

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PARSI SUIT NO.2 OF 2023**

Hamin Ostawad Tantra ... Plaintiff No.1

AND

Delna Hamin Tantra ... Plaintiff No.2

Ms. Nerissa Almeida a/w Ms. Ritika Bharadia for the Plaintiffs.

CORAM : ARIF S. DOCTOR, J.

DATE : 24TH FEBRUARY 2023

P.C. :

1. The present Suit is filed under Section 32B of the Parsi Marriage & Divorce Act, 1936 ("the PMD Act"), whereby the Plaintiffs have prayed for decree of divorce by mutual consent.

2. The facts briefly stated are as follows :-

(i) The Plaintiffs got married on 18th November 2006 at Parsi Anjuman Hall, Lucknow according to the Parsi Zoroastrian rights and customs. The certificate of marriage dated 18th November 2006 has been issued, the xerox copy of which is annexed to the Plaint at Exhibit "A".

(ii) The Plaintiffs have one child born from the marriage, who is presently 13 years old.

(iii) The Plaintiffs state that after passage of certain years, irreconcilable differences arose between the parties on account of there being temperamental differences, which made it impossible to live together.

(iv) The parties have been living apart since 1st July 2017 and have thus not cohabited as ‘husband and wife’ for more than one year.

(v) Despite several attempts made by the family members and friends of the Plaintiffs to resolve the disputes and differences, the same have proved futile. It is thus that the Plaintiffs have decided to dissolve their marriage by consent under Section 32B of the PMD Act.

3. The Plaintiffs have entered into the Consent Terms, which are annexed as Exhibit “C” to the Plaint. The Plaint sets out that the Plaintiffs filed this Suit and entered into the Consent Terms freely, voluntarily and out of their own volition. The Consent Terms set out that there are no claims/demands of any nature pending or that will be raised in the future by the Plaintiffs against each other.

4. The Plaintiffs are present in Court today. They have identified by their Advocate. The Plaintiffs have administered oath. They have also tendered

their respective affidavits by way of evidence as per the provisions of Sub-Rule (1) of Rule 4 of Order VIII of the Code of Civil Procedure. They have deposed to the correctness of the contents of the same. Accordingly, the testimony of the Plaintiffs 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 Plaintiffs. Insofar 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 harmoniously 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 PMD Act as the Plaintiffs are not in a position to live happily in their marriage. 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 24th January 2023 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 prayer clauses (a) and (b), which read as follows :-

"a) that this Hon'ble Court be pleased to dissolve the marriage between the Plaintiffs solemnized on 18th November 2006 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 "C" to the Plaint be made absolute and to form part of the decree;"

7. The Registry to draw up a Decree of Divorce by mutual consent and the same be made available to the Plaintiffs within a period of four weeks from today. There shall be no order as to costs.

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

(ARIF S. DOCTOR, J.)