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IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO.16 OF 2026
WITH
MISCELLANEOUS CIVIL APPLICATION NO.196 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.
Email: chand81@gmail.com
/chandan.pawaskar@gmail.com
Mobile: 8459046591 / 8149826949

... 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 in person, heard through V.C. Appellant has refused
representation through legal Counsel.

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

CORAM: VALMIKI MENEZES, J.

RESERVED ON: 19.08.2025

PRONOUNCED ON: 10.04.2026

JUDGMENT:

1. Registry to waive office objections and register the First Appeal and the Miscellaneous Civil Application.

2. For the reasons stated in the Miscellaneous Civil Application, the same is allowed.

3. The First Appeal is directed against the Judgment and decree dated 06.05.2023 passed by the Civil Judge Senior Division at Quepem (hereinafter referred to as 'Quepem Court') in Matrimonial Petition No. 42/2022/A, granting the Respondent/Original Plaintiff a decree of divorce, dissolving the marriage between the Appellant (Original Defendant) and the Plaintiff.

4. The main grounds raised in this Appeal are following:

- a. That the decree has been passed ex-parte, without effective service on the Defendant and by suppressing the fact that there was a suit for divorce bearing Matrimonial Petition No.08/2018/C before the Civil Court at Mapusa (hereinafter referred to as 'the Mapusa Court'), where the Plaintiff had contested the same by filing Written Statement, and could have notified the Defendant/Appellant of the suit filed by her

in Quepem Court; in substance, the Defendant alleges in the grounds of appeal that the impugned Decree is a product of fraud and suppression and therefore is to be quashed and set aside.

b. That the Quepem Suit was required to be stayed in terms of Section 10 of the Civil Procedure Code, since it was a subsequent Suit on the same cause of action, on the basis of which the Defendant's Suit for divorce at the Mapusa Court was pending. It is the Defendant's ground in Appeal that his Suit for divorce, filed at the Mapusa Court, was prior in point of time and the Quepem Court ought to have stayed the Plaintiff's Suit for divorce, until a decision was rendered in the Defendant's suit in the Mapusa Court.

5. On merits, the Appellant has submitted that the Plaintiff has not led any evidence to substantiate allegations which constitute grounds for divorce, namely, in this case, the ground of ill-treatment. The Appellant seeks to rely upon certain depositions recorded by the Mapusa Court in the Defendant's suit to establish that the Mapusa Court had all details of the Appellant's email and whereabouts and the Appellant could have been served with a proper notice of the Plaint in the Quepem Suit.

6. I have heard the rival submissions of the parties and perused the record of the Suit, which was called for, from the Quepem Court. The Appellant/Original Defendant has insisted on arguing the

matter in person rather than engaging a Counsel. Apart from oral arguments, the Appellant has also placed on record Written Submissions which have been considered by me. Learned Advocate Ms. Ashwini Agni, appearing for the Respondent/Plaintiff, in addition to oral submissions, has also filed written submissions, which have been considered by me.

7. Based upon the record of the trial Court, and the grounds sought to be urged before me, the following points arise for my determination in this Appeal:

- a). Whether the Quepem Suit was required to be stayed under Section 10 CPC until the Mapusa Court disposed of the Appellant's suit for divorce.
- b). Whether the evidence led by the Plaintiff is sufficient to prove the grounds of divorce under Article 4(4) of the Portuguese Civil Code, 1867 applicable to the State of Goa, i.e. whether the ground of ill-treatment has been proved.
- c). Whether the Appellant/Defendant has proved that the notice/summons of the Suit were improperly served on him and as a consequence the entire Decree passed is vitiated.

8. Section 10 CPC postulates that no Court shall proceed with the trial of the Suit in which the matter in issue is directly and substantially in issue in a previously instituted suit between the same parties or between parties litigating under the same title. It is the Appellant's case that he had filed a suit against the present

Respondent for divorce bearing Matrimonial Petition No. 08/2018/C before the Civil Court at Mapusa (North Goa District) on grounds of adultery and on the ground of ill-treatment. These are obviously the grounds which the present Appellant would have to plead, prove, to obtain his decree. It is his case that whilst this Suit (Mapusa) was pending, the Plaintiff/Respondent filed the present Suit in the Quepem Court (South Goa District) where she claimed she resided, on grounds of ill-treatment, without disclosing the pendency of the Appellant's suit at Mapusa, even though she was served in that suit and had filed her Written Statement, cross-examined the Appellant where he led evidence and opposed his application for custody of the child. It is also the Appellant's case that the Plaintiff had filed an application in the Mapusa suit seeking custody of the child and return of her gold ornaments. The Appellant therefore submits, that in these circumstances, the Quepem Court ought to have stayed the subsequent suit until the first suit filed by the Appellant at the Mapusa Court was decided.

9. The underlying principle of Section 10 CPC is for Courts to avoid passing conflicting decrees in two suits, which are based upon the same cause of action. In the present case, the Appellant's suit filed in the Mapusa Court is for divorce on grounds he claims, against the Respondent, of adultery and ill-treatment. His cause of action for filing this suit is therefore independent of the cause of action of the Respondent in filing her suit before the Quepem Court, where she has urged grounds of ill-treatment. The causes of action in each of these suits are therefore independent of each other. No

doubt, the result of either of these suits might affect the outcome of the other, depending upon which decree was passed first, but the causes of action on the basis of which each of these suits was filed being different and independent of each other, the provisions of Section 10 would not be applicable. For these reasons, I answer point (a) for determination in the negative and hold that the Quepem Suit filed by the Respondent was maintainable and need not have been stayed until disposal of the Appellant's suit at Mapusa. It is a different matter that ideally both suits should have been transferred to one Court and the trial be consolidated, but however, even if this was not the course followed by the two Courts, it would not vitiate the decree passed by the Quepem Court.

10. Article 4(4) of the Portuguese Civil Code provides for the grounds on which a decree of divorce can be obtained. The Plaintiff has alleged in the Plaint that from the year 2018, when differences arose between the Plaintiff and Defendant, the Defendant started levelling baseless allegations against her of being in adulterous relationships with her colleagues at work. She has averred that she was forced to give up her employment due to these constant allegations and remained unemployed for a period of one year, after which she took up employment at Pune. She has then averred that from the year 2019, due to their strained relationship, the Appellant stopped performing his marital obligations or looking after the educational expenses and needs of their son. She also alleges that the Defendant stopped having physical relations with her, causing her immense suffering and mental agony.

11. Based on these averments, the Plaintiff led evidence by filing an affidavit in evidence which was produced and exhibited on oath. There is no cross-examination on the specific facts which the Plaintiff has alleged in the affidavit, which are a reflection of the specific averments made in the Plaint, as reproduced in the preceding paragraphs. The statement of fact that the Defendant made baseless allegations against the Plaintiff of having adulterous relationships with her colleagues, forcing her to give up employment, would constitute a ground of *injuria* grave or serious mental torture. This would constitute a ground of ill-treatment. Further evidence on affidavit of the Plaintiff alleges that the Appellant stopped performing his marital obligations by refusing to look after the educational expenses and needs of their son; the further averment in the affidavit is that the Appellant stopped having physical relations with the Plaintiff. The last allegation, which has gone uncontroverted in evidence, would certainly constitute a ground of ill-treatment, justifying the grant of decree of divorce. The grounds have thus been proved on the basis of uncontroverted evidence led by the Plaintiff. The trial Court has assessed this evidence and arrived at its conclusion that the allegations constitute sufficient grounds to grant divorce. The findings arrived at by the trial Court are based upon evidence and cannot be termed as perverse to call for an interference by this Court. The same are therefore confirmed.

12. It is the Appellant's argument that the decree was obtained by

non-disclosure of the pending suit and is therefore a product of fraud. Allegations of fraud require pleadings to be placed before the Court and evidence to be led thereon. In the present case, it would be a different matter if the Appellant had approached the Quepem Court, after gaining knowledge of the decree, with an application under Order 9 Rule 13 CPC seeking to set aside the impugned Decree on grounds of inadequate service or that the Quepem Court was misled into passing the decree ex parte. No attempt has been made by the Appellant to approach the trial Court to seek setting aside of the decree on these grounds, where he would have had an opportunity of leading evidence or pressing for an enquiry into the circumstances under which the decree was passed ex parte. The allegations now made in the memo of appeal, which would require sufficient pleadings and evidence to prove the same, cannot be entertained in the present First Appeal. The First Appeal has challenged the Judgment and Decree on its merits. In these circumstances, I reject the submission that the impugned Decree is not based on evidence and accordingly answer point (b) for determination (b) in the affirmative. The grounds have been sufficiently proved.

13. I am supported in my view by the Judgment of the High Court of Himachal Pradesh in similar facts in **Veepul Lakhanpal v/s Smt. Pooja**.¹

¹ 2016 SCC OnLine HP 379

The facts giving rise to the matter before the Himachal High Court are that the parties have filed two independent suits for divorce in the District Court therein one under Section 12 and other under Section 13 of the Hindu Marriage Act; application under section 10 CPC is filed to stay the suit filed later in point of time. The Court whilst deciding has upheld the rejection of such application by the District Court as held in the following paragraphs quoted below:

“2. The facts giving rise to the present petition may be noticed. The proceedings pending before the learned trial Court (Additional District Judge-1, Solan) have been instituted by the respondent under Section 12 of the Hindu Marriage Act (for short 'Act') wherein the petitioner moved application under Section 10 of CPC on the ground that earlier petition instituted by the petitioner under Section 13 of the Act was already pending adjudication before the learned District Judge, Shimla. The respondent had not only put in appearance, but had also raised similar plea regarding impotency of the petitioner and had further raised certain other contentions, which were similar to the one set out in the present petition.

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7. The object of Section 10 CPC is to prevent Courts of concurrent Jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the

same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, the same would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in Issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of subject matter in both the proceedings is Identical.

8. The mere common grounds in the previous suit and subsequent suit would not attract the Section 10. The basic purpose and underlying object of Section 10 of the Code is to prevent the Courts of concurrent Jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts given by two Courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding(s).

9. It is not in dispute that the respondent in the proceedings instituted by the petitioner under Section 13 of the Hindu Marriage Act has only filed her reply and has not raised a

counterclaim therein. It is further not in dispute that the grounds taken by her in the petition instituted by her under Section 12 of the Act are quite similar to those raised as a defence in the proceedings Instituted by the petitioner under Section 13 of the Act.

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11. Section 23-A only applies to the proceedings for the following reliefs:

(1) divorce;

(ii) judicial separation and;

(iii) restitution of conjugal rights. But this Section has no applicability insofar as the relief claimed by the respondent under Section 12 of the Act is concerned. Even otherwise, no decree of annulment of marriage can be passed in favour of the respondent by the Court on the ground of Impotency in the proceedings instituted by the petitioner under Section 13 of the Hindu Marriage Act at Shimla wherein the respondent has raised a specific plea of Impotency. Such decree of annulment of marriage can only be passed in a substantive petition under Section 12 of the Act which is pending before the Court at Solan. Thus, the scope, ambit and result of both the petitions are entirely different. Moreover, the grounds for filing of an application under Section 12 of the Act and the grounds for filing of an application under Section 13 of the Act are entirely

different.

...

13. Section 21-A reads thus:

“ 21-A Power to transfer petitions in certain cases(!)
where-

(a).....

14. This Section has been added by Section 14 of the Marriage Laws (Amendment) Act, 1976 and makes provision for a case where both the parties to a marriage file separate petitions against each other either in the same Court or in different Courts in the same State or in different States. It provides that in such a case both the petitions shall be tried by the District Court in which the first petition was filed and the petition by the other party shall be transferred to that Court by the Government or by the High Court in accordance with the provisions of the Code of Civil Procedure relating to transfer. These provisions are contained in Sections 22 to 25 of the Code and apply to petitions for judicial separation and for divorce but not to petitions under Sections 9, 11 or 12. In other words, if one petition is for judicial separation or divorce but the other is for restitution or for nullity, this Section will not apply.”

14. Third point for determination is whether the Appellant/Defendant has proved that the notice/summons of the Suit were improperly served on him and as a consequence the entire

Decree passed is vitiated. Here, the only ground is that the summons were routed through the Mapusa Court and returned unserved as the house of the Appellant as found closed. It is also not the Appellant's case that the address shown in the cause title is a different one from the address at which he resides. In fact, the Appellant claims that since he resides within the jurisdiction of the Mapusa Court, it was the duty of that Court, which was aware of the pendency of the matrimonial suit, to inform him either by email or by a phone call, both of which were known to the Court, of the summons issued by the second Court. Neither of these arguments are accepted to hold that the Appellant has been improperly served.

15. Ultimately, the Appellant was served through publication in the local newspaper, since service could not be effected through a bailiff. What needs to be taken note of is that in the cause title of the present matter, the Appellant cites his address as one in Pune, while the address shown in his matrimonial matter at Mapusa Court is shown as the same address as the one given by the Respondent herein in her matrimonial petition before the Quepem Court. In these circumstances, therefore, and considering the fact that on the aforementioned grounds, the Appellant did not think it fit to approach the trial Court to set aside the Decree which was passed ex parte, on all these grounds, the point (c) for determination is answered in the negative.

15. Consequently, I pass the following Order:

ORDER

- a) The Appeal stands dismissed.
 - b) The Judgment and Decree dated 06.05.2023 passed by the Civil Judge Senior Division at Quepem in Matrimonial Petition No. 42/2022/A stands confirmed.
16. Decree to be drawn up accordingly.

VALMIKI MENEZES, J.