

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION (MAIN) NO. 1 OF
2022

Lelly Braganza thr. POA Sofia Santana Leonsa Braganza E. Pereira	... Applicant
<i>Versus</i>	
Francisco Erasmo Leitao And Anr.	... Respondents

Mr Adish V. Halarnkar, Advocate *for the Applicant.*

Mr Neelesh Takkekar, Advocate *for the Respondent No.1.*

Mr Shivdatt P. Munj, Additional Government Advocate
for the Respondent No.2.

CORAM: M. S. KARNIK, J
DATED: 9th MARCH 2023

ORAL ORDER

1. Chapter XIII of the Portuguese Code of Civil Procedure, 1939 provides as under:-

'CHAPTER XIII

REVIEW AND CONFIRMATION OF FOREIGN JUDGMENTS

Article 1100 – Foreign Judgments subject to review and confirmation - *Without prejudice to what is provided in treaties and special law, no judgment on private rights, passed by a Foreign Court or Foreign Arbitrators, shall have effect in Portugal, regardless the nationality of the parties, without the foreign judgment having being reviewed and confirmed.*

Review will not be required when the decision is relied upon in any pending proceedings in Portuguese Courts, as matter of evidence and is subject to appreciation by the Court deciding the matter.

- **Articles 1100-1106** – Review and confirmation of foreign judgments – Corresponding provisions in C.P.C. 1908: -

- o When foreign judgement not conclusive - S. 13*
- o Execution of decrees passed by Courts in reciprocating territory - S. 44A*
- o Execution of Decrees and Orders – Notice to show cause against execution in certain cases – O.XXI, r.22(1)(b).*

Article 1101 – Jurisdiction - Review and Confirmation shall lie before the High Court having jurisdiction at the place at which the person against whom the judgment is sought to be enforced is domiciled or resides.

If such a person has no domicile or residence in Portugal, the High Court within whose jurisdiction, the Petitioner is domiciled or residing shall have jurisdiction, except where the judgment is of patrimonial nature and it is to be enforced against the person who has assets in Portuguese territory, because in such case Revision can be asked in any of the High Courts where the assets are situated.

When none of the requirements foreseen in the previous paragraphs are satisfied, any of the High Courts will have jurisdiction to entertain the matter.

Article 1102 – Requisites necessary for confirmation –

In order that the judgment be confirmed it is necessary: -

- i) that there are no doubts about the authenticity of the document on which the judgment is recorded nor about the intelligibility of the decisions;*
- ii) that it has become res-judicata according to the law of the country in which it was pronounced;*
- iii) that it arises from a court having jurisdiction according to the Portuguese Law rules relating to the conflict of jurisdiction;*
- iv) that the defence of litispendence or res-judicata based on a case subject to a Portuguese Court is not available, unless it was the foreign court which prevented the jurisdiction;*
- v) that the defendant has been duly summoned: except in a matter which under Portuguese Law would not require initial notice; and if the decree was passed against the defendant immediately, due to non-filing of Written Statement in the suit, in such event the summons should have been served on him personally;*
- vi) that it does not contain decisions contrary to the principles of Portuguese Public Order;*
- vii) that having been pronounced against a Portuguese National it does not violate the provisions of Portuguese Private Law when it had to be decided by the latter, according to the Portuguese*

Law rules of Conflict of Laws.

§ Sole Paragraph – The provisions of this article are applicable to an arbitral award so far as may be.

2. The applicant-wife had filed proceedings before the Family Court at Liverpool for divorce. By a decree dated 05.08.2021 the marriage was dissolved by the Family Court at Liverpool.

3. Initially, the respondent-husband had reservations about such a dissolution on the ground of competency of the Family Court at Liverpool. Apart from the territorial jurisdiction, it was the objection of the respondent that the decree has been passed ex-parte and even as the written statement could not be filed within the time granted by the Family Court at Liverpool for reasons beyond the control of the respondent. Relying on Article 1102 of the Code, the respondent-husband initially submitted that such foreign judgment would not bind the respondent.

4. There were some intervening developments. The applicant-wife has filed the present application in terms of Article 1100 of the Code for confirmation of the judgment of the foreign Court. The parties mutually decided to resolve their dispute. Considering the offer made by the applicant, to which the respondent husband was agreeable, the parties mutually decided to persuade this Court to confirm the foreign judgment. Accordingly, a request was made for Order in Invitum and the parties have placed the Minutes for inviting an order to dispose of the present matter. The Minutes are taken on record and marked as Exhibit 'X' for identification. The Minutes are also signed by the applicant through her Power of Attorney holder as also the Advocate for the applicant. The Power of Attorney is already on record. The Power of Attorney holder Mrs Sofia Santana Leonsa

Braganza E Pereira is personally present in the Court and duly identified by the learned counsel for the applicant. The Minutes are also signed by the respondent No.1 who is personally present in the Court and duly identified by Shri Takkekar, learned counsel representing him.

5. The parties state that they have gone through the Minutes of the Order and the same are as per their instructions and they are agree to abide by the same.

6. I have gone through the Minutes. The understanding reached between the parties is reasonable and needs to be accepted in the interest of justice.

7. Before I pass an order in terms of the Minutes of the Order in Invitum it would be necessary to refer to the decision of the Hon'ble Supreme Court in the case of ***Y. Narasimha Rao And Others v/s. Y. Venkata Lakshmi And Another***¹ The Hon'ble Supreme Court in paragraph 15 has observed thus: -

'15. Clause (a) of Section 13 states that a foreign judgment shall not be recognised if it has not been pronounced by a court of competent jurisdiction. We are of the view that this clause should be interpreted to mean that only that court will be a court of competent jurisdiction which the Act or the law under which the parties are married recognises as a court of competent jurisdiction to entertain the matrimonial dispute. Any other court should be held to be a court without jurisdiction unless both parties voluntarily and unconditionally subject themselves to the jurisdiction of that court. The expression "competent court" in Section 41 of the Indian Evidence Act has also to be construed likewise .

¹ (1991) 3 SCC 451

8. Though it was previously the contention of the learned counsel for the respondent that on various grounds the foreign judgment is not sustainable, in view of the understanding reached between the parties, now these objections are not pressed. Both the parties have voluntarily and unconditionally decided to accept the foreign judgment subject, however with the understanding that the parties will abide by what is provided in the Minutes.

9. In my opinion, in the interest of justice, the course which the parties have mutually suggested to this Court in confirming the foreign judgment needs to be accepted. There is no point inconveniencing the parties any further and adding to the trauma of a failed marriage by declining the request. Instead of delving into the legal propositions, I feel that this matter should rest.

10. In terms of Article 1100 of the Code, the Decree of the Family Court of Liverpool dated 05.08.2021 at Exhibit 'G' is confirmed. The Minutes of the Order signed by the parties reads thus :-

'a) The parties herein agree to confirm the Decree Absolute passed by the Honourable Family Court of Liverpool, UK in Divorce proceedings bearing case No.LV20D03772 which is made absolute in terms of communication dated 05/08/2021.

b) The applicant undertakes to the Court that she will not raise any financial claim before the Courts/Tribunal in any part of Great Britain and that the claimed reserved in terms of Section 10 of the Divorce petition filed before the Family Court of Liverpool shall not be pressed in service in any part of Great Britain.

c) The applicant herein shall not claim any rights in the property which is ancestral/inherited by the

respondent no.1 and similarly the respondent no.1 shall not claim any rights in the property which belongs to the parents of the applicant. The children of the Applicant and the Respondent No.1 will however hold rights in the ancestral/inherited properties of the applicant and the Respondent No.1 and both parties cannot create any third party rights in the said ancestral properties in view of the rights of the children.

d) The applicant undertakes not to deny the visiting rights of respondent no.1 qua their children who are identified as Master Richard Francisco Braganza and Miss Amanda Rose Braganza. The children are presently living along with the applicant in UK hence the Respondent no.1 shall be entitled to communicate via whatsapp call on the phone number 00447501385050 and/or email id lellybraganza2705@gmail.com on every Saturday at 18:00 hours (Indian Standard Time) and the Respondent No.1 is free to correspond with the said children on the address "38 Oxford Road, Altrincham, WA14 2EB".

e) The respondent has agreed to not raise the issue of Jurisdiction in the present proceedings in order to resolve the issues amicably.

f) The issue of separation of assets shall be independently dealt with on its own merits and in any case without being influenced by the allegations made by the applicant in the divorce proceedings initiated before the Family Court at Liverpool in UK.

g) The respondent undertakes not to raise the objection or embargo in terms of Article 27 of The Law of Divorce as applicable within the State of Goa on the ground that the Family Court of Liverpool at UK has granted Divorce based on the contentions and statements of fact relied upon by the applicant.

h) On the abovesaid terms the Judgment, Order and Decree dated 05.08.2021 issued by the Family Court at Liverpool at UK shall be declared as final, ratified, sanctioned and confirmed and appropriate steps shall be taken by the applicant to cancel the entry no.80/2001 of the Marriage Registration Book for the year 2001 maintained before the Civil Registrar of Ilhas, Panaji-Goa.'

11. The parties agree and undertake to abide by the terms as reflected in the Minutes.
12. The application is allowed in terms of prayer clause (a) and (b).
13. The application is, accordingly, disposed of.

M. S. KARNIK, J

MARIA SUZANA
REBELLO

Digitally signed by MARIA
SUZANA REBELLO
Date: 2023.03.09 18:14:17 +0530'