

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
(FROM ITS PARSI CHIEF MATRIMONIAL JURISDICTION)
APPEAL NO.342 OF 2017
IN
NOTICE OF MOTION NO.7 OF 2016
IN
PARSI SUIT NO.31 OF 1987
WITH
IN PERSON APPLICATION NO. 45 OF 2019
WITH
NOTICE OF MOTION NO. 157 OF 2019**

Mrs. Shireen Kersi Dubash
Parsi Indian Inhabitant,
presently residing at
Cusrow Baug, M-43,
Shahid Bhagat Singh Road,
Colaba, Mumbai – 400 001. ... Appellant (Original Defendant)
V/s.

Mr. Kersi Jai Dubash
Parsi Indian Inhabitant,
presently residing at
Roxana, Flat No.8, B-Wing,
3rd Floor, 109, Maharshi Karve
Road, Mumbai-400 020. ... Respondent (Original Plaintiff)

Ms. Shireen Dubash, Appellant in person is present.

Mr. Karl Tamboly a/w Ms. Tanya Chaudary & Ms. M. Srinidhi i/by
Bharucha & Partners for the Respondent.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

**RESERVED ON : 15TH MARCH 2024
PRONOUNCED ON : 30TH APRIL 2024**

JUDGMENT: (PER ARIF S. DOCTOR, J.)

The present Appeal impugns an order dated 18th April 2017, by which the captioned Notice of Motion (*"the said Notice of Motion"*) came to be dismissed. The said Notice of Motion was filed by the Appellant on 20th October, 2016 seeking to set aside a Decree of Divorce dated 8th December 1987 (*"the said Decree"*) by which the marriage between the Appellant and the Respondent had been dissolved. Thus, admittedly, the said Notice of Motion was filed after over 28 years from the date of the Decree.

2. Before adverting to the rival contentions, it is useful to first set out a few facts, viz.

i. The Appellant and the Respondent were married in the

year 1981 in accordance with the provisions of the Parsi Marriage & Divorce Act, 1936. In the year 1982 the Appellant and the Respondent were blessed with the birth of their daughter.

- ii. It appears that thereafter there was some matrimonial discord between the Appellant and the Respondent, which led to both of them filing their respective Petitions under the provisions of The Guardians and Wards Act, 1890 both seeking custody of their minor daughter. MPT No. 531 of 1987 was filed by the Respondent and MPT No. 532 of 1987 was filed by the Appellant.
- iii. After the filing of the aforesaid MPT's, settlement talks ensued between the Parties and their respective advocates. The Respondent then, during the pendency of the settlement talks on 29th October 1987 filed the captioned Suit *inter alia* seeking a divorce from the Appellant on the ground of desertion. The Appellant

thereafter on 10th November 1987, filed another MPT (Being MPT No. 596 of 1987) seeking custody of their minor daughter.

- iv. It is not in dispute that, the Appellant then on 7th December 1987 filed her written statement and counter claim ("*the first written statement*") in which the Appellant opposed the Suit and *inter alia* sought restitution of conjugal rights. Also, during this time, it is not in dispute and the record infact bears out that settlement talks were also on going between the Parties and their respective Advocate.
- v. Thereafter, on 8th December 1987 various events took place, namely (a) that a sum of Rs. 2,00,000/- was sent by the Respondent to advocate of the Appellant, (b) the Respondent executed a second written statement dated 8th December, 1987 ("*the second written statement*") – which is denied by the Appellant, (c) the advocate for the Respondent gave a no objection to the sum of Rs.

2,00,000/- being handed over to the Appellant and (d) the Advocate for the Respondent lodged a draft of the Divorce Decree with the Chief Matrimonial Court with a request to issue two certified copies thereof.

- vi. On 9th December 1987 Parties entered into consent terms in MPT No. 596 of 1987, which *inter alia* provided (a) the Appellant would get custody of their then minor daughter, (b) the Respondent was to make payment of a sum of Rs. 2,00,000/- as maintenance of then minor daughter; and (c) the Respondent was permitted visitation rights in respect of his minor daughter. Thereafter, on 13th February 1988 the Decree for Divorce was drawn up. The Respondent then on 1st November, 1988 got remarried and has a son out of that wedlock.
- vii. The Appellant on 18th July, 2014 filed a praciepe with the Registrar of Parsi Chief Matrimonial Court in which the Appellant had stated, viz.

"Be pleased to furnish certified copy of Judgment and

Decree passed in the above mentioned Suit. The Defendant is unable to recollect the date of the passing of the Decree. The Defendant is ready and willing to bear the necessary charges for the same."

The Appellant thereafter, as already noted above, on 20th October, 2016 filed the said Notice of Motion in which the Appellant sought the following reliefs, viz.

- "a) *This Hon'ble Court may be pleased to set aside the incorrect Decree dated 8.12.1987 unilaterally drawn up on 13.2.1988 by the Plaintiff and declare the Divorce Decree as null and void;*
- b) *This Hon'ble Court may be pleased to condone the delay in the filing of the present Notice of Motion;*
- c) *This Hon'ble Court may be pleased to direct the Registry to investigate into the matter so as to inquire to the validity of the Decree.*
- d) *This Hon'ble Court may be pleased to hold the proceedings of this case in camera and not made reportable to the press.*
- e) *This Hon'ble Court may be pleased to address the Plaintiff and Defendant by other identities and to direct the Registry to not make the names of both parties public or disclose their respective identifies at any stage.*

- f) For costs of this Motion to be provided for.*
- g) For any other and further reliefs, this Hon'ble Court deems fit and proper in the facts and circumstances of the present proceedings."*

The said Notice of Motion came to be dismissed by the Impugned Order and it is thus that the present Appeal came to be filed.

Submissions of Ms. Shireen Dubash Appellant in person:

3. Ms. Dubash, at the outset, submitted that the said Decree was obtained by playing a fraud on this Court since there was no judgement on the basis of which the said Decree was drawn up. She then pointed out that the second written statement was also a fraudulent document since (i) no leave/order of the Court was produced pursuant to which the same was permitted to be filed and (ii) it did not have any verification clause. She therefore submitted that there could be no manner of doubt that the said Decree was a fraudulent one.

4. Ms. Dubash then invited our attention to the first

written statement filed by her and pointed out that the same was dated 7th December 1987 which was only one day prior to the second written statement. Ms. Dubash pointed out from the first written statement that the Appellant had opposed the prayer for divorce and had infact sought for restitution of conjugal rights. She submitted that the Appellant never wanted a divorce, and it was indeed most odd that one day after the first written statement was filed, a second written statement with a diametrically opposite stand was filed. She thus submitted that it was clear that the second written statement was a forged and fabricated document and not one which could ever be said to be the written statement of the Appellant.

5. Ms. Dubash then submitted that it was only because of the fear of losing custody of her minor daughter that she had agreed to accept the offer of the Respondent, i.e., Rs.2,00,000/- and enter into the Consent Terms. She however pointed out that the said Consent Terms had been filed in Miscellaneous Petition No.596 of 1987 and were not filed in the captioned Suit.

6. Ms. Dubash then invited our attention to two letters both dated 8th December 1987 addressed by D. H. Nanavati & Company the then Advocates of the Appellant to Mulla & Mulla & Craigie Blunt & Caroe Advocates and Solicitors in which it had been categorically stated that the Appellant had refused to consent to a decree of divorce and pointed out therefrom that the said letters specifically recorded that the Appellant had refused to sign a written statement giving consent for a decree of divorce. She therefore submitted that plainly the decree of divorce was a fraudulent document and one for which the Appellant had never given her consent.

7. Ms. Dubash pointed out that while the date of the decree of divorce was 8th December 1987 and was stated to have been passed by Justice Guttal, the said Learned Judge did not even have the assignment of hearing Parsi Matrimonial matters at the relevant time. She submitted that the assignment for hearing Parsi Matrimonial Suits was with Justice H. Suresh and not Justice Guttal. She submitted that no hearing

infact took place in the Suit before Justice Guttal on 8th December 1987 and that the only hearing that took place on 8th December 1987 was before Justice H. Suresh which was in the captioned Suit.

8. Ms. Dubash submitted that she had become aware of the said decree only when she had received certified copies of the record and proceedings of the captioned Suit on 28th July 2014. She pointed out that the captioned Notice of Motion was filed on 20th October 2016, which was within a period of limitation and therefore there was no delay in the filing of the captioned Notice of Motion.

9. Ms. Dubash, in light of the above submissions pointed out that the said Decree having clearly being obtained by a fraud practiced upon this Court by the Respondent, was necessarily required to be set aside. Basis this she submitted that the Learned Judge had gravely erred in dismissing the said Notice of Motion and this Appeal deserves to be allowed.

Submissions of Mr. Karl Tamboly on behalf of the Respondent:

10. Mr. Tamboly, Learned Counsel, at the outset submitted that the said Notice of Motion was not only grossly barred by limitation but was also a completely abuse of law and the process of this Hon'ble Court.

11. He submitted that the Appellant was not only well aware of the said Decree but had actively participated individually and through her then advocate, D.H. Nanavati and Company in both formulating and obtaining the same. In support of his contention, he highlighted the following instances which he submitted made apparent the Appellant's knowledge and participation in obtaining the said Decree, namely, viz.

- a. That between 30th October 1987 to 10th November 1987, the Advocates for the Appellant were in constant talks for settlement of the divorce petition as also the custody proceedings, which were pending for custody of their minor daughter.

- b. That the Respondent's Advocates had, vide their letter dated 8th December 1987, forwarded to the Appellant's Advocates, a sum of Rs.2,00,000/- with the clear direction that the said funds were transferred to the Appellant only after "*the decree for divorce is pronounced*".
- c. That the second written statement was duly affirmed by the Appellant before an officer of this Court after receipt of the funds by her Advocate and the same specifically Viz.

*"2.The Defendant further states that a consent order has been agreed to be obtained between the parties hereto in the custody petitions in respect of minor ****.*

3. In the Premises, the Defendant submits to a decree in terms of prayer (a) of the plaint solely on the ground of desertion" (name of the daughter redacted)

- d. That the Respondent's Advocates, by their letter dated 8th

December 1987 specifically recorded that since the divorce decree had been pronounced, the funds could be released to the Appellant and specifically sought the Appellant's confirmation that the Appellant had no outstanding claims against the Respondent.

- e. That the Appellant's advocate then issued a receipt dated 8th December 1987 to the Advocates for the Respondent acknowledging receipt of the sum of Rs.2,00,000/- from the Respondent.
- f. That the Appellant's Advocate vide the letter dated 9th December 1987 specifically recorded that '*only a divorce would be accorded to your client, without a contest on a settlement in the minor's petition*'.
- g. That the Respondent's Advocate, vide a praecipe dated 8th December 1987, lodged the draft decree for divorce with the Registrar, Parsi Chief Matrimonial Court in accordance with the then existing Rule 300(1) and (2) of the Bombay High Court (Original Side) Rules, 1980 ("Original Side

Rules”).

- h. That the Appellant’s Advocates as per Rule 300 (2) of the Original Side Rules made handwritten corrections/suggestions to the draft decree, lodged by the Respondent’s Advocates and even appended his signature to the same thus endorsing his approval to the final decree to be issued by the Court.
- i. That the Appellant’s then Advocate had himself on 9th February 1989 applied for a certified copy of the said Decree.
- j. That even in the praecipe dated 18th July, 2014, the Appellant had sought a certified copy of the judgment and divorce decree which evinced her knowledge of the same.

He submitted that considering the above, it was inconceivable and unconscionable for the Appellant to now contend that she was not aware of the said Decree or that the same was obtained fraudulently. He thus submitted that the Appellant’s conduct was

patently *mala fide* and totally dishonest.

12. Mr. Tamboly then on the aspect of delay submitted that the said Decree was dated 8th December 1987 whereas the said Notice of Motion had been filed approximately 28 years after the date of the said Decree. Placing reliance upon Articles 59 and 137 in the Schedule to the Limitation Act, 1963, he pointed out that the time limit to file an application against a decree of divorce was three years from the date of which the party was made aware of the said decree. He pointed out that in the present case, there could be no manner of doubt that the Appellant was aware of the said decree in the year 1987 and, therefore, the said Notice of Motion was grossly barred by limitation.

13. He then submitted that in the alternative and even on the assumption that the Appellant was not aware of the divorce decree in the year 1987, limitation would commence from 1989 when the Appellant's advocate D.H. Nanavati and Company had

applied for a certified copy of the said divorce decree. Basis this, he submitted that the Learned Judge had correctly held that the said Notice of Motion was grossly barred by limitation.

14. Mr. Tamboly then pointed out that not a single cogent reason had been forthcoming by the Appellant to condone the delay of 28 years and 288 days. He submitted that the reason for delay given by the Appellant in her Affidavit in Rejoinder to the Notice of Motion was that the Appellant suffered from various health ailments, owing to which she was unable to take stock of the divorce proceedings. He submitted that this reason was also patently false since (i) all the alleged ailments, which the Appellant claimed to have been suffering from, were only from the year 2012 onwards (ii) there was no explanation whatsoever as to why the Appellant had not been taken any steps prior to that and (iii) that the Appellant was pursuing three separate Writ Petitions between the years 1999 to 2013 all filed in this Court against her erstwhile employer. He therefore submitted that there was no stateable much less cogent reason as to why the Appellant could not have taken steps earlier. He

submitted that it was clear that the Appellant had taken out the said Notice of Motion for *malafide* reasons and only to extract monies from the Respondent.

15. Mr. Tamboly then submitted that after being granted a decree of divorce in the year 1987, the Respondent had remarried in the year 1988 and had a son from the second marriage, who was now about 31 years old. He submitted that if this Court was to accept the Appellant's contention and set aside the decree of divorce granted in the year 1987 great harm and prejudice would be caused not only to the Respondent, but also to his wife and son. He, therefore, submitted that the question of today interfering with the decree of divorce, that was passed in the year 1987, did not arise.

16. Mr. Tamboly then in support of his contention that the party aggrieved by the invalidity of any order has to approach the Court for a declaration that such order against such party was inoperative and/or not binding upon such party, within prescribed period of limitation, placed reliance upon the

judgements of the Hon'ble Supreme Court in the cases of *Sabitri Senapati Vs. Judge Family Court, Cuttak*¹, *Sneh Gupta Vs. Devi Sarup & Ors.*² and *State of Rajasthan & Ors. Vs. D. R. Laxmi & Ors.*³ and pointed out that even in cases where an order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated, acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. He thus submitted that in the present case, he submitted that even if the contention of the Appellant was to be accepted that the said Decree was void, the fact that the Appellant had not taken any steps for over 28 years, despite having knowledge of the said decree, the Appellant was now estopped from assailing the same in any manner.

17. He then took pains to point out that though the Appellant had herself in the praecipe dated 18th July 2014 specifically sought a copy of the said judgement and decree and

1 2003 SCC Online Ori 86

2 (2009) 6 SCC 194

3 (1996) 6 SCC 445

recorded that she was unable to recall the date of the decree was evidence enough of her knowledge of the same. He thus submitted that the Appellant's contention that she had become aware of the said Decree only after receiving certified copies records and proceedings in captioned Suit was patently false. He pointed out that as per the judgements of the Hon'ble Supreme Court in the cases of *Basawaraj & Ors. Vs. The Special Land Acquisition Officer*⁴, *Warlu Vs. Gangotribai*⁵ and *Pundik Jalam Patil Vs. Executive Jalgaon Medium Project*⁶, sufficient cause for seeking condonation of delay in filing an application was a mandatory requirement at law which the Appellant in the present case had failed to demonstrate.

18. Mr. Tamboly then placing reliance upon a judgment of the Hon'ble Supreme Court in the case of *Byram Pestonji Gariwala Vs. Union of India & Ors.*⁷ submitted that the relationship between a counsel and his party was that of a principal and agent. He submitted that therefore a counsel had

4 (2013) 14 SCC 81

5 1995 Supp (1) SCC 37

6 (2008) 17 SCC 448

7 (1992) 1 SCC 31

the freedom to contract on behalf of his client since the counsel had a vested authority. In this context, he pointed out that the Appellant's then advocate D. N. Nanavati & Company had in fact under the provisions of Rule 300 of the Bombay High Court Rules made handwritten corrections to the draft decree and also appended his signature on 25th January, 1998 signifying his consent to the said Decree. He therefore submitted that it was now not open for the Appellant to contend that the said decree was passed either fraudulently or without the consent of the Appellant.

19. Mr. Tamboly then submitted that the Appellant's contention with regard to the fact that the Learned Judge i.e. Justice Guttal who passed the Decree never had the assignment of Parsi Matrimonial Cases was also patently incorrect. He pointed out that the assignment for Parsi Matrimonial Matters was infact with Justice Guttal whereas the assignment for custody and guardianship matters under Guardians and Wards Act, 1890 was with Justice H. Suresh. He submitted that the

Appellant's contention that the divorce decree was fraudulent and that the divorce proceedings were heard by Justice H. Suresh was incorrect and unfounded.

20. He then submitted that the Appellant had attempted to mislead this Hon'ble Court and had wrongly contended that she had never appeared before Justice Guttal, and that the Respondent had fraudulently planted the divorce decree. He pointed out that the Parsi Suit Register specifically noted that the Judge, who had disposed of the matter, was Justice Guttal and this fact was also recorded by the Learned Judge in the Impugned Order. Thus, the contention that the Decree was passed by a Learned Judge who did not have the assignment was patently false and misleading.

21. Mr. Tamboly then submitted that the Appellant was guilty of suppression and falsification of facts and had not approached this Court with clean hands. In support of his contention, he first submitted that the Appellant had intentionally suppressed the second written statement, since the

same specifically recorded the Appellant's consent for the grant of decree of divorce to the Respondent on the ground of desertion by the Appellant. He pointed out that it was only when the Respondent brought the second written statement on record in the Affidavit in Reply to the said Notice of Motion that the Appellant, had for the first time denied, having declared any such written statement in her Affidavit in Rejoinder to the said Notice of Motion.

22. He then submitted that another patently false case pleaded by the Appellant was that she has been removed from her matrimonial home "Roxana". He pointed out that the Appellant had on her own admission never resided at "Roxana", which fact found mention in her first Written Statement dated 7th December 1987, wherein the Appellant admitted that subsequent to her marriage, she continued to stay at Cusrow Baug and therefore the Appellant's contention taken for the first time that the Respondent had thrown out the Appellant and his then minor daughter was entirely false and incorrect case pleaded. Mr. Tamboly thus placing reliance upon the judgements

of the Hon'ble Supreme court in the cases of *S. P. Chengalvaraya Naidu (Dead) by LRs Vs. Jaganath (Dead) by LRs & Ors.*⁸ and *Ramjas Foundation & Anr. Vs. Union of India & Ors.*⁹ submitted that a party, who does not approach the Court with clean hands, is not entitled to be heard and can be summarily thrown out at any stage of the proceedings. Basis this, he submitted that the present Appeal deserves to be dismissed with costs.

Reasons and Conclusions

23. We have heard the Appellant in person at length as also the learned counsel for the Respondent and after giving our careful consideration to the submissions advanced as also the documents upon which reliance was placed and the case laws cited, we find that filing of the said Notice of Motion is as misconceived as it is unfortunate. We therefore have no hesitation in dismissing the said Appeal for the following reasons, viz.

⁸ (1994) 1 SCC 1

⁹ (2010) 14 SCC 38

A. In our view, there can be no manner of doubt that the Appellant was aware of the passing of the said Decree. We say so because, viz.

- i. Payment of the sum of Rs.2,00,000/- to the Appellant was clearly contingent to the Appellant consenting to a Decree for divorce as is clear from the letter dated 8th December, 1987 addressed by the Respondent's Advocates to the Appellant's Advocates.
- ii. The Respondents advocates by subsequent letter dated 8th December, 1987 then specifically recorded that since the decree of divorce had been pronounced, the funds could be released to the Appellant and specifically sought the Appellant's confirmation that the Appellant did not have any outstanding claims against the Respondent.
- iii. The Appellant's advocates issued a receipt dated 8th December, 1987 acknowledging receipt of the said

sum of Rs.2,00,000/-.

- iv. The Appellant's advocates had in accordance with the provisions of the Bombay High Court Rules made corrections in hand to the draft decree lodged with the Registrar of the Parsi Chief Matrimonial Court and initialed the said corrections and even signed on the same endorsing his approval to the final decree to be issued by the Court.
- v. The Appellant's advocates had on 9th February 1989 applied for a certified copy of the said decree.
- vi. The Appellant herself in the praecipe dated 18th July 2014 had specifically sought copies of the judgment *and decree* passed in the above Suit and recorded that she was unable to recollect the date of passing of *the decree*.

Thus, from the aforesaid facts, there can be no manner of

doubt that the Appellant was aware of the said Decree, despite which, the Appellant had chosen not to challenge it for a period of over 28 long years.

- B. We must also note that though the Appellant has contended that the second written statement was a fraudulent document which was not signed by her, we are unable to accept this contention since (i) the Appellant herself curiously did not make any mention and/or raise any grievance in respect of the second written statement in her Affidavit in support of the Notice of Motion (ii) disowned the same for the first time only when the Respondent produced the same along with his Affidavit in Reply to the Notice of Motion (iii) also a perusal of the said written statement makes clear that the same was affirmed before an officer of this Court (iv) that the second written statement when viewed with the context of the events that transpired in quick succession in between 7th and 9th December does not at all support the Appellant's contention that the same was fraudulent and she did not execute the same. Similarly, the

letters dated 8th December, 1987 upon which reliance was placed by the Appellant to suggest that the Appellant was not willing to consent to a divorce would also have to be viewed in the context of the other contemporaneous documents and events which took place between 7th December and 9th December 1987 also do not support the Appellant's contention that the decree of divorce was not validly passed.

- C. Also, the contention of the Appellant that Justice Guttal who passed the said Decree never had the assignment of hearing Parsi Matrimonial Suits is entirely without merit and basis. We must note that the Learned Judge who passed the Impugned Order personally examined the Paris Suit Register, after which he held as follows, viz.

"15. I have also considered the Parsi Suit Register from Suit Nos.23/1986 (9.10.1986) until 13/1977 (29.3.1997). It is noted therein by the then Parsi Registrar that His Lordship Justice P.M. Guttal (as he then was) was the Judge who disposed the matter and the date of disposal was 8th

December 1987. In fact, the register also shows that Justice Guttal was the Judge hearing the Parsi Matrimonial matters even on 7th December 1987 and also on 8th December 1987. The photocopy of the relevant pages of the register is taken on record and marked 'X' for identification."

Thus, there can be no doubt that Justice Guttal infact had the said assignment. However, what is crucial to note is that the Appellant contention that Justice Guttal did not have the assignment based on absolutely no material and it is purely on the Appellant's *ipse dixit*. Thus, given the clear finding of the Learned Judge, we have no occasion much less basis to interfere with the same.

- D. We also find no merit in the contention of the Appellant that since the judgment upon which the said Decree was passed is unavailable, the said Decree has been fraudulently passed. However, given the events noted above, we concur with the findings of the Learned Judge in the Impugned Order where the Learned Judge has specifically held as follows, viz.,

"17. *I must also add, I don't find any order dated 8th December 1987 of Justice Guttal in the records and proceedings. Perhaps it is misplaced. An order can be misplaced only if it was there and I would believe it was there, or else the registry would not have drawn up the decree*".

Furthermore, given that we have already held that the Appellant was well aware of the passing of the said decree in the year 1987 itself, mere absence of the said judgment today from the records which are over thirty years old would not invalidate the said decree. We must note and as held by the Hon'ble Supreme Court in the case of ***D. R. Laxmi*** (supra), upon which reliance was placed by the Learned Counsel for the Respondent that "*though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.*" Thus, we have no hesitation in holding that mere absence of the judgement in the facts of the present case and given the conduct of the Parties, would not invalidate

the said Decree.

- E. Additionally, another factor which we are bound to consider is the inordinate passage of time since the said Decree was passed. We are unable to accept that the Appellant contention that she never wanted a divorce and wanted restitution of conjugal rights. The Appellant's conduct certainly does not support this contention. The Appellant's conduct infact supports the stand taken by the Appellant in the second written statement. The bonafides and conduct of the Appellant does not inspire the slightest confidence in us. It is inconceivable that the Appellant would not have known of the intervening events, namely the remarriage of the Respondent and the fact that the Respondent today has a 31 years old son from his second marriage. We are also informed that the daughter of the Appellant and the Respondent is today 41 years old and lives overseas and has a family of her own. Thus, for the Appellant to state that she did not want a divorce but wanted restitution of conjugal rights is plainly unstatable. Had there been the slightest genuineness and sincerity in the Appellant's

contention that she wanted restitution of conjugal rights or to save her marriage, the Appellant would not have done absolutely nothing for over three decades. Sadly, it is only the Appellant who has not moved on. It is thus that we have noted above that the filing of the present Notice of Motion is as misconceived as it is unfortunate. It is for these reasons that we are not imposing costs upon the Appellant since we find that in the facts of the present case, the need for exercising compassion would outway the object sought to be achieved by the grant of costs.

24. Before parting with this order, we must note that the Appellant had before the commencement of the hearing of the present Appeal made a request that the names of the parties not be disclosed in the judgment of this Court. We had vide our order dated 2nd February, 2024 made clear that such occasion may arise only after the completion of the hearing when the Court prepares the judgment. However, today we find no reason why the names of the parties to the Appeal should be redacted and hence have not done so.

25. Hence, for the reasons stated above, the Appeal is dismissed.

26. In view of dismissal of the captioned Appeal, all pending Applications are accordingly disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)