



IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.17 OF 2026

Chandan Digambar Pawaskar, S/o
Digambar Raghuvir Pawaskar, Aged
about 43 years, Business, R/o
Rukmini Niwas, 178/10, Ganeshpuri,
Mapusa, Goa Presently residing at
1105 H, Sangria, Megapolis,
Hinjewadi Phase 3, Pune, MH.
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... Appellant.

v/s

Mrs. Tanvi Dattaraj Gad, previously
Mrs. Tanvi Chandan Pawaskar, alias
Tanvi Ashok Xete Raikar, Wife of
Dattaraj Gad, Aged about 37 years,
Service, R/o 361/1/A, Tambudki
Waddo, Arpora, Bardez, Goa
Email: shetraikartanvi@gmail.com

...Respondent.

Appellant present in person (though VC)

Ms. Ashwini Agni, Advocate with Ms. Rajlaxmi Bhatkar, Ms. Afrin Harihar Khanm, Mr. Junaid Shaikh and Mr. V. Salkar, Advocates for the Respondent.

CORAM: VALMIKI MENEZES, J.
RESERVED ON : 19th AUGUST, 2025
PRONOUNCED ON: 10th APRIL, 2026

JUDGMENT:

1. Registry to waive office objections and register the matter.
2. This First Appeal challenges a Judgment and Decree dated 29.02.2024 passed by the Civil Judge Senior Division, Mapusa (hereinafter referred to as Mapusa Court) in Matrimonial Petition No. 08/2018/C, whereby the Appellant's Matrimonial suit, seeking divorce against the Respondent on grounds of adultery and ill treatment has been dismissed as being infructuous, in view of the Judgment and Decree dated 06.05.2023 being passed by the Civil Judge Senior Division at Quepem (hereinafter referred to as Quepem Court), in favour of the Respondent, granting her a Decree of Divorce in Matrimonial Petition No. 42/2022/A. The Appellant is the original Plaintiff and the Respondent, the Defendant. They shall be referred to in this Judgment by these nomenclatures.

Along with the Plaintiff's suit for divorce, an application seeking custody of the Plaintiff's child was filed and was at Exhibit D-18 of the suit. The Defendant also filed an application for custody of their child which is found at Exhibit D-23 of the Trial Court proceedings. The Trial Court dismissed the custody applications, without deciding them on merits, holding them not to be maintainable in view of the dismissal of the Plaintiff's Matrimonial suit as being infructuous after the Defendant was granted a Decree of divorce by the Quepem Court. That order came to be passed on 29.02.2024, which was set aside by this Court vide Judgment dated 26.06.2024 passed in a Miscellaneous Civil Application No. 1078/2024(F), and the application for custody of the child of the plaintiff was remanded back to the Mapusa Court with the direction to register the application separately, and after giving the parties an opportunity, to decide the same within two months.

3. The impugned judgment and decree dismisses Plaintiff's matrimonial suit for divorce, without answering the allegations made in the plaint on merits, and holds that the suit had become

infructuous due to the passing of a decree of divorce dated 06.05.2023 passed by the Quepem Court in the Matrimonial Suit No.42/2022/A, filed by the Defendant, dissolving the marriage. The sole point for determination that arises in this matter is whether the impugned decree calls for interference, since it is not passed on merits but is decided on the sole count that the suit is rendered infructuous.

4. The Appellant has declined representation through an Advocate and has insisted on arguing his case in person. The Appellant has been heard remotely over video conferencing and has chosen not to remain physically present before the Court. The entire appeal proceedings have been e-filed. The records of the trial Court were called for by this Court while examining the Appeal. In addition, the Appellant file the written submissions through e-mail.

The Respondent/Defendant was represented by Ms. Ashwini Agni and in addition to oral submissions have also filed written submissions.

5. The main submissions of the Appellant/Plaintiff are as follows:

A. The Plaintiff submitted that he has led evidence, including electronic evidence of recordings of the Defendant's adulterous relation, which were collected through a spy App which the Plaintiff loaded on the Defendant's phone, without her knowledge. Apart from reliance placed on this evidence, which is produced along with the Certificate under Section 65-B of the Evidence Act, reliance was placed on various photographs showing the Defendant and her alleged paramour at various locations. It was submitted that all the aforementioned evidence which was collected by the Plaintiff was in digital form, and though not sent for forensic analysis, the Plaintiff had undertaken to the Court that he would fully cooperate with the Court to send the data for forensic analysis.

B. It was submitted that the digital evidence was collected and stored on the Truthspy Server and should be accepted as digital evidence under Section 65-B of the Evidence Act. The Plaintiff makes reference to the various alleged acts of adultery recorded in the audio data as well as the audio conversations which are allegedly of the Defendant and the said paramour.

Reliance was placed by the Plaintiff on a judgment of the Supreme Court in **Shafhi Mohammad V/s. State of Himachal Pradesh** reported in (2018) 2 SCC 801, that in every case, a certificate under Section 65-B of the Evidence Act is not mandatory and can be dispensed with. According to the Plaintiff, none of these evidence has been shaken in cross-examination and the Defendant has chosen not to lead any evidence, for which reasons, the Court is required to adopt an adverse inference and hold in favour of the Plaintiff that the ground of adultery has been proved.

As far as grounds of ill-treatment, the Plaintiff argues that the Respondent, on few occasions physically assaulted him, resulting in minor injuries being caused to him. He further submitted that the Defendant's behavior was aggressive and abusive, causing adverse impact to the tender mind of their son. Photographs were produced on record which are found at Exhibit C-31 (colly) claiming the same to be injuries caused by the Defendant to the Plaintiff. It is mainly on this evidence that the Plaintiff claims the ground of mental torture to have been proved.

6. On behalf of the Defendant, Advocate Ms. Ashwini Agni makes the following submissions:

A. She submits that neither of the grounds under Article 4(1) of ill-treatment or Article 4(4) of adulterous relationship have been proved by the Plaintiff. It was submitted that the spy App used on the Defendant's phone was loaded by the Plaintiff, admittedly without the consent of the Defendant. It was further submitted that the digital data produced of the voice recording through the said App are unreliable, and have not been examined by any forensic expert much less any evidence given of the forensic expert to vouch the credibility; the Plaintiff has admitted that he is not a qualified forensic expert in relation to electronic evidence or sound recordings nor has he certified whether the server of the Truthspy App was operating properly since November, 2017. The electronic evidence is therefore unreliable and therefore must be rejected. This being only evidence of adultery, the ground has not been proved.

B. As far as the ground of ill-treatment is concerned, it was submitted that the alleged incident of assault on the Plaintiff, has been admitted by him, not to have been reported to the Police or even to his family members, though the Plaintiff has deposed that he has orally informed his family. Further, it was argued that there is no evidence produced on record to substantiate the allegations of aggressive behavior or how it affected their child, to prove the allegations of ill-treatment.

7. On examining the record of the trial Court, it is noticed that after written arguments came to be filed by both parties, an application/memo came to be filed on 24.11.2023 by the Defendant at Exhibit D-86, seeking to place on record the judgment and decree dated 06.05.2023 of the Quepem Court granting a decree of divorce to the Defendant, dissolving the marriage of the Defendant with the Plaintiff. A copy of the Official Gazette of the Government of Goa dated 24.08.2023 was also placed before the trial Court, wherein the decree of the Quepem Court has been published, giving public notice of the same. The application at Exhibit D-86 seeks dismissal of the suit on grounds that the same is rendered infructuous as a

consequence of the declaration of the dissolution of the marriage of the Plaintiff and Defendant under Decree dated 06.05.2023. it is on the basis of this subsequent event that the Court has passed its decree dismissing the Plaintiff's matrimonial petition, holding the same infructuous.

8. The consequence of any decree of divorce is that it operates as a dissolution of the contract of marriage. The marriage contracted under the Goa Civil Code is not a sacrament based upon religion but is a contract between the spouses which can be dissolved and terminated by a decree of a Civil Court. On this principle, since the contract of marriage had been declared dissolved and therefore terminated, under the decree dated 06.05.2023 of the Quepem Court, the marriage that was dissolved would obviously not be dissolved for the second time by the Mapusa Court, dealing with the Plaintiff's suit. The trial Court have therefore correctly held that the effect of the dissolution of the marriage by the Quepem Court's decree, rendered the Plaintiff's suit infructuous as the Court would not have any jurisdiction to pass a decree in the light of the contract of marriage already having been terminated.

9. I would also have to take judicial notice of the fact that the Plaintiff's First Appeal No.16 of 2016 which impugns the decree dated 06.05.2023 of the Quepem Court, has also been dismissed by me through a judgment pronounced today. The appeal having been dismissed, the decree of divorce granted by the Quepem Court has attained finality and the marriage must be treated as dissolved, prior to the Mapusa Court having occasion to decide the Plaintiff's matrimonial suit. As a consequence of these events, I hold that the sole point for determination must be answered in the negative.

10. Consequently, the Plaintiff's First Appeal shall stand dismissed and the judgment and decree dated 29.02.2024 impugned in this appeal stands confirmed.

11. Decree to be drawn up accordingly.

VALMIKI MENEZES, J.