

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PARSI SUTT NO. 22 OF 2022

Sheenaz Dastur

... Plaintiff No. 1

AND

Hormazd Noshir Dastur

... Plaintiff No. 2

Ms. Nerissa Almeida i/b Ms. Armaity S. Khushrushahi for Plaintiffs

CORAM : ARIF S. DOCTOR, J.

DATE : 23rd DECEMBER 2022

P.C. :

1. The present Suit is filed under Section 32-B of the Parsi Marriage & Divorce Act, 1936 ("PMD" Act), whereby the Plaintiffs have prayed for divorce by mutual consent. Both the Plaintiffs are present in Court. The plaint sets out that the Plaintiffs got married on 9th May, 2004 at St. Joseph Convent Primary School Compound, Mumbai, according to the Parsi Zoroastrian rights and customs. A marriage certificate dated 11th October, 2007 is annexed to the Plaint as Exhibit "A".

2. The Plaintiffs do not have any children born from the marriage. After the marriage the Plaintiffs co-habited and resided together at 369 Villa Queenie, 1st Floor, Flat No. 5, 16th Road, TPS III, Bandra (West), Mumbai-400050. The

Plaintiffs state that some years after marriage serious disputes and differences cropped up between the plaintiffs which caused a rift between them. It eventually grew and brought about an unpleasant atmosphere in the house as a result of which both the Plaintiffs started drifting apart from each other. Being unable to resolve their disputes and differences as also unable to lead a harmonious married life together, Plaintiff No. 1 on 28th June, 2019 left the matrimonial home severing all matrimonial ties with Plaintiff No.2. Thereafter despite several attempts were made by the Plaintiffs themselves as well as the family members and friends to resolve their disputes and differences, but the same have proved futile. The Plaintiffs have been thus living separately since from June 2019 to till date i.e. for more than one year before filing of this Suit.

4. It is in these circumstances that the Plaintiffs have decided to mutually agreed that their marriage should be dissolved amicably. Plaintiffs have entered into the consent terms a copy of which is annexed to the Plaint as Exhibit-C. For ease of reference the said consent terms is scanned and reproduced as under:-

EXHIBIT "C"



IN THE PARSİ CHİEF MATRİMONİAL COURT AT BOMBAY.
PARSİ SÜİT NÖ. 22 OF 2022

SHEENAZ DASTUR

...PLAINTIFF NO. 1

AND

HORMAZD NOSHİR DASTUR

...PLAINTIFF NO. 2

Consent Terms

1. Plaintiff No.2 agrees and undertakes to this Hon'ble Court that by way of one time lumpsum alimony, he will pay a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs Only) to Plaintiff No.1 on the day of passing of the divorce by demand draft or by direct bank transfer.
2. Both the Plaintiffs jointly and equally own an ownership flat situated at : Royal Avenue, Flat no 102; Udwarda, Gujarat (hereinafter referred to as 'the said flat'). It is agreed by and between the Plaintiffs :
 - (i) to sell the said ownership flat at the earliest and after defraying the expenses, will divide the net sales proceeds equally. The said flat will be sold at a price which is mutually acceptable to both the Plaintiffs. It is further agreed that the sale of the said flat will be done within 12 months of filing this divorce suit.

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- (ii) in case the Plaintiffs are unable to get a buyer or the price put forth by the buyer is not acceptable then after 1 year at any given point of time either Plaintiff reserves the right to buy the other Plaintiff's share at the agreement value. All expenses, duty, taxes etc. will be divided equally and be borne by them.
- (iii) In case neither Plaintiff is desirous to buy the other Plaintiff's share to the said Flat then they will continue to look for a buyer to purchase it at a price which is mutually acceptable to them.
- (iv) For sake of clarity, the Plaintiffs agree that till such time that the said flat is sold or share is purchased by either Plaintiff, both the Plaintiffs will continue to equally bear the society outgoing or such other amounts payable to society, property taxes, etc. in relation to the said Flat.
3. Plaintiff No. 1 agrees and undertakes to this Honble Court that on date of divorce decree being passed she will relinquish her right to use the MCA membership.
4. Plaintiff No.2 agrees and undertakes to this Hon'ble court that he will give Plaintiff No.1 all the jewellery which was gifted to her by Plaintiff No.2 and his family at the time of their marriage and during the subsistence of their marriage.



5. Plaintiff No.2 agrees and undertakes to this Hon'ble court that he will allow Plaintiff No.1 to take away all her personal belongings lying at the matrimonial home.
6. Plaintiff No. 1 will continue to use the surname 'Dastur' post divorce. Plaintiff No. 2 agrees and undertakes to this Hon'ble Court that he will cooperate to execute any documents or give a NOC etc. as the case may be, at any and all times to enable Plaintiff No. 1 to continue using her marital surname. From the date of the divorce decree being passed, Plaintiff No. 1 will going forward cease to use "Hormazd" as her middle name, and within three (3) months of receipt of original Divorce Decree, Plaintiff No. 1 will initiate relevant paperwork to carry out the change in Aadhar Card, PAN Card and Passport.
7. It is agreed and declared that the Plaintiffs have arrived at these terms at their own free will, without any force or coercion from the other.
8. The Plaintiffs have read over the terms and have given their signatures after having fully understood the meaning and intent of the terms.
9. The Plaintiffs undertake to abide by the terms in the stipulated time as enumerated herein.



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10. Save as aforesaid neither party will have any claim on each other's and/or family's property both, moveable and/or immoveable, whatsoever and where so ever situated after the passing of the Judgment dissolving the marriage.

24/11/22
Dated this 27 day of November 2022

S. H. Dastgir
PLAINTIFF NO. 1

H. N. Dastgir
PLAINTIFF NO. 2

A. Khushrushahi
ADVOCATE S. KHUSHRUSHAH
(Advocate for Plaintiffs)



The Plaintiffs have also tendered their respective affidavits in lieu of evidence as per the provisions of sub-rule 1 of Rule 4 of Order VIII of the Code of Civil Procedure. Both the affidavits of evidence are dated 23rd December, 2022. The Plaintiffs have tendered the same in Court and have deposed to the correctness of the contents of the same. Accordingly, the testimony of the Plaintiff as contained in their respective affidavits of evidence stand accepted so as to true and correct facts as placed before the Court in support of the averments made in the plaint.

5. I have heard learned counsel appearing on behalf of the Parties. In so far as the requirement for this Court to exercise jurisdiction under Section 32B of the PMDC 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 plaintiffs are living separately for a period of more than one year. It is quite clear that the plaintiffs 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 affidavit of evidence. Thus, there is sufficient material for this Court to exercise jurisdiction under Section 32B of the PMDC Act as the plaintiffs are not in a position to live happily in their marriage. There is no dispute that the plaintiffs' marriage was solemnized under the PMDC Act as seen from the Certificate of Marriage dated 7th May, 2004 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.

6. The consent terms dated 7th December 2022 as entered between the plaintiffs stand accepted and shall form a part of the decree to be drawn by the Court. The undertakings as contained in the consent terms stand accepted. The suit is accordingly decreed in terms of (a) and (b).

7. The undertakings made by the parties in the consent terms and more particularly set out in paragraphs 2, 3, 4 and 5 of the consent terms are accepted as undertakings to the Court.

8. Testamentary Suit is therefore disposed of in the above terms.

(ARIF S. DOCTOR, J.)