

IN THE PARSİ CHİEF MATRİMONİAL COURT AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PARSI SUTT NO. 11 OF 2024

DARIUSH HOMI IRANI)...PLAINTIFF NO.1

V/s.

AYBEZA DARIUSH IRANI)...PLAINTIFF NO.2

Mr.Deenanath Kamat, Advocate for the Plaintiff no.1.

Mr.Malcolm Vaz, Advocate for the Plaintiff No.2.

Mr.Dariush Homi Irani, Plaintiff no.1, present in Court.

Mrs.Aybeza Dariush Irani, Plaintiff No.2, present in Court.

CORAM : ABHAY AHUJA, J.

DATE : 8th AUGUST 2024

PC. :

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

2. The Plaintiff no.1 is the husband and the Plaintiff no.2 is the wife. The suit had been filed on 15th March 2024 by the constituted attorneys of the Plaintiff no.1 and the Plaintiff no.2. Two affidavits in support of the plaint have also been filed on behalf of the Plaintiffs. Today, both the Plaintiffs, although residing in the United Kingdom, are

present in Court and have been identified as such, by their respective Advocates.

3. It has been submitted by both the Plaintiffs that they are Parsis by religion and got married as per Parsi rites and customs on 4th November 2001 in Mumbai. This Court's attention has been drawn to the registration certificate annexed as Exhibit A to the plaint, which indicates that the marriage has been solemnized in Mumbai on 4th November 2001 and that the marriage was registered on 5th November 2001.

4. That, after the marriage, both the parties started cohabiting together in Mumbai and were blessed first with a girl named Jefrina Dariush Irani, who is aged 20 years and later another girl named Diana Dariush Irani, aged 17 years and 11 months, as on the date of filing of the suit . It is submitted that, at the time of filing of the suit, one of the girls was a minor, however, as on date, both the girls are adults.

5. It is submitted that on 14th January 2006 the Plaintiff no.1 took the Plaintiff no.2 and the elder daughter Jefrina to the United Kingdom and moved to the United Kingdom for better prospects. That, the younger daughter was born in the United Kingdom in 2006 and that

the Plaintiffs with their two children were residing in the first Plaintiff's house at 30, Holcot Lane, Anchorage Park, Portsmouth, United Kingdom, and as on date, the Plaintiffs are overseas citizens of India. It is submitted that till the year 2020, the Plaintiffs were residing together at 30, Holcot Lane, Anchorage Park, Portsmouth, United Kingdom residence.

6. However, the initial differences which indicated incompatibility between the Plaintiffs over a period became unmanageable and the fights between them became more frequent. That, on 7th April 2020, there was a very serious argument between the parties and that is when it was decided that the Plaintiffs would stay separately and end their matrimonial relationship and file for divorce. However, they decided to wait until the youngest child went to university, although the Plaintiffs stopped cohabiting as husband and wife and started living separately in different rooms from 7th April 2020. It is submitted that the friends and well-wishers of both the Plaintiffs tried their best to reconcile the differences between them but the same were unsuccessful. Several meetings were held between the Plaintiffs in the presence of family members and well-wishers, who tried to mediate, without any success.

7. It is submitted that, thereafter, since 1st March 2023, the Plaintiff no.1 – husband has been residing at 20, Daventry Lane, Portsmouth, Hampshire, PO3 5UL and the Plaintiff no.2 i.e. the wife has been residing with the two daughters at 30, Holcot Lane, Anchorage Park, Portsmouth, United Kingdom, PO35UE.

8. That, on 1st August 2023, the Plaintiff no.1 had filed for dissolution of marriage against the Plaintiff no.2 on grounds including under Section 32(bb) and 32(dd) of the PMD Act. However, it is submitted that the said suit was withdrawn with liberty to file a fresh suit for divorce by mutual consent, as the parties had agreed to do so, and a financial settlement agreement had been entered into between them in the United Kingdom on 17th February 2024.

9. The Plaintiffs, who are present in Court, have submitted that they confirm the pleadings in the plaint as well as the terms and conditions of divorce by mutual consent and the affidavits that have been filed in support of the suit and the plaint. The plaint has been, as noted above, filed on 15th March 2024, although it has been registered after removal of office objections only on 7th August 2024.

10. Under Section 32-B of the PMD Act, it is provided 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, provided that the suit is filed after a period of one year has elapsed since the date of the marriage. That, if the Court is 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.

11. It is seen from the record and my interaction with the Plaintiffs that the marriage was solemnized on 4th November 2001. Both the Plaintiffs have submitted in the plaint as well as in the supporting affidavits that they have been living separately since 7th April 2020. In the case of *Smt.Sureshta Devi vs. Om Prakash*¹ the Hon'ble Supreme Court has observed that living separately does not necessarily mean residing in different houses but parties could live in the same house

1 AIR 1992 Supreme Court 1904

and yet live separately, if they are not performing their marital obligations. Paragraph 9 of the said decision is relevant and 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 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.”

12. The plaint has been verified on 13th March 2024 by the plaintiffs’ constituted attorneys, which has been confirmed by the Plaintiffs, who are present in Court, and the plaint had been lodged on 15th March 2024 and registered on 7th August 2024. Therefore, it is clear that the Plaintiffs have been living separately for a period of more than one year. A perusal of the record and the proceedings as well as my

interaction with both the Plaintiffs suggests that they have not been able to live together since 7th April 2020 and that they have not been performing their marital obligations since then and that they have mutually agreed that the marriage be dissolved. That, the averments in the plaint are true and that the consent of neither of the Plaintiffs has been obtained by force or fraud. The suit has also been filed after more than a period of one year from the solemnization of marriage.

13. Being satisfied that the marriage has been solemnized under the PMD Act and the averments in the plaint are true, that the Plaintiffs cannot live together and that the parameters in Section 32-B of the PMD Act having been met and that the consent of either of the party to the suit not having been obtained by force or fraud, I am inclined to pass a decree, dissolving the marriage.

14. Accordingly, the marriage between the Plaintiffs stands dissolved. The suit is decreed as under :

- (i) The marriage between the parties which was solemnized on 04.11.2001 be dissolved by a Decree of Divorce by mutual consent, under Section 32(B) of the Parsi Marriage and Divorce Act – 1936.

(ii) The Financial Settlement Agreement dated 17.02.2024 entered into by both the Plaintiffs be deemed to be part of the decree.

15. Let the decree be drawn up expeditiously.

(ABHAY AHUJA, J.)

ARTI
VILAS
KHATATE

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by ARTI VILAS
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