



nita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 265 OF 2026

Mr. Blinston Savio Fernandes,
Major Aged 46 years, Son of Antonio Silvano
Fernandes, Resident of Hno. 407,
Vittolem, Sarzora, Chinchinim, Salcette,
Goa 403715

...PETITIONER

~ VERSUS ~

1. Mrs. Leandra Marie Fernandes,
Major Aged 44 years old, Present
Resident of C-101, GRCSubhiksha,
Choodasandra, Bangalore 560037.
2. The Sub Registrar, Margao, Salcete Goa.

...RESPONDENTS

APPEARANCES:

for the Petitioner

*Ms A. Agni with Mr Juniad Shaikh,
Advocates.*

for the Respondent No.1

Mr Sameer Talekar, Advocate

for the Respondent No.2

*Mr Rishikesh Gawas, Addl. Govt.
Advocate.*

**CORAM : VALMIKI MENEZES &
AMIT S. JAMSANDEKAR, JJ.**

RESERVED ON : 6th April 2026

PRONOUNCED ON : 29th April 2026.

JUDGMENT (*Per Amit Satyavan Jamsandekar, J*)

1. Rule. The Rule is made returnable forthwith at the request and by consent of the Learned Counsel for the parties. The Learned Counsels appearing for the Respondents waive service.
2. By the present Petition, the Petitioner is seeking a *Writ of Mandamus* directing the Civil cum Sub Registrar, Salcete, Goa, (*the Registrar*) to cancel the marriage certificate dated 3.1.2007 bearing entry No.2105/2006 and certificate of marriage No.43/2007 in view of the judgment and the decree (*the decree*) dated 4.1.2022, passed by the Family Court, Bangalore in Matrimonial Petition No.5494/2019. Originally, the Petitioner filed an Application under Article 1101 of the *Portuguese Code of Civil Procedure, 1939* to review and confirm the decree by exercising jurisdiction under Article 1101 of the *Portuguese Code of Civil Procedure, 1939*. On 25.11.2025, the Learned Single Judge granted leave to the Petitioner to amend the Petition and add the Registrar as party Respondent and seek a *Writ*

of *Mandamus* by converting the Application into a Writ Petition. Accordingly, the original Application was amended by the Petitioner. Thereafter, the original Application came to be registered as the present Writ Petition under Article 226 of the Constitution of India.

3. The facts and circumstances relating to the cause for filing the present Writ Petition are as follows:

- i) On 14.10.2019, the Petitioner filed the Matrimonial Petition under Section 10 clause 1 (i) of the Indian Divorce Act, 1861 before the Family Court, Bangalore and, *inter alia*, sought a relief of dissolving the Marriage which was solemnised on 23.12.2006. A Mediation Report was filed in the proceeding before the Family Court, Bangalore.
- ii) On 4.1.2022, the Family Court, Bangalore passed the decree by which the marriage between the Petitioner and the 1st Respondent came to be dissolved in terms of the Mediation Report and Memorandum of Settlement under Section 89 of the Code of Civil Procedure, 1908 read with Rules 24 and 25 of the Karnataka Civil Procedure Mediation Rules, 2005.
- iii) The decree passed by the Family Court, Bangalore, was presented by the Petitioner before the Registrar, for

cancellation of the marriage certificate dated 3.1.2007 bearing entry No.2105/2006 and the certificate of marriage No.43/2007.

- iv) The Registrar has refused to accept the decree passed by the Family Court, Bangalore, by which, *inter alia*, the marriage between the Petitioner and the 1st Respondent came to be dissolved. The Registrar told the Petitioner that the decree had been passed by a Court which is outside the jurisdiction of the State of Goa, and therefore, Article 1102 of the *Portuguese Code of Civil Procedure, 1939* applies. The Registrar has taken the view that the decree of the Family Court, Bangalore, is a 'foreign decree' for the purpose of the *Portuguese Code of Civil Procedure, 1939* and therefore, the provisions of Article 1100 of the *Portuguese Code of Civil Procedure, 1939* are attracted. If the provisions of Article 1100 are attracted, then a 'foreign judgment' is required to be reviewed and confirmed by the High Court by exercising jurisdiction under Article 1101 and in accordance with the provisions of Article 1102 of the *Portuguese Code of Civil Procedure, 1939*. In view thereof, the Registrar was of the view

that the decree passed by the Family Court, Bangalore ought to be ratified and confirmed by this Court.

4. Therefore, the Petitioner has filed the present Petition.
5. We have heard the parties and perused the record.
6. Admittedly, the Family Court, Bangalore, has passed the decree by which the marriage between the Petitioner and the 1st Respondent came to be dissolved in terms of the Mediation Report and Memorandum of Settlement under Section 89 of the Code of Civil Procedure, 1908 read with Rules 24 and 25 of the Karnataka Civil Procedure Mediation Rules, 2005. In view thereof, it is submitted by the Petitioner that, the marriage certificate dated 3.1.2007 bearing entry No.2105/2006 and certificate of marriage No.43/2007 ought to be cancelled by the Registrar.
7. However, by invoking the provisions of the *Portuguese Code of Civil Procedure, 1939* the Registrar has refused to cancel the marriage certificate dated 3.1.2007 bearing entry No.2105/2006 and certificate of marriage No. 43/2007. We have been informed by the Learned Counsel for the parties that, in the State of Goa, the Registrar in such matters applies the *Portuguese Code of Civil Procedure, 1939* and treats a decree passed by any Indian Civil Court as a foreign decree. In view of the Registrar's objections, the parties

have no option but to invoke the jurisdiction of this Court by filing applications before the High Court under Article 1101 of the *Portuguese Code of Civil Procedure, 1939*. In the present case, the 1st Respondent submitted that she has no objection if the Registrar cancels the marriage certificate dated 3.1.2007 bearing entry No. 2105/2006 and the certificate of marriage No. 43/2007.

8. However, for the purpose of dealing with the larger issue arising in the present petition, the following question of law is framed by us.

Whether a decree passed by a Civil Court having competent jurisdiction in India be construed as a foreign decree under the Portuguese Code of Civil Procedure, 1939?

9. The State of Goa was liberated from Portuguese Rule on 19th December 1961. Prior to the liberation of the State of Goa from Portuguese Rule, there were two separate Codes governing Civil Law in the State of Goa. The first is the ***Portuguese Civil Code of 1867***. This Code is the substantive law, comprising 2538 Articles/Sections. It covers general provisions regarding the Citizenship (Articles 1-16), Foreigners and Foreign Courts (Articles 7-31), Legal Persons (Articles 32-39), Domicile (Articles 40-54), Absence (Articles 55-96), Incapacity/Minority (Articles 97-358),

Original (Fundamental) Rights (Articles 359-368), Contracts, Divorce, Children, Succession, Property Law (Articles 505-638, 2167-2380), Civil Wrongs (Torts) (Articles 2361-2538), Prescription, Limitation, Possession.

10. The Second is the ***Portuguese Code of Civil Procedure, 1939.***

This Code is a procedural law, comprising 1580 Articles/Sections.

The Code covers procedures for suits and various other proceedings, including Inventory Proceedings. In the *Portuguese Civil Code, 1867*, the first 16 Articles deal with matters of a general nature. Article 17 of the Code provides that the provisions of the Code are available in fullness to Portuguese citizens.

11. There is also a reference to 'Foreign Courts' in Articles 50 and 1101 to 1106 of the *Portuguese Code of Civil Procedure, 1939*. The plain reading of Article 17 onwards of the *Portuguese Civil Code, 1867* makes it clear as to what is meant by 'foreign', 'foreigner' and 'foreign court'. In terms of the provisions of the *Portuguese Civil Code, 1867*, it is clear that the word '*foreigner*' means '*one who is not a Portuguese citizen*'. Accordingly, for the purpose of the *Portuguese Civil Code, 1867* as well as *Portuguese Civil Procedure Code, 1939*, the word '*foreign*' is to be construed as referring to legal institutes or institutions which are not Portuguese. Therefore, the word '*foreign*'

in the *Portuguese Code of Civil Procedure, 1939* carries its natural and ordinary meaning '*from another country*' whether referring to persons or to Courts. There is no definition of the words '*foreign*' or '*foreigner*' as such in the *Portuguese Civil Code, 1867* and the *Portuguese Code of Civil Procedure, 1939*. From the statutory context of these provisions, it can only mean '*persons or Courts or otherwise relating to legal systems outside Portugal*'.

12. After liberalisation, an Ordinance, being the Goa, Daman and Diu (Administration) Ordinance, was promulgated on 5th March 1962. Thereafter, the Goa, Daman and Diu (Administration) Act, 1962 was enacted. Both the Ordinance as well as the 1962 Act provided that the laws applicable in Goa prior to the appointed date, i.e. 20th December 1961, would continue to be in force until amended or repealed by the competent legislature or authority. Section 5 of the 1962 Act reads as follows:

“5. Continuation of existing laws and their adaptation.—(1) All laws in force immediately before the appointed day in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by a competent legislature or other competent authority.

(2) For the purpose of facilitating the application of any such law in relation to the administration of Goa, Daman and Diu as a Union Territory and for

the purpose of bringing the provisions of any such law into accord with the provisions of the Constitution, the Central Government may within two years from the appointed day, by order, may (sic make) such adaptations and modifications, whether by way of repeal or amendment, as may be necessary or expedient and thereupon, every such law shall have effect subject to the adaptations and modifications so made.”

13. Thereafter, by virtue of *The Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965*, the provisions, *inter alia*, of the Code of Civil Procedure, 1908 came to be extended to the Union territories of Goa, Daman & Diu with effect from 27th September 1965.
14. Section 3, 4 & 5 of *The Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965* reads as follows:

“3. Extension of Code of Civil Procedure and Arbitration Act, 1940, to Goa, Daman and Diu.—

The Code of Civil Procedure, 1908, and the Arbitration Act, 1940, as in force in the territories to which they generally extend, are hereby extended to and shall be in force in Goa, Daman and Diu.

4. Repeal and saving.— (1) *So much of any law in force in Goa, Daman and Diu as corresponds to the Code of Civil Procedure, 1908, or the Arbitration Act, 1940, or any part of the said Code or Act, as the case may be, shall stand*

repealed as from the coming into force of this Act in Goa, Daman and Diu: Provided that the repeal shall not affect—

(a) The previous operation of any law so repealed or anything duly done or suffered thereunder, or (b) Any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or (c) Any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if this Act had not been passed: Provided further that, subject to the preceding proviso, notifications published, declarations and rules made, places appointed, agreements filed, awards made or filed, scales prescribed, forms framed, appointments made and powers conferred under any law so repealed shall, so far as they are consistent with the said Code or, as the case may be, the said Act have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under the said Code or the said Act and by the authority empowered thereby in such behalf. (2) In every law or notification passed or issued before the commencement of this Act in which reference is made to or to any Chapter or section or provision of any law hereby repealed, such reference shall, so far as may be practicable, be taken to be made to the said Code or, as the case may be, to the said Act or its corresponding Part, Order, section or rule.

5. Rules of construction.— (1) *In the Code of Civil Procedure, 1908, and in the Arbitration Act, 1940,—*

(a) Any reference to any provision of law not in force, or to any functionary not in existence, in Goa, Daman and Diu shall be construed as a reference to the corresponding law in force, or to the corresponding functionary in existence, in that Union territory: Provided that— (i) If any question arises as to who that corresponding functionary is, or (ii) If there is no such corresponding functionary, the Lieutenant Governor shall decide as to who such functionary will be and his decision shall be final; (b) Any reference to the State Government shall be construed as a reference to the Central Government and also as including a reference to the Lieutenant Governor. (2) For the purpose of facilitating the application in relation to Goa, Daman and Diu of the said Code or the said Act, any court or other authority may construe it in such manner not affecting the substance as may be necessary or proper to adapt it to the matter before the court or other authority.”

15. Thus, the provisions of the Code of Civil Procedure, 1908, are made applicable in the State of Goa in its entirety.
16. The applicability and status of the *Portuguese Civil Code, 1867* came to be considered by the Hon’ble Supreme Court in ***Jose Paulo Coutinho V. Maria Luiza Valentina Pereira & anr.*** (2019) 20 SCC 85. To deal with the issue arising out of the *Portuguese Civil Code, 1867* the Hon’ble Court Supreme court framed issues for

consideration, which included the question of whether the *Portuguese Civil Code, 1867* can be said to be a foreign law and whether the principles of private international law are applicable. (See para 12 of the judgment ***Jose Paulo Coutinho*** (supra)).

17. After considering all the aspects, the Hon'ble Supreme Court held that:

*15. The territories forming part of Goa, Daman and Diu were part of the kingdom of Portugal. **They were annexed by the Government of India by conquest on 20-12-1961 and became a part of India by virtue of Article 1(3)(c) of the Constitution. After acquisition by conquest, these territories became part and parcel of India, that is, Bharat.** As pointed out earlier, for making provision for administration of the said territories, the President of India, exercising powers vested in him under Article 123(1) of the Constitution on 5-3-1962 promulgated an Ordinance called the Goa, Daman and Diu (Administration) Ordinance, 1962. This Ordinance was replaced by an Act of Indian Parliament known as the Goa, Daman and Diu (Administration) Act, 1962, which came into effect from 5-3-1962. On the same day, the Constitution was amended by the Constitution (12th Amendment) Act, 1962 whereby Goa, Daman and Diu were added as Entry 5 in Part II of the First Schedule to the Constitution with*

retrospective effect from 20-12-1961. These territories of Goa, Daman and Diu were also included in clause (d) of Article 240(1) of the Constitution with effect from 20-12-1961. Thus, it is more than apparent that Goa, Daman and Diu became an integral part of India as a Union Territory of India with effect from the date of its annexation by conquest. Goa became a full-fledged State in 1987.

16. The Civil Code may be a Code of Portuguese origin but after conquest and annexation of Goa, Daman and Diu, this Code became applicable to the domiciles of Goa only by virtue of the Ordinance and thereafter, by the Act. Therefore, the Civil Code has been enforced in Goa, Daman and Diu by an Act of the Indian Parliament and thus, becomes an Indian law. This issue is no longer res integra.

22. We are clearly of the view that these laws would not have been applicable unless recognised by the Indian Government and the Portuguese Civil Code continued to apply in Goa only because of an Act of the Parliament of India. Therefore, the Portuguese law which may have had foreign origin became a part of the Indian laws, and, in sum and substance, is an

Indian law. It is no longer a foreign law. Goa is a territory of India; all domiciles of Goa are citizens of India; the Portuguese Civil Code is applicable only on account of the Ordinance and the Act referred to above. Therefore, it is crystal clear that the Code is an Indian law and no principles of private international law are applicable to this case. We answer question number one accordingly.

(emphasis supplied)

18. In view thereof, it is clear that the *Portuguese Civil Code, 1867* is not a foreign law. The *Portuguese Civil Code, 1867* is an Indian law. The State of Goa is part of India and is governed by the Constitution of India. Therefore, by applying the same principle, even the *Portuguese Code of Civil Procedure, 1939*, is also an Indian law.
19. Article 1100 of the *Portuguese Code of Civil Procedure, 1939* mandates that any judgment of a foreign court must be reviewed and confirmed by the High Court under Article 1101, applying the tests set out in Article 1102 of the *Portuguese Code of Civil Procedure, 1939*.
20. The relevant Articles of the *Portuguese Code of Civil Procedure, 1939* read as follows:

Article 1100-Foreign Judgments subject to review and confirmation - Without prejudice to what is provided

in treaties and special law, no judgment on private rights, passed by a Foreign Court or Foreign Arbitrators, shall have effect in Portugal, regardless the nationality of the parties, without the foreign judgment having being reviewed and confirmed. Review will not be required when the decision is relied upon in any pending proceedings in Portuguese Courts, as matter of evidence and is subject to appreciation by the Court deciding the matter.

Article 1101—*Jurisdiction-Review and Confirmation shall lie before the High Court having jurisdiction at the place at which the person against whom the judgment is sought to be enforced is domiciled or resides.*

If such a person has no domicile or residence in Portugal, the High Court within who jurisdiction, the Petitioner is domiciled or residing shall have jurisdiction, except where the judgment is of patrimonial nature and it is to be enforced against the person who has assets in Portuguese territory, because in such case Revision can be asked in any of the High Courts where the assets are situated.

When none of the requirements foreseen in the previous paragraphs are satisfied, any of the High Courts will have jurisdiction to entertain the matter.

Article 1102 – *Requisites necessary for confirmation – In order that the judgment be confirmed it is necessary: -*

i) that there are no doubts about the authenticity of the document on which the judgment is recorded nor about the intelligibility of the decisions;

ii) that it has become res-judicata according to the law of the country in which it was pronounced;

iii) that it arises from a court having jurisdiction according to the Portuguese Law rules relating to the conflict of jurisdiction;

iv) that the defence of litispendence or res-judicata based on a case subject to a Portuguese Court is not available, unless it was the foreign court which prevented the jurisdiction;

v) that the defendant has been duly summoned: except in a matter which under Portuguese Law would not require initial notice; and if the decree was passed against the defendant immediately, due to non-filing of Written Statement in the suit, in such event the summons should have been served on him personally;

vi) that it does not contain decisions contrary to the principles of Portuguese Public Order;

vii) that having been pronounced against a Portuguese National it does not violate the provisions of Portuguese Private Law when it had to be decided by the latter, according to the Portuguese Law rules of Conflict of Laws.

§ Sole Paragraph – The provisions of this article are applicable to an arbitral award so far as may be.

21. The above quoted Articles of the *Portuguese Code of Civil Procedure, 1939*, are quoted from the 3rd edition of the book authored and published by Advocate F. E. Noronha. In its note, it is mentioned that the Authoritative Text of the *Portuguese Civil Code, 1867*, and *Portuguese Code of Civil Procedure, 1939* along with notes and comments, has been prepared by the author for the Government of Goa and duly published in the Government Gazette, Series I

No.29, dated 19.10.2018, and Series I No.46, dated 14.02.2019 respectively.

22. As held by the Hon'ble Supreme Court in ***Jose Paulo Coutinho*** (*supra*) the *Portuguese Civil Code, 1867* is not a foreign law; consequently, even the *Portuguese Code of Civil Procedure, 1939* is not a foreign law. Therefore, after *The Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965*, these Articles of the *Portuguese Civil Code, 1867* as well as the *Portuguese Code of Civil Procedure, 1939* are applicable in respect of some right, then the same are applicable to judgments passed outside the territory of India, and not to judgments passed by the Courts in India. Therefore, the *Portuguese Civil Code, 1867* or the *Portuguese Code of Civil Procedure, 1939* cannot be construed and interpreted to treat the judgments and decrees of Indian Civil Courts as foreign judgments. After the liberation, the local and special law of the State of Goa cannot treat the rest of India as foreign territory.

23. The Code of Civil Procedure, 1908, is made applicable to the State of Goa with effect from 15.06.1966. Section 13 of the Code of Civil Procedure, 1908, contains a provision similar to Article 1102 of the *Portuguese Code of Civil Procedure, 1939*. Section 13 of the Code of Civil Procedure, 1908, reads as follows:

“Section 13. When foreign judgment not conclusive.

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except--

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of 1 [India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in 1 [India].”

24. Section 2 (6) of the Code of Civil Procedure, 1908 defines **‘foreign judgment’ to mean a judgment of a foreign court**. Section 2 (5) defines **‘foreign court’ to mean a court situated outside India and not established or continued by the authority of the Central Government**. Therefore, the definitions of ‘foreign judgment’ and ‘foreign court’ as provided in the Code of Civil Procedure, 1908, will be the binding definitions even for the purpose of the *Portuguese Civil Code, 1867* and the *Portuguese Code of Civil Procedure, 1939* All the references of and to the words ‘foreign’ or ‘foreigner’, ‘from another country’ and ‘foreign Court’, etc., in the *Portuguese Civil Code, 1867* and the *Portuguese Code of Civil Procedure*,

1939 by necessary implications stand repealed and/or amended in view of the applicability of the Code of Civil Procedure, 1908.

25. Therefore, the Registrar cannot treat any judgment and decree passed by a Civil Court within India as a foreign judgment. If the decree is passed by any Civil Court in India, then the provisions of Articles 1100, 1101 and 1102 of the *Portuguese Code of Civil Procedure, 1939* are not applicable. A decree passed by any Civil Court having jurisdiction is not required to be reviewed and confirmed by the High Court under Articles 1101 and 1102 of the *Portuguese Code of Civil Procedure, 1939*. **The decree passed by a Civil Court established in India is binding on the Registrar, and the Registrar is bound to abide by the same.** Therefore, there was no reason for the Registrar not to cancel the entry and the certificate of marriage and make the consequential changes in the Register. The objections raised by the Registrar in the present matter that the decree passed by the Family Court, Bangalore ought to be reviewed and confirmed by the High Court are arbitrary, perverse and contrary to law. In view thereof, we quash and set aside the requirement raised by the Registrar to get the decree passed by the Family Court, Bangalore reviewed and confirmed by the High Court under Article Articles 1101 and 1102 of the *Portuguese Code*

of Civil Procedure, 1939. We order and direct that the Registrar (Respondent No. 2) shall cancel the marriage certificate dated 3.1.2007 bearing entry no. 2105/2006 and certificate of marriage no. 43/2007, within a period of one week from the date of uploading of this order.

26. We have been informed that there are many such applications pending before the Registrar in the State of Goa, in which the Registrar has raised objections under Articles 1100, 1101, and 1102 of the *Portuguese Code of Civil Procedure, 1939*. Therefore, we deem it appropriate to pass the following order and directions to the Registrar (and all the sub-Registrars) in the State of Goa:

- i) The Registrar (and all the sub-Registrars) shall not treat any decree of a Civil Court established in India as a foreign decree;
- ii) The Registrar (and all the sub-Registrars) shall not refuse registration or cancel entry by raising the objection that the decree required to be reviewed and confirmed by the High Court, if the decree is passed by the Court in India;
- iii) If any applications are pending before the Registrar (and all the sub-Registrars) in which the Registrar (and all the sub-Registrars) has raised objection under Articles 1100, 1101

and 1102 of the *Portuguese Code of Civil Procedure, 1939*, then such applications shall be disposed of by the Registrar (and all the sub-Registrars) within a period of two weeks from today in view of the law laid down in this judgment;

iv) The Registrar (and all the sub-Registrars) shall file a compliance report within a period of three weeks from today before the Registrar (Judicial) of this Court.

27. The Registrar (Judicial) of this Court is directed to send a copy of this judgment to the State Registrar and all its subordinate Registrars in the State of Goa.

28. **The Rule is made absolute, and the Petition stands disposed of in the above terms. No order as to costs.**

29. Though we have disposed of the Petition, list it on the cause list dated 22nd June 2026 under the caption 'For Compliance'.

30. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.] [VALMIKI MENEZES, J.]