



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

32 WRIT PETITION NO. 4869 OF 2024

Disha Mayur Antre
name Disha Anandrao Gaikwad
Age : 35 years, Occ: Pvt. Service
R/o : 71/1, in front of K. K. Market,
Gate No.2, Punyai Nagar,
Dhankawadi, Pune
Presently, R/at, Discovery Garden,
Street 4, Dubai (U.A.E.)

...Petitioner
(Ori. Respondent)

VERSUS

Mayur Bhagunath Antre,
Age : 36 years, Occ : Pvt. Business,
R/o : Vrindavan Bangla,
Shri Swami Samarth Nagar,
Lane No.2, Ghulewadi,
Sangamner
Presently, R/at, M Square Residential Building,
Mankhool, Dubai (U.A.E.)

...Respondent

...

Mr. Krishna P. Rodge, Mr. Shardul G. Shinde and Mr. Abhaysinh K. Bhosle, Advocates for the Petitioner
Mr. Vijay V. Deshmukh along with Mr. Jaydeep S. Vaishampayan, Advocates of the Respondent

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CORAM : ROHIT W. JOSHI, J.
DATE : 25th AUGUST, 2025

ORAL JUDGEMENT :

1. Heard finally with consent of the parties. At the outset, the learned Advocate for the petitioner seeks leave correct the prayer clause. Leave is granted. Necessary amendment be carried out forthwith.

2. Petitioner had filed a proceeding for divorce under the Hindu Marriage Act before the Court of Dubai Courts of First Instance vide Case No.105 of 2022/239. Apart from the decree for divorce prayers were also made for maintenance and custody of the child. The learned Court of First Instance has rejected the prayers for divorce and maintenance and has granted a decree with respect to custody of the child.

3. Petitioner preferred an appeal in the Court of Appeal at Dubai which came to be allowed vide judgement dated 12.07.2023 passed in Case No.376/2023/320. The petitioner and respondent preferred two separate appeals before the Court of Casation, Dubai. The appeal preferred by the petitioner-wife came to be allowed and the appeal preferred by the respondent/husband was rejected. The decree for divorce is maintained in the said appeal.

4. Respondent-husband has filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1954 on 20.03.2023 before the learned Civil Judge, Senior Division, Sangamner being case Hindu Marriage Petition No.122 of 2023. The petitioner-wife filed an application vide Exhibit-13 in the said petition praying for dismissal of the petition on the ground that the Court at Dubai had already passed a decree for divorce in her favour and therefore petition

for restitution of conjugal rights was not maintainable. Respondent/husband opposed application. After hearing the rival submissions, the learned Trial Court was pleased to reject the application vide order dated 16.03.2024 which is impugned in the present petition.

5. The learned Advocate for the petitioner/wife states that the learned Trial Court has not dealt with the law on subject in accordance with the judgment of the Hon'ble Supreme Court in the matter of ***Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi & Ors.*** reported in ***(1991) 3 SCC 451***. He contends that merely because a decree for divorce is passed by a foreign Court, it could not be discarded on the said ground. As against this, the learned Advocate for respondent/husband contends that the petition deserves to be dismissed since, the judgment delivered by the Court at Dubai cannot be accepted by Courts in India on three grounds, namely, the husband did not voluntarily acquiesce in the jurisdiction at the Court at Dubai, the judgment and order is not in accordance with substantive law of India; and that the procedure followed is not in accordance with principles of natural justice. The learned Advocate for the respondent/ husband has placed reliance on a Division Bench Judgment of this Court in the matter of ***Shilpa Sachdev Vs. Anand Sachdev***, (Family Court Appeal

No.56 of 2016 - Civil Appellate Jurisdiction at Bombay) delivered on 11.08.2017.

6. Perusal of the impugned order passed by the learned Trial Court rejecting the application of the petitioner wife will demonstrate that the learned Trial Court has held that the Courts at Dubai did not have the jurisdiction to grant decree for divorce, since, the marriage was performed as per Hindu rites and customs at Sangamner, Dist Ahmendnagar and as there is no evidence on record to suggest that the parties had cohabited as a couple at Dubai. It is observed that jurisdiction of a Court for granting decree for divorce is governed by Section 19 of the Hindu Marriage Act, 1954 and having regard to the said provision the Courts at Dubai will not have jurisdiction to pass a decree for divorce.

7. Perusal of the impugned order passed will demonstrate that the law laid down by the Hon'ble Supreme Court in the matter of *Y. Narasimha Rao (supra)* and other judgments from time to time as also various judgments of this Court on the subject including the judgment in the matter of *Shilpa Sachdev (supra)* on which the learned Advocate for the respondent has placed reliance are not considered by the learned Trial Court. It will also be pertinent to mention here that the documents filed in the present petition are also not sufficient for this

Court to decide the issue for the first time. As mentioned above no reasons are recorded by the learned Trial Court on the aspect of binding efficacy of a foreign judgment in view of Section 13 of the Civil Procedure Code and Section 41 of the Evidence Act. In that view of the matter in the considered opinion of this Court it will be appropriate to quash and set aside the impugned order with directions to the learned Trial Court to decide the application afresh. Petition is partly allowed as under:-

ORDER

- i. Order dated 16.03.2024 passed by the learned Civil Judge, Senior Division, Sangamner on an application at Exhibit-13 in Hindu marriage Petition No. 122 of 2023 is quashed and set aside.
- ii. The matter is remitted to the learned Trial Court to decide the said application afresh.

[ROHIT W. JOSHI J.]