



vinita

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION (MAIN) NO. 7 OF 2024

MELONIE CARVALHO ... APPLICANT
VERSUS
JACK FLORIANO FERNANDES. ... RESPONDENT

Ms Sweta Pereira, Advocate for the Applicant.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 28th June 2024

ORAL ORDER:

1. Heard Ms Pereira, Advocate for the applicant.
2. Even though the respondent served, remained absent.
3. This is an application for confirmation of the decree of divorce granted by Foreign Court.
4. The applicant and the respondent married in Goa and the marriage certificate is placed on record at page no.7. Their marriage was registered in Goa on 10.12.2017. Subsequently, the

couple moved out of India and thereafter a matrimonial petition was filed in Family Court in the United Kingdom.

5. Vide order dated 20.4.2021, decree was passed thereby dissolving the marriage between the applicant and the respondent.

6. Certificate issued by Family Court duly certified by the embassy is placed on record at pages 8 and 9 respectively.

7. 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 the Portuguese Code of Civil Procedure only thereafter registration could be cancelled.

8. 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 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.”

9. Documents placed on record clearly shows that marriage between the applicant and the respondent was registered in Goa whereas such marriage has been dissolved by a final decree granted by the Family Court at UK on 20.4.2021.

10. Accordingly, application needs to be allowed and accordingly allowed as per prayer clauses (a) and (c), which read thus:-

- a. For an order granting confirmation of foreign judgment to the applicant dated 20.4.2021 and passed by in the Court of Bury St Edmunds in ZC19D00078.*
- c For an order cancelling marriage dated 10.12.2017 entry Nos.2559/2017 before Sub Registrar Margao.*

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

BHARAT P. DESHPANDE, J.