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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION (MAIN) NO. 4 OF 2022

DELFINA GONSALVES

... PETITIONER

VS

FELIX GONSALVES

... RESPONDENT

Mr. Aniroodh Sardesai, Advocate for the Petitioner.

CORAM: G.S. KULKARNI, J.

DATED: 6 DECEMBER 2022

ORAL ORDER.

1. This is an application under Article 1101 of the Portuguese Code of Civil Procedure, 1939 (for short, "the PCCP") read with Section 13 of the Code of Civil Procedure, 1908 (for short, "the CPC"), praying for confirmation of the judgment and decree dated 15 December 2021 (Decree Absolute) of the Family Court sitting at the Court and Tribunal Service Centre in England. Such foreign judgment confirms and declares that the marriage of the petitioner and the respondent registered on 20 April 2004 with the office of the Civil Registrar, Ponda under entry no. 478/2004 of the marriage registration book for the year 2004, be cancelled and for an appropriate endorsement in that regard.

2. It is the case of the petitioner that the petitioner and the respondent herein are Goans by birth and originally hail from the South Goa District. The petitioner and the respondent were married to each other on 20 April 2004 under the regime of the communion of assets and as such, as per the relevant laws their marriage was registered with the office of the Civil Registrar of Ponda under entry no. 478/2004. After their marriage, the petitioner and the respondent migrated to U.K. The petitioner has contended that the petitioner's marriage with the respondent had broken down irretrievably, consequently, the petitioner and the respondent were staying separately with effect from 2 February 2015.

3. In these circumstances, on 2 August 2021, the petitioner approached the "Family Court sitting at the Court and Tribunal Service Centre in England", in proceedings praying for a divorce (Reference Number ZZ21D15726). The respondent appeared in the said proceedings and filed a reply *inter alia* stating that the respondent will let the divorce proceed as he does not intend to defend. He also agreed that the Courts of England would have jurisdiction to grant a decree of divorce. He also stated that there would be no other proceedings outside England, which according to him may be identical.

4. The Family Court sitting at the Court and Tribunal Service Centre, accordingly proceeded to adjudicate the said Petition filed by the petitioner, and by a final order (Decree Absolute) dated 15 December 2021 confirmed the Decree Nisi dated 19 October 2021, which reads thus:

Decree Absolute

Further to the decree nisi granted on 19 October 2021, no reason has been shown as to why the decree nisi should not be made absolute therefore the decree is made absolute.

This certifies that the marriage solemnised on 20 April 2004 at the Church of St. Anthony Panchawadi between Delfina Gonsalves and Felix Gonsalves has legally ended.

5. The “*Decree Absolute*” is also certified by Mr. Aleksandra Jankowiak, Notary Public Authority in England having an office at 3 Central Chambers, 1-10 the Broadway, London, W5 2NR, England who has certified that the Absolute Decree was issued on 15 December 2021 by the Family Court sitting at the Court and Tribunal Service Centre in England in favour of the petitioner– Delfina Gonsalves, born on 26 November 1974, who is identified by means of United Kingdom of Great Britain and Northern Ireland passport no. 123542165, who appeared before the said Notary Public, declaring her marriage certificate no. 1349/2004. The Notary Public has also verified the authenticity of the said “*Decree Absolute*”. The original of such certificate of the Notary

Public along with Decree Absolute is annexed to the present proceedings at pages 10 and 11.

6. This Court by an order dated 11 October 2022 had issued notice to the respondent returnable on 14 November 2022 and had permitted service of the proceedings on the respondent by private service. Affidavit of service dated 11 November 2022 has been filed by the Advocate for the petitioner. It appears that the respondent is not interested to appear and contest the present proceedings. This appears to be also for the reason that the respondent had no objection before the Family Court sitting at the Court and Tribunal Service Centre in England, to proceed in granting a decree of divorce, to be passed against him. It also appears from the record that there was consensus between the parties that the marriage had broken down irretrievably. Also the parties were staying separately for almost five years i.e. from 2 February 2015 before the proceedings were instituted before the Family Court in England.

7. Learned Counsel for the petitioner has placed reliance on the decision of this Court in **Renetta Rodrigues Vs. Levino Mariano Fernandes & Another** passed in Miscellaneous Civil Application (Main) No. 2/2002 decided on 8 September 2022, whereby this

Court after considering the provisions of Article 1101 of the PCCP as also, prior decisions of this Court in applying Section 13 of the CPC and the decision in **Dr. Roy Andre Sales de Andrade & Another Vs. State of Goa**¹, allowed similar proceedings. In such decision, the Court had also taken a view that Section 13 of the CPC would become applicable when reliefs of the present nature are prayed for. In deciding such proceedings, the Court also referred to the decisions in the case of **Saturnino Epifanio Ralph Barros Vs. Tina Noronha Barros & Another**², as also, the decision in the case of **Rohan Madhuker Agni Vs. Lara Rodrigues**³ and the decision in **Maria Antoneta Fernandes Vs. Mr. Valerian Sebastian Rodrigues**⁴.

8. I have heard the learned Counsel for the petitioner. Having perused the record, in my opinion, it appears to be quite clear that the marriage between the petitioner and the respondent has stood dissolved as per the decree passed by the Family Court sitting at the Court and Tribunal Service Centre in England. Also considering the grounds on which such decree was made are also grounds recognised and acceptable under the laws in India, including under the PCCP. It also needs to be observed that all

¹ 1995 SCC Online BOM 66

² 1997 (2) Goa L.T.343

³ MCAM No. 793/2015 dt. 19.01.2016

⁴ MCAM No. 645/2016 dt. 08.06.2017

other essentials under Article 1101 of PCCP to confirm the judgment of the Family Court sitting at the Court and Tribunal Service Centre in England are present and stand justified. The presumption under Section 41 of the Evidence Act read with Sections 13 and 14 of the CPC is also available to the petitioner.

9. Accordingly, the decree passed by the Family Court sitting at the Court and Tribunal Service Centre in England would be required to be declared to be final and conclusive. The petitioner has become entitled to the reliefs as prayed for in the application.

10. The application is accordingly allowed in terms of prayer clauses (A) and (B), which read thus:

- A. That this Hon'ble Court be pleased to confirm the Decree Absolute dated 15/12/2021 and declare the marriage of the Petitioner and the Respondent registered in the Office of the Civil Registrar of Ponda-Goa under entry no: 478/2004 of the Marriage Registration book for the year 2004 and which was solemnized on 20/04/2004 at Church of St. Anthony Panchwadi to be cancelled.
- B. That this Hon'ble Court be pleased to direct the Office of the Civil Registrar of Ponda-Goa to make appropriate endorsement to the same effect in accordance to the prayer clause A and cancel the registration of marriage between

the Petitioner and the Respondent under entry no: 478/2004 of the Marriage Registration book for the year 2004 and which was solemnized on 20/04/2004 at Church of St. Anthony Panchwadi.

11. The petitioner is permitted to present of a copy of this order to the office of the Civil Registrar so that the necessary entry in relation to the marriage of the petitioner and the respondent is cancelled, in compliance with the present orders.

12. Disposed of in the above terms. No costs.

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

G.S. KULKARNI, J.

VAIGANKAR
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