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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION (MAIN) NO. 3 OF 2022

PRADIP SADASSIVA NAIK ... APPLICANT
VS
LEUNORA ANTÃO AND ANR. ... RESPONDENTS

Ms. Shweta Parulekar, Advocate for the Applicant.

Mr. Geetesh Shetye, Additional Government Advocate for
Respondent No. 2.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 21st June 2024

ORAL ORDER:

1. Heard the learned Counsel for the Applicant.
2. Respondent No. 1 is duly served and the affidavit of service is placed on record. In spite of service, Respondent No. 1 failed to appear and contest the present proceedings.
3. The Application is filed under Article 1101 read with Article 1102 of the Law of Divorce. It is claimed that the marriage between the Applicant and Respondent No. 1 was solemnised on 29.05.1999 at Old Goa and registered with Respondent No. 2.

4. It is further claimed that thereafter the parties started residing in London and due to some family discord, a Petition was filed before the Court of London for grant of divorce. The said Court/Tribunal by its decree dated 28.01.2022 granted divorce by terminating the marriage solemnised between the Applicant and Respondent No. 1.

5. The Applicant is now praying that there is a decree passed by the Foreign Court and as per the provisions of Article 1102, the same is required to be confirmed by this Court.

6. In terms of Article 1101 of the Portuguese Code of Civil Procedure, the decree passed by the Foreign Court, requires to be confirmed by this Court.

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. The marriage certificate, by which the marriage between the Applicant and Respondent No. 1 was registered before Respondent No. 2 is placed at page 16. Similarly, the Application for divorce filed before the London Court as well as the decree passed therein dated 28.01.2022 is produced, which is duly certified by the concerned Court and the Authority.

9. Since there is no appearance on behalf of Respondent No. 1 objecting to such Application and the procedure for confirmation, the Application needs to be allowed. The Applicant is, therefore, entitled to an order of confirmation of this Court confirming the Decree of Divorce dated 28.01.2022 passed by the Foreign Court. The Decree of Divorce of the Foreign Court is declared as final and conclusive. The dissolution of marriage between the Applicant and Respondent No. 1 stands confirmed.

10. Accordingly, the present Application stands allowed in terms of prayer clauses (a) and (b), which read thus:

“a. For a Judgment and Order that the Decree of Divorce dated 28/01/2022 granted by the Courts and Tribunal Service Centre, c/o Birmingham Civil and Family Justice Centre under File No. ZZ21D77249 terminating the marriage between Applicant and Respondent No. 1 be confirmed by this Hon’ble Court by way of the present proceedings for the Judgment producing all its legal effects in India.

b. For a Judgment and Order directing the Respondent No. 2 (Civil Registrar) to cancel the marriage entry/endorsement under entry No. 508 of the Marriage Registration Book for the year 1999 dated 29/05/1999, certificate of Marriage No. 106 under Receipt No. 11/32.”

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

BHARAT P. DESHPANDE, J.