

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PARSI SUIT NO. 1 OF 2024

ANAHITA PORUS HAKIM)...PLAINTIFF NO.1

V/s.

PORUS JAMSHED HAKIM)...PLAINTIFF NO.2

Mr.Pervez M. Rustomkhan, Advocate for the Plaintiff no.1.

Ms.Nerissa Almeida, Advocate for the Plaintiff no.2.

CORAM : ABHAY AHUJA, J.

DATE : 25th JULY 2024

P.C. :

1. This suit seeks divorce by mutual consent under Section 32-B of the Parsi Marriage and Divorce Act, 1936 (the “PMD Act”).

2. Mr.Rustomkhan, learned Counsel for the Plaintiff no.1 and Ms.Almeida, learned Counsel for the Plaintiff no.2, submit that both the Plaintiffs were originally married for the first time on 11th February 2003. After the said marriage, two twin daughters Katriena and Karyna were born on 16th June 2007. However, due to disputes and differences between the Plaintiffs, the first marriage was dissolved by a decree of divorce passed by this Court on 30th March 2012. It is submitted that

after the first marriage was dissolved, the Plaintiff no.2 went to reside at Andheri. However, the Plaintiff no.1 remarried the Plaintiff no.2 on 16th June 2018 at Vatcha Gandhi Agiary Hall, Hughes Road, Mumbai – 400 007. Both the learned Counsel draw the attention of this Court to the Certificate of Marriage at Exhibit A to the plaint.

3. It is submitted that the two daughters are minor and presently in the custody of the Plaintiff no.2 i.e. the father.

4. That, soon after their second marriage, both the Plaintiffs cohabited and resided together at their matrimonial home at Flat No.1, Building No.11, Ground floor, Old Khareghat Colony, Babulnath, Mumbai – 400 007.

5. It is submitted that, thereafter, although externally things were working out well, however, after a period of time, differences once again arose between the Plaintiffs. The Plaintiffs made their best efforts to sort out the differences with the help of friends and relatives, but the same could not be resolved. It has been stated that due to incompatibility and differences, which arose between the Plaintiffs, once again the Plaintiffs stopped cohabiting with each other as husband

and wife, and in fact, started living separately since August 2022, although in the same house and ultimately from February 2023, the Plaintiffs have been living in separate residences.

6. During the course of the hearing, Mr.Rustomkhan as well as Ms.Almeida have relied upon a decision of the Hon'ble Supreme Court in the case of *Smt.Sureshta Devi vs. Om Prakash*¹ to submit that living separately does not necessarily mean residing in different houses but parties could live in the same house and yet live separately, if they are not performing their marital obligations. Attention of this Court has been drawn to paragraph 9 of the said decision, which is usefully quoted as under :

“9. The ‘living separately’ for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression ‘living separately’, connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform material obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second

1 AIR 1992 Supreme Court 1904

requirement that they 'have not been able to live together' seems to indicate the concept of broken down marriage and it would not be possible to reconcile themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved."

7. Both the learned Counsel have submitted that the Plaintiff no.1 and the Plaintiff no.2, although were living in the same house, but had stopped performing their marital obligations and with that mental attitude, had been living there since August 2022, and that, therefore, the two have been living separately since August 2022.

8. It is submitted that the Plaintiffs have entered into Consent Terms dated 8th January 2024 which are annexed as Exhibit B to the plaint. By the said Consent Terms, the Plaintiffs have mutually agreed that the two daughters would be living with the father, who affectionately takes care of them. It has also been provided how the education, marriage and other expenses as well as the payments for the residence of the Plaintiff no.2 will be provided for. The access by the Plaintiff no.1 to the two daughters has also been provided for therein. The Plaintiff no.1 has also undertaken to make various payments.

9. This Court is informed that in accordance with paragraph 2 of the Consent Terms dated 8th January 2024, the Plaintiff no.1 has already made payment by two cheques of Rs.10 lacs each to the Plaintiff no.2 - Husband. Mr.Rustomkhan for the Plaintiff no.1 submits that today a Pay order of Rs.10 lacs bearing No.000070 dated 14th June 2024 is being handed over by the Plaintiff no.1 to the Plaintiff no.2. Ms.Almeida for the Plaintiff no.2 has accepted the said Pay order and handed over the same to the Plaintiff no.2. The said Consent Terms dated 8th January 2024 are taken on record and marked “X” for the purposes of identification. The undertakings contained in the Consent Terms are accepted as undertakings to this Court. In support of the plaint as well as the Consent Terms, the Plaintiffs have also filed affidavits dated 8th January 2024 modified by affidavits dated 2nd July 2024 by the Plaintiff no.1 and 1st July 2024 by the Plaintiff no.2 as well as affidavits dated 23rd July 2024.

10. Section 32-B(1) of the PMD Act provides that a suit for divorce may be filed by both the parties to a marriage together, on the ground that they have been living separately for a period of one year or more and that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. The proviso to

the said Section 32-B(1) provides that no suit shall be filed unless at the date of the filing of the suit one year has elapsed since the date of the marriage.

11. Section 32-B(2) provides that the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under the PMD Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

12. It is observed from the Registration Certificate that the marriage was solemnized on 16th June 2018 and that the suit has been filed on 8th January 2024, which is after a period of one year since the date of the marriage. It has been submitted that the parties have been living separately since August 2023, which is also for over a period of one year, since the date of the marriage. A perusal of the plaint, the Consent Terms, the affidavits filed before this Court and my interaction with the Plaintiff no.1 and the Plaintiff no.2, who are present in Court, suggests that the Plaintiff no.1 and the Plaintiff no.2 whose marriage was solemnized on 16th June 2018 under the PMD Act, have not been

able to live together, and that, they have mutually agreed that the marriage be dissolved and have entered into the Consent Terms dated 8th January 2024.

13. That, the Plaintiffs were earlier married on 11th February 2003, out of which wedlock, they had two twin daughters and which was dissolved on 30th March 2012, after which, in the year 2018, the Plaintiffs once again came together and got married but again due to compatibility differences, despite best efforts, were unable to resolve the differences and stopped cohabiting together and living as husband and wife since August 2022 and have now once again mutually decided to part ways.

14. I am, therefore, satisfied that the averments in the plaint are true and that the consent of either party to the suit has not been obtained by force or fraud. That, adequate arrangements have been made for the two minor children. That, since the Plaintiff no.1 and the Plaintiff no.2 are unable to live together as husband and wife, the marriage between the Plaintiff no.1 and the Plaintiff no.2 be dissolved from the date of the decree.

15. The suit, accordingly, stands decreed in terms of Prayer clause (a) which reads thus :

“(a) for a decree for Divorce by mutual consent, dissolving the marriage solemnized on 16th June, 2018 between Plaintiff No.1 and Plaintiff No.2 under Section 32-B of the Parsi Marriage and Divorce Act, 1936.”

16. Decree be drawn up expeditiously.

(ABHAY AHUJA, J.)

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