

shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.681 OF 2023

1. Ajit Kumar Agarwal alias Ajit Mittal,
Son of late Mr. Nathmal Agarwal,
Aged 48 years married,
Businessman, residing at
House No. 463, "Mittal Villa"
Virlosa, Penha de Franca, P.O. Betim,
Bardez, Goa.PETITIONER

Versus

Mrs. Meena Mittal,
Daughter of late Mr. Satya Narayan Goyal,
Aged 39 years, businesswomen,
Resident of 801-802, 8th floor, Block D
Adwalpalkar Shettar, Cranzalem,
Panaji, Goa. RESPONDENT

Ms. Priyanka Kamat, Advocate for the Petitioner.

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 29th February, 2024

ORAL JUDGEMENT

1. Heard Ms. Kamat, learned counsel appearing for the
Petitioner. In spite of filing affidavit of service stating that the
Respondent has been duly served, no one appeared and
contested the present petition.

2. Rule. Rule is made returnable forthwith. Heard the matter finally at the admission stage with the consent of learned counsel appearing for the Petitioner.

3. Ms. Kamat would submit that the Petitioner is the Respondent in Matrimonial Petition No.1/2023, whereas present Respondent is the Applicant therein. She submits that the petition for divorce by mutual consent was filed before the learned District Court and the matter was taken up. Even the evidence of the Respondent was recorded and only thereafter, the learned District Court passed an impugned order observing that the Matrimonial Petitions are decided by the Civil Court in the State of Goa and accordingly disposed of the said petition on the ground that the Applicant/Respondent herein ought to have filed the said petition before the Civil Court.

4. Ms. Kamat would submit that the learned District Judge ought to have transferred the said petition or allotted it to the Civil Court having jurisdiction to decide such petitions. She submits that the petition for divorce was filed under Section 13B of the Hindu Marriage Act, since both the parties to the said petition registered their marriage outside Goa and the

same was not registered in Goa.

5. The impugned order would go to show that only because the petition was filed for divorce by mutual consent under Section 13B of the Hindu Marriage Act, before the District Court, the said petition was disposed of only on the ground that the matrimonial petitions are entertained and decided by the Civil Courts in Goa.

6. Ms. Kamat would submit that as per the Hindu Marriage Act, any petition for divorce has to be filed before the District Court. She submits that the forum as provided therein would have been considered. If the matters are decided by the Civil Courts in the State of Goa, such petitions ought to have been transferred instead of disposing of.

7. The submission of Ms. Kamat needs consideration. Even though the provisions of Hindu Marriage Act and more specifically, Section 13B provide that such a petition needs to be filed before the District Court, as far as the Goa Civil Courts Act is concerned, such jurisdiction is with the Civil Court. Accordingly, the learned District Judge instead of

disposing of the said proceedings could have transferred it to the Court having jurisdiction. By disposing of such petitions and asking parties to present it before the concerned Civil Court, was not proper.

8. The impugned order therefore suffers from improper exercise of jurisdiction. Accordingly, the impugned order is quashed and set aside. Matrimonial Petition no 1 of 2023 is restored to the file of the Principal District and Sessions Court, North Goa, Panaji who is directed to transfer/allot such petition to the Court having jurisdiction. The concerned Civil Court shall thereafter decide the petition in accordance with law.

9. Rule is made absolute in the above terms.

10. Parties to act on an authenticated copy of this order.

BHARAT P. DESHPANDE, J.