1939 provides that no decision of private rights pronounced by foreign courts shall have efficacy or shall have effect without being revised. Article 1101 lays down that for the revision and confirmation it is competent the High Court of the

¹ 1995 SCC Online BOM 66

judicial district within which the petitioners are domiciled or residing.

Article 1102 specifies the necessary requisites for confirmation of foreign Judgments and stipulates amongst others that for the judgment being confirmed it is necessary that there should be no doubt on the authenticity of the document wherein the judgment is recorded, that the judgment had become final (res judicata) according to the law of the country where it was pronounced, that it should come from a Court competent according to the rules of conflict of jurisdiction and that it does not contain decisions contrary to the principles of the public order of the country.

In the instant case I am satisfied that the grounds on which the decree has been obtained by the petitioners do not seem to oppose the public policy in this country and that the Judgment was pronounced by a Court of competent jurisdiction. Thus, in my view, the presumption of section 41 of the Evidence Act read with sections 13 and 14 of the Civil Procedure Code is available to the petitioners. I therefore see no reason not to grant the confirmation sought for by the petitioners so much so as contended by them it is required to enable them to cancel the registration of their marriage effected in India so that the petitioners if they choose to get married again at any stage need not be charged in future for bigamy. This being the position, I do not find any reason as to why such confirmation should not be made."

9. In another case in **Saturnino Epifanio Ralph Barros Vs. Tina Noronha Barros & Another**², a learned Single Judge was considering an application for a revision filed under Article 1101 of PCCP. In such case, the Court considered the legal position in regard to the applicability of Article 1102 so as to entertain such application for revision filed under Article 1102 in the light of the introduction of the Civil Procedure Code, 1908 (for short, CPC) to the territory of Goa with effect from 15.06.1966, inasmuch as Section 13 of the Code of Civil Procedure was the substantive law on the question as to when a foreign judgment would not be conclusive. The Court considered the question whether in view of the applicability of Section 13 of the CPC whether Article 1102 of PCCP would any longer be applicable. Considering the legal position, it was held that prior to coming into force of the CPC, the substantive law on the question was certainly what was provided for in Article 1102 of PCCP. It was observed that with the coming into force of CPC and Goa, Daman and Diu (Extension of Code of Civil Procedure and Arbitration) Act, 1965 so much of any law in force in Goa, Daman and Diu, corresponding to the CPC stood repealed. It was also observed that Section 13 corresponds to Article 1101 of the PCCP. It was held that Article 1102 stood repealed on coming into force of the CPC. The Court thus held that substantive law would be Section 13 of the CPC. The relevant observations are required to be noted which read thus:

“Prior to the coming into force of the Civil Procedure Code, the substantive law on the question was certainly what was laid down in Art. 1102 of the said Code. However, with the coming into force of CPC and by virtue of Section 4(1) of the Goa, Daman and Diu (Extension of Code of Civil Procedure and Arbitration) Act, so much of any law in force in Goa, Daman and Diu as corresponds to CPC of 1908 shall stand repealed as

² 1997(2) Goa L.T.343

from the coming into force of this Act in Goa, Daman and Diu. In my opinion, Section 13 corresponds to Art. 1102 of the said Code and Art. 1102 stood repealed with the coming into force of CPC. The Apex Court has pointed out that Section 13 lays down rule of substantive law and not merely of procedure. Therefore, the law incorporated in Section 13 CPC is not merely procedural law but it deals with the substantive law on the subject. I, therefore, do not find any merit in the submission of learned Advocate for the petitioner that the substantive law which has to be applied to the case under consideration is the one prescribed under Article 1102 of the said Code. On the contrary, I hold that Art. 1102 of the said Code stood repealed with the coming into force of Section 13 of CPC.”

Thus it appears that necessarily the provisions of Section 13 of the CPC would become applicable when reliefs of the nature as sought in the present proceedings are sought.

10. Be that as it may, in a similar situation, as in the present case, a co-ordinate Bench of this Court (S.B. Shukre, J.) in **Rohan Madhuker Agni Vs. Lara Rodrigues**³ had granted a relief under Article 1102 of the PCCP, which also pertained to dissolution of marriage. The relevant observations of the Court are required to be noted, which read thus:

“4. Since the marriage was solemnized at Panaji, dissolution of the marriage would have to take place in accordance with the relevant Articles of the Portuguese Civil Code. Article 1100 lays down that no judgment concerning private rights

³ MCAM No. 793 of 2015 dt. 19.01.2016

pronounced by a foreign court or by arbitrators in foreign countries, shall be effective in Portugal, the State of Goa, unless it is reviewed and confirmed. Under Article 1101 the jurisdiction for review and confirmation is vested in the High Court. Article 1102 provides for requirements for confirmation. The requirements are:

(1) authenticity of the judgment as well as the correctness of the reasoning (2) the judgment of the Foreign Court having become res judicata according to the law of the Country; (3) the judgment being delivered by the Court of competent jurisdiction (4) the dispute between the parties being not subject to defences of 'lis pendens' or 'res-judicata' (5) the defendant having been duly summoned (6) the judgment not going contrary to the Portuguese public order; (7) the judgment having been delivered not in violation of any of the provisions of Portuguese Private Law. All these conditions as seen from the judgment of the Circuit Court of Kane County, are fulfilled in this case.

5. The respondent, though duly served, has not appeared before this Court. It is submitted by the learned counsel for the applicant that since the dissolution of marriage has taken place from out of mutual settlement between the parties, now it is unlikely that the respondent would even appear before this Court. In any case, an opportunity has been given to the respondent which she has not availed so as to oppose grant of this application.

6. In the circumstances, I have no hesitation in allowing this application. Accordingly, the

application is allowed in terms of prayer clauses “a” and “b”. The Judgment of the Circuit Court of Kane County, Illinois, dated 9/8/2011 passed in marriage of Lara Rodrigues-Agni and Rohan Madhuker Agni bearing No. 2011 D 482 is hereby ratified and confirmed and the marriage between the applicant and the respondent stands dissolved in terms of the judgment of Circuit Court of the Sixteenth Judicial District Kane County, Illinois. The registration of marriage under Entry no.665 of 1999 be cancelled.

11. Also in **Maria Antoneta Fernandes Vs. Mr. Valerian Sebastian Rodrigues⁴** a co-ordinate Bench of this Court (C.V. Bhadang, J.) considering an Application under Article 1102 of the PCCP referring to the observations as made in **Rohan Madhuker Agni** (supra), allowed the prayer of ratification of a decree of divorce granted to the applicant by the U.K. Court.

12. Now coming to the facts of the present case, as noted above, the petitioner has annexed the certificate issued by the Civil Registrar, Tiswadi, registering the marriage between the petitioner and respondent no. 1 at Exhibit-A. The Decree Nisi dated 23.02.2021 and 07.04.2021 are also annexed as Exhibit-C and Exhibit-B respectively. There is no reason to believe that the documents on record are not authentic or that there is any dispute on the correctness of the said documents. This also for the reason that respondent no. 1 could be the only person who could have responded, to raise any such dispute, however, he has chosen not to dispute the documents as placed on record. It therefore needs to be observed that the petitioner’s plea along with the documents has remained uncontroverted.

⁴ MCAM No. 645 of 2016 dt. 08.06.2017

13. A perusal of the record clearly indicates that the marriage between the petitioner and respondent no. 1 has now been dissolved as per the decree passed by the Family Courts in U.K. The ground on which the marriage has been dissolved is an acceptable ground for divorce even under the laws in India. It is also informed across the bar that respondent no.1 neither contested the original proceedings before the Courts in U.K. nor did he assail the decree even before the U.K. Courts. Thus, under the laws of U.K. the divorce decree has attained finality. All the other essentials under Article 1102 to confirm the judgment of the U.K. Court stands justified. The presumption of Section 41 of the Evidence Act read with Sections 13 and 14 of the CPC is available to the petitioner. Accordingly, the decree passed by the U.K. Court, would be required to be declared to be final and conclusive. Thus, the petitioner has become entitled to the reliefs as prayed for in the application.

14. The application is accordingly allowed in terms of prayer clauses (a) and (b), which read thus:

“(a) That the decree absolute dated 07.04.2021 passed by the Family Court sitting at the Courts & Tribunal Service Centre, U.K. in Case No. ZZ20D75707 be declared final, conclusive and confirmed.

(b) Such further orders as this Hon'ble Court deems fit including a direction to the Civil Registrar of Tiswadi, Panaji, Goa for cancellation of Entry No. 62/17 from the Marriage Registration Book for the year 2017.”

15. The learned Additional Government Advocate shall intimate the present orders to the office of the Civil Registrar so that the

necessary entry in relation to the marriage of the petitioner and respondent no. 1 is cancelled, in compliance of the present orders.

16. Disposed of. No costs.

17. Parties are directed to act on an authenticated copy of the order.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

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