

IN THE PARSİ CHİEF MATRİMONİAL COURT, BOMBAY

**PARSİ SUİT NO. 26 OF 2008
WITH
CONTEMPT PETITION NO. 80 OF 2019
NOTICE OF MOTION NO. 9 OF 2014
CONTEMPT PETITION NO. 1 OF 2015
MISC. APPLICATION NO. 1 OF 2015
NOTICE OF MOTION NO. 1 OF 2015
MISC. APPLICATION NO. 2 OF 2015
NOTICE OF MOTION NO. 3 OF 2015
NOTICE OF MOTION NO. 15 OF 2015**

Neville S. Daruwalla ...Plaintiff
vs.
Farzandi Neville Daruwalla ...Defendant

Mr.Vikrant Shinde for Plaintiff.

Mr.Neville Daruwalla, Plaintiff present in person.

Mr.Nityoah S. Mehta with Ruchi Turkhia and Ishani Paradkar i/b. Nityoah Suneel & Associates for Defendant.

Ms.Farzandi Neville S. Daruwalla, Defendant present in person.

CORAM : G. S. KULKARNI, J.

DATED : 4 MAY 2022

P.C. :

1. This parsi suit is filed by the plaintiff husband against the defendant wife praying that the marriage solemnised between the plaintiff and defendant on 27 April 2002 be dissolved by a decree of divorce. During the pendency of the suit, there were several interim proceedings filed by the parties, which are also stated to be pending. Also, there are two contempt petitions.

2. On such backdrop, the parties are before the Court today submitting that the parties have amicably resolved their matrimonial disputes. They, accordingly, pray that the suit be converted into a suit for a

decree of divorce by mutual consent under the provisions of Section 32B of the Parsi Marriage and Divorce Act, 1936 (for short “PMD Act”). The request, as made by the parties, is required to be eminently accepted. Accordingly, the suit is converted into a suit under Section 32B of the PMD Act.

3. The plaintiff and defendant got married on 27 April 2002 as per Parsi Zoroastrian rites and ceremonies at Albless Baug, Girgaum, Mumbai 400 004. After the marriage, the plaintiff and defendant cohabited and resided at 19/B, Mody Colony, Synagogue Street, Camp, Pune 411001. A Marriage Certificate dated 30 April 2002 registering the plaintiff and defendant’s marriage was issued by the Registrar of Parsi Marriages, High Court, Bombay. From the wedlock, the couple has a daughter named Shazmin, who is today 17 years old.

4. After some years of the marriage, serious differences cropped up between the plaintiff and defendant which could not be reconciled despite efforts as set out in paragraph 4 of the affidavits of evidence as placed on record by both parties. Since October 2012, the plaintiff and defendant started residing separately as they were unable to live together. Thereafter they have not been able to live together. To reconcile the differences and being confronted with several proceedings against each other, they have finally decided to put an end to the marriage by praying for a decree of divorce by mutual consent.

5. Today, both parties have tendered their affidavits in lieu of evidence as per the provisions of Sub-Rule (1) of Rule 4 Order VIII of the Code of Civil Procedure, which are taken on record. Both of them have

agreed to what has been agreed between them in the consent terms dated 27 April 2022. They have deposed to the contents of their respective affidavits in lieu of their evidence. Accordingly, testimony of the plaintiff and defendant, 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 32B of the PMD Act.

6. I have heard learned Counsel for the parties.

7. In so far as the requirement for this Court to exercise jurisdiction under Section 32B of the PMD Act is concerned, from the perusal of the record as also having interacted with the parties, it appears to be not in dispute that the plaintiff and defendant are living separately for a period of more than one year. It is quite clear that the plaintiff and defendant have not been able to live together due to irreconcilable differences which have arisen between them as stated by them in the plaint as also in their evidence. Thus, there is sufficient material for this Court to hold that it is not possible for the plaintiff and defendant to live happily in their marriage. Admittedly, the plaintiff and defendant's marriage was solemnized under the PMD Act as seen from the Certificate of Marriage dated 30 April 2002 issued by the Registrar of Parsi Marriages, High Court, Bombay. Further the consent of the parties for a decree of divorce by mutual consent is also a free consent. In these circumstances, the present suit for divorce by mutual consent would be required to be decreed.

8. Learned Counsel for the parties have also placed on record consent terms as entered between the parties dated 27 April 2022, in terms

of which the parties have stated that the marriage between the parties shall stand dissolved. The plaintiff husband has agreed to surrender his right, title and interest in respect of Flat No.E-304, Parsi Panchayat Complex, Walbhat Road, Opp. Sharma Estate, Goregaon (E), Mumbai – 400 063 in favour of the Defendant and their daughter Shazmin. He has also agreed that all formalities for such transfer of the leave and license in respect of the said flat shall be complied with. The agreement to this effect is set out in para 4 of the consent terms. The plaintiff has, accordingly, agreed that the flat in question would now be available to the defendant and the daughter Shazmin, aged 17 years, and who is in the custody of the defendant. The plaintiff has also issued a separate No Objection Certificate for transfer of the leave and license in favour of the defendant wife and daughter Shazmin to be submitted to the Chairman/the committee members of the Parsi Panchayat for appropriate action to be taken, as agreed between the parties. Also the plaintiff has drawn two pay orders, the description of which is set out in para 5A and 5B of the consent terms, which are amounts being paid in favour of the defendant wife in terms of the Minutes of Order dated 6 December 2021 passed by this court. As set out in the consent terms, the defendant has agreed to the said amount being received by her in full and final settlement. It is accordingly stated that order dated 6 December 2021 passed by this Court shall stand complied.

9. The consent terms are taken on record, marked “X” for identification. As all the necessary requirements under Section 32B are stand satisfied, it would be imperative that this Court passes a decree of divorce by mutual consent exercising its jurisdiction under Section 32 of the PMD Act.

10. The suit is, accordingly, decreed by the following order :

ORDER

(i) The marriage solemnised between the plaintiff and defendant on 27 April 2002, as registered by the Registrar of Parsi Marriages, High Court, Bombay in the certificate dated 30 April 2002 stands dissolved by mutual consent of the parties;

(ii) Consent terms dated 27 April 2022, as taken on record, shall form part of the decree. The undertakings, as set out in the consent terms, shall stand accepted as an undertaking to the Court;

(iii) The Suit is disposed of in above terms. No costs.

11. The learned Prothonotary & Senior Master of this Court is directed to draw a Decree of Divorce by mutual consent and the same be made available to the plaintiff and defendant within a period of three weeks from today.

12. In view of this suit being disposed of, the contempt petitions as also connected applications/notices of motion would not survive. They are, accordingly, disposed of.

13. Mr. Vikrant Shinde, learned Counsel for the plaintiff husband, states that he would file a vakalatnama within one week from today.

sat

7. ps 26-2008 a.w connected matters

(G.S. KULKARNI, J.)