

Prajakta Vartak

**BEFORE THE PARSI CHIEF MATRIMONIAL COURT AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PARSI SUIT NO.2 OF 2022

Kamal Farzaad Engineer ..Plaintiff No.1

And

Farzaad Nozar Engineer ..Plaintiff No.2

Mr. Khushroo Driver i/b. KRY Legal for Plaintiff No.1.

Ms. Firoze Daruwalla i/b. Ms. Nerissa Almeida for Plaintiff No.2.

CORAM : G.S. KULKARNI, J.

DATE : FEBRUARY 09, 2022.

P.C.:

1. This is a suit for divorce by mutual consent filed under Section 32B of the Parsi Marriage and Divorce Act, 1936 (for short, "the PMDC Act"). The plaintiffs got married on 19 February, 2009 as per Parsi Zoroastrian rites and ceremonies. From the said marriage, the plaintiffs have a son Master Arish Farzaad Engineer, who was born on 01 October, 2012.

2. The plaintiffs resided together as husband and wife at Flat No.5, Building No.1, Dhunbai Wadi, Dadabhai Road, Vile Parle (W.), Mumbai – 400 056, after marriage. They have stated that there were irreconcilable differences between them, consequent to which since May 2016, the plaintiffs are residing separately from each other. Despite efforts made by the family members and friends to resolve the marital disputes between the plaintiffs, there could not be any reconciliation and

consequent to which the plaintiffs mutually decided to put an end to the marriage and part ways amicably.

3. The plaintiffs have set out in paragraph 8 of the plaint that due to temperamental and irreconcilable differences between them, their marriage has broken down irretrievably and they can no longer continue their marriage, and hence, have agreed and decided to have their marriage dissolved by mutual consent as per the provisions of Section 32B of the PMDC Act as amended by Act 5 of 1988.

4. It is also the case of the plaintiffs that after having physically separated since May 2016, plaintiff no.1 Kamal, having left the matrimonial home along with minor son Master Arish, is residing with her parents at the address as set out in the cause title of the plaint. The plaintiffs have reached an agreement with respect to custody, relocation, alimony, residence, child support, etc. which are set out in the consent terms as arrived between the parties and which are annexed at Exhibit "C" to the suit. On a perusal of the consent terms between the parties, it is seen that the parties have *inter alia* agreed on alimony & maintenance, custody, access/visitation rights in respect of Master Arish and an agreement in regard to the jewellery as also an agreement that the plaintiffs shall not file any legal proceedings either civil or criminal against each other regarding the subject matter of the consent terms. It is also agreed that there are no future claims against each other as also

there is an understanding that the parties would not interfere in each other's personal/professional lives etc.

5. The plaintiffs have filed their respective affidavits in lieu of evidence as per the provisions of Sub-Rule (1) of Rule 4 Order VIII of the Code of Civil Procedure. The affidavit of plaintiff no.1 is dated 13 January, 2022 as also affidavit of plaintiff no.2 is dated 13 January, 2022. Both the plaintiffs have appeared before the Court virtually. They have deposed to the contents of their respective affidavits in lieu of evidence to state that whatever has been stated in such affidavits, is true and correct and they shall abide by every statement made in the said affidavits. Accordingly, testimony of the plaintiffs as contained in their affidavit of evidence stands accepted so as to depict the true and correct facts as placed before the Court in support of the prayers as made in the plaint filed under Section 32-B of the Act.

6. I have heard learned counsel for the parties. I have also interacted with the plaintiffs.

7. On perusal of the record as also having heard learned counsel for the parties and having interacted with the parties, it is clear that the plaintiffs are living separately for a period of more than one year and that they have not been able to live together due to irreconcilable differences which have arisen between them and as set out by them and

placed on record not only in the plaint, but also in their evidence. Thus being satisfied that it is not possible for the parties to live happily in the marriage in question, as also being satisfied that the marriage was solemnized under the PMDC Act as seen from the Certificate of Marriage dated 07 March, 2009 issued by the Registrar of Parsi Marriages, High Court, Bombay, and that the statements and averments as made in the plaint are true that there is free consent of the parties to the suit and and the same has not been obtained by force or fraud as stated by the plaintiffs, in my opinion, the present suit for divorce by mutual consent is required to be decreed. The suit is accordingly decreed in terms of prayer clauses (a) and (b) which read thus:-

“(a) That this Hon’ble Court be pleased to dissolve the marriage between the Plaintiffs solemnized on 19th February 2009, by a decree of divorce by mutual consent under Section 32B of the Parsi Marriage and Divorce Act, 1936;

(b) That the Consent Terms annexed hereto and marked Exhibit “B” to the Plaint be made absolute and to form part of the decree.”

8. Office is directed to draw a decree, and the same be made available to the plaintiffs within a period of two weeks from today. No costs.

[G.S. KULKARNI, J.]