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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION (MAIN) NO. 3 OF 2024

CLIFTON SAMEER BARBOSA ... APPLICANT
VS
NIKITA JOAO RODRIGUES ... RESPONDENT

Mr Jatin Ramaiya, Advocate for the Applicant.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 26th June 2024

ORAL ORDER:

1. Memo is filed placing an authenticated copy of the final order passed by the family court dated 14.12.2023. The same is taken on record.

2. Heard Mr J. Ramaiya, learned counsel for the applicant. Even though the respondent was duly served, no one appeared. Affidavit of service is placed on record.

3. The present application is for confirmation of the foreign decree passed by the family Court under Article 1102 of the Portuguese Code of Civil Procedure.

4. It is the contention of the applicant that she got married with respondent in Chandor on 9.6.2018. Applicant as well as respondent are Goan by birth and accordingly their marriage has been registered with Civil Registrar, Margao as per certificate issued dated 9.6.2018.

5. It is the contention of the petitioner that thereafter they shifted to the United Kingdom and started residing therein. However, some Matrimonial discord arose between them which resulted in filing of divorce proceedings before family Court in the United Kingdom. Such a petition was allowed vide order dated 14.12.2023 thereby granting divorce.

6. It is the contention of the applicant that since the decree is passed by Foreign Court, it is required to be confirmed by this Court as per Article 1102 of Portuguese Code of Civil Procedure.

7. Articles 1101 and 1102 of the Portuguese Code of Civil Procedure read thus:-

“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 who 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.”

8. On perusal of the final order dated 14.12.2023, authenticated copy is placed along with a memo page which

clearly suggest that interim order was confirmed and decree of divorce is made final.

9. Though respondent was duly served and affidavit of service is placed on record, he failed to appear and contest the present proceedings.

10. Accordingly, order passed by the Foreign Court needs to be confirmed, application is therefore allowed as per prayer clauses(a) and (b), which read thus:

a. *That this Court be pleased to Confirm the Final Order dated 14.12.2023 and declare the marriage of the Petitioner and the Respondent registered in the Office of Civil Registrar of Salcete at Salcete at Margao- Goa under entry No:1339/2018 of the Marriage Registration book for the year 2018 and which was solemnized on 09.06.2018 at Church of Chandor, Salcete at Margao Goa to be cancelled by decree of divorce.*

b. *That this Hon'ble Court be pleased to direct the Office of Civil Registrar of Salcete at Salcete at Margao- Goa to make appropriate endorsement to the same effect in accordance to the prayer clause A and cancel the registration of marriage between the Petitioner and the Respondent under entry No:1339/2018 of the Marriage Registration book for*

the year 2018 and which was solemnized on 09.06.2018 at Church of Chandor, Salcete at Margao Goa.

11. The Application stands disposed of in the above terms.

BHARAT P. DESHPANDE, J.