



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 325 OF 2026**

1. Miss. Ekaterina Grinko,
Daughter of Valery Lukich Zakharikov and
Mrs. Galina Aleksandrovna Zakharikova,
43 years of age, Divorcee,
Russian National,
Holder of Russian Passport No. 763057211 &
Tourist Visa No. VL3128960
Resident of Fug 01, Akar Excelsior,
Colva Benaullim Road 403707,
Colva Salcete South Goa.

2. Mr. David Menino Tolentino,
Son of Late Mr. Francisco Xavier Tolentino
and Mrs. Angelica Felecidade Tolentino,
45 years of age, Bachelor,
Indian National,
Resident of H. No. 69/1,
1st ward, Colva Salcete, South Goa.

... Petitioners***Versus***

1. State of Goa,
Through Chief Secretary,
Porvorim, Bardez, Goa.

2. The Sub-Registrar of Birth,
Death and Marriage,
Margao, Salcete, South Goa.

... Respondents

Mr. Abhijit Gosavi, Advocate for the Petitioners.

Ms. Maria Simone Correia, Additional Government Advocate for the Respondent-State.

CORAM : VALMIKI MENEZES &

AMIT S. JAMSANDEKAR, JJ.

RESERVED ON : 15TH APRIL, 2026.

PRONOUNCED ON: 27TH APRIL, 2026.

JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Heard learned Advocates for the parties.
3. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Additional Government Advocate Ms. Maria Simone Correia waives of Respondent-State.
4. The Petitioners herein invoke this Court's writ jurisdiction under Article 226 of the Constitution of India, seeking a Writ of Mandamus directing the Respondent No.2, the Sub-Registrar of Birth, Death and Marriage, Margao, Salcete South Goa, to register their marriage by accepting the

surname of Petitioner No.1 as reflected in her passport and other official documents.

5. The Petitioner No.1 is a Russian citizen as reflected in her passport. Her earlier marriage with a Russian National has been dissolved in 2012 though she continues to use her ex-husband's surname, "Grinko" on all her official documents, including her Passport. Her name as found on her Birth certificate is 'Ekaterina Valeryevna Zakharikova' and on her passport, which bears her name after her earlier marriage, is "Ekaterina Grinko", was issued by the Russian Federation on 02.06.2020, being valid till 02.06.2030.

6. The Petitioner No.1 now intends to solemnize her marriage with the Petitioner No.2, who is an Indian citizen and resident of Goa. Since both the contracting parties were not Indian Citizens of Goan origin, and they were required to comply with the provisions of Article 248 of the Portuguese Code of Civil Registration, which is in force in the State of Goa. Accordingly, they filed proceedings under Article 248 of the Portuguese Code of Civil Registration before the Court of Civil Judge Senior Division at Margao, seeking permission to register their marriage before Sub-Registrar Salcete South Goa; vide order dated 10.03.2026, the Civil Court granted

permission to the Petitioner No.1 to register the marriage with Petitioner No.2 before the Civil Registrar.

7. Subsequently the Petitioner initiated the online process of registration of marriage on the online Goa Marriage Portal through (National Generic Document Registration System-NGDRS) before the Respondent No. 2, the Civil Registrar of Salcete at Margao. The Respondent No. 2 raised an objection that Petitioner No.1 cannot continue to use the surname of her former husband “Grinko” and must revert to her maiden surname “Zakharikova” as reflected in her birth certificate. According to the Registrar the marriage could not be registered, despite orders of the Civil Court under Article 248 since the Petitioner No. 1 continued to use the surname of her ex-husband on her Passport; further objection raised was as to the effect that the Petitioner No. 1 could not register her marriage with the Petitioner No. 2 by entering on the submission form (Form ‘C’), her name as contained in her Passport but would require to use her maiden name as stated in her Birth Certificate. The Sub Registrar has raised this objection on what the Authority perceives is a prohibition to use her ex-husband’s name under Article 43 of the Portuguese Law of Civil Marriage applicable to the State of Goa.

8. Aggrieved by the objection raised and on considering that her Visa to visit India is valid till 18th June, 2026 the Petitioners have filed the present Petition, seeking directions to the Sub Registrar to hold the objections untenable, arbitrary and violative of Article 14 of the Constitution of India, and for a writ of mandamus to direct the Civil Registrar to register their marriage.

SUBMISSIONS

9. Learned Advocate Shri. Abhijit Gosavi has advanced the following submissions on behalf of the Petitioner.

(a) The Civil Court has considered the very same document, which includes the Passport of the Petitioner No. 1, her Birth Certificate, her Visa and copy of Form 'C', filed before the Registrar and after applying the requirements of Article 248 of the Portuguese Code of Civil Registration (Codigo De Registo Civil) and has granted an order in favour of the Petitioners to register their marriage before the Civil Registrar of Salcete. He submits that the Civil Court has considered all aspects of the matter, including the difference in name in the Passport of the Petitioner No. 1 from her Birth Certificate, and the fact that the Petitioner No. 1 uses the surname of her ex-

husband till date, as her present name, despite divorce in the year 2012 and such order is binding on the Sub Registrar.

(b) It is argued that this Court has considered the binding effect of an order passed under Article 248, which declares the capacity of parties to marry, as held in *Dipesh Ambaram Mesuria and Anr v/s State of Maharashtra* reported in 2008 (1) Mh.L.J. 274, and as such the order of the Civil Court is binding on the Civil Registrar. Reliance was also placed on *Ms. Hema Gadgil v/s The Passport Officer & Anr* reported in 2015 (2) ALL MR 879.

10. Learned Additional Government Advocate Ms. Simon Maria Correia has advanced the following submissions on behalf of the Respondents:

(a) She has submitted that the Registrar's objections are based upon the prohibition contained in Article 43 of Chapter V of the Portuguese Law of Civil Marriage which mandates that a wife, after divorce shall not have the right of using her husband's name. It is contended that the Civil Registrar raised the objection on the premise that the Petitioner No. 1 has divorced from her ex-husband in the year 2012, but continues

to use the surname of her ex-husband “Grinko” on her Passport and has now filled the marriage form in Form ‘C’ with her name shown as ‘Ekaterina Grinko’ (as shown on her Passport) instead of using her maiden name as shown on her Birth Certificate as ‘Ekaterina Valeryevna Zakharikova’.

(b) It is further submitted that in terms of Article 213 of the Registration Code, the parties are required to produce their Birth Certificates while under Article 225 thereof, the Deed of Registration of marriage is required to contain the actual names of the parties and of their family, their ages, professions, place of birth, domicile and residence. It was argued, on this basis, that it was incumbent upon the Civil Registrar to register the marriage stating the name of the Petitioner No. 1 as shown in her Birth Certificate and not the one shown in her Passport.

(c) Reliance was placed on a Judgment of this Court in *Neelam Dadasaheb Shewale v/s Dadasaheb Bandu Shewale* reported in 2010 (2) Mh.L.J. 952 to contend that after the marriage is dissolved by Decree of Divorce, the wife cannot use the name of her husband.

CONSIDERATIONS

11. The primary question laid before us for our decision is whether, on the basis of the provisions of the Portuguese Code of Civil Registration and of the present Portuguese Civil Code, the objection raised by the Civil Registrar in registering the marriage of the Petitioners is sustainable.

12. In deciding the aforementioned question, it would be necessary to consider certain provisions of law. Article 213 of the Portuguese Code of Civil Registration reads as under:

“Article 213 . The certificates of birth of each one of the contracting parties, necessary for the marriage shall be of the next (narrative) given in terms of article 296 and when these are extracted from the Civil Registration Office they must be less than three months back when issued within the territory of Goa, Daman & Diu and less than six months when issued from any other place.”

Article 225 of the Portuguese Code of Civil Registration reads as under:

Article 225. The following circumstances shall be specified in the deed of registration of marriage :

1. The time, date, month and year of the marriage.

2. *Whether it is celebrated in a public or private building, describing the latter and the reasons for the fact.*

3. *The name of the official who performs the registration and signs it in terms of article 103.*

4. *Their actual names and those of the family, ages, professions, places of birth, domiciles and residences of two contracting parties and of their attorneys, in case there are.*

5. *Whether they are unmarried, widow, widowers, divorcees or married*

6. *Whether they are legitimate, illegitimate or adopted children*

7. *Complete names, professions birthplaces and domiciles of the parents, if they are known and have been declared.*

8. *Complete names, professions, birthplaces and domiciles of the witnesses, indicating their relationship with each of the betrothing parties and of whom they are the god-parents or protectors or represent them, as the case may be*

9 *The declaration made by the contracting parties, stating that that they celebrate the marriage with each other of their own free will.*

10. *The regime of assets adopted by the contracting parties, with the mention of the document in support, in case there is;*

11. *The reading done before the parties and the witnesses, of the extracts produced, of the provisions of law referred to in the articles 223, No 2., and of the deed of the Civil Registration, with the omissions imposed by articles 106 and 223, No 1.*

12. *Mention of the persons who sign, specifying those who do not sign for not knowing to sign or because they are unable to sign.*

Proviso. In classes where polygamy is permitted by law the name of the previous wife shall also be declared, by mentioning the documents in virtue of

which the respective legislations have authorized this act.

Article 248 of the Portuguese Code of Civil Registration reads as under:

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"The marriages celebrated in the State of India (Goa) between foreigners (foreign nationals) belonging to any Country for which there is already in force or going to be in force the International Convention of Haya dated 12/6/1902 meant to regulate conflict of laws in the matter of Marriages, can be celebrated before the employee of the Civil Registration if the betrothed persons justify that they are in harmony with the National laws of each of them in respect of the capacity to get married by production of certificates from the Diplomatic agents/Consuls or Consular agents of their Country or by any proof/justification before the Civil Judge of the respective Jurisdiction. If only one of the betrothed persons is a foreigner/foreign national the proof/justification shall be only in relation to him.

The above is a true translation into English of the Article 248 of the Code of Civil Registration of the State of India which is in Portuguese language."

13. The translations of Article 43 of Chapter V of the Portuguese Law of Civil Marriage is the following:

"Article 43, A wife shall enjoy all the honors that the husband is entitled to and which are not merely inherent to the post he holds or has held, and shall maintain them, as well as, the right of using his name, until such time the divorce is granted or, in case of widowhood, until she contracts a second marriage."

14. At the outset, we must note that the provisions of the Portuguese Code of Civil Registration are procedural in nature and enable the Sub Registrar to register a marriage after considering whether there is any impediment in the substantive provisions of the Law of Marriage. Being procedural in nature and only to facilitate the Ministerial Act of registration of the marriage by the Sub Registrar, which results in the creation of the contract, its provisions have to be read in that context. The Portuguese Code of Civil Registration cannot be read in a manner that operates as a bar to registration of marriage, if there is non-compliance of certain documentation or requirements, which otherwise do not act as proof of the impediment.

15. Marriage, under the Civil Code is a civil contract and under Article 3 of the Law of Marriage applicable to Goa, it is compulsory to solemnize the same by registration before the Civil Registrar. The impediments to registration of a marriage are contained in Article 4 of the Code amongst which, the following constitutes absolute impediments: (a) marriage between relatives by consanguinity (b) marriage between legitimate or illegitimate brothers with their sisters (c) marriage of males below the age of 18 years and females below the age of 16 years (d) marriage by person under disability due to insanity declared by Judgment, (e)

marriage by spouse who has been convicted for committing or abating murder of other spouse, with a person convicted of a similar offence, (f) marriage with a person who is already married and whose marriage is not dissolved.

Thus, the Civil Registrar is required to confirm, prior to registering a marriage, whether the contracting parties suffer from any of the impediments referred above, and if none exists, as a Rule, the contract of marriage must be registered. The provisions of the Portuguese Code of Civil Registration are mainly Ministerial Acts and set out a procedure for fiscal and statistical purposes, as also to record with clarity the names of the contracting party, their domicile and residence, their ages, nationalities and other statistical information. In our opinion, the provisions of the Registration Code cannot operate as a bar to the registration of a marriage as a contract, beyond the absolute impediments contained in the substantive law which is found under Article 4 of the Portuguese Civil Code.

16. The provisions of Article 213 and 225 of the Registration Code, in view of what we have held above are to be read as the procedure in aid of recording the contract of marriage between parties to suffer no impediment, and to register that marriage. Further, clause 4 and 5 of Article 225,

refers to actual names, ages, profession, place of birth, domicile and whether unmarried, widow, divorcee or married, of the contracting parties, not to act as an impediment to registering a marriage, but to ascertain whether the contracting parties are precluded from entering into the contract by the prohibitions to registration of marriage as a contract contained in Article 4 of the Civil Code.

17. Article 248 of the Portuguese Code of Civil Registration provides for the manner in which marriages between a Foreign citizen and a citizen of now India (Goa or Portugal as it was prior to liberation of the State of Goa) are to be registered. This provision considers that there may be a conflict of laws in matters of marriage between the law governing each of the contracting parties, one of whom is a Foreigner. To that end, it departs from the regular procedure and requires that the marriage can be celebrated/ solemnized before the Civil Registrar, if the parties seeking the contract of marriage justify that they are in harmony with the National laws governing each of them **in respect of their capacity to get married.** The provision therefore recognizes a different procedure for solemnizing the marriage, where there could be a conflict of law governing each of the spouses, only in relation to their capacity to

marry. What the parties seeking to contract must demonstrate, is that there is no legal impediment under their respective laws of the country to which they belong, to their marriage being solemnized.

18. Article 248 provides that the parties may demonstrate the lack of impediment to contract a marriage under their respective laws by any one of the two prescribed methods, the first being by production before the Civil Registrar of certificate from Diplomatic or Consular Agents of their countries, and the second being by obtaining orders from the Civil Judge of the respective jurisdiction, stating and justifying therein, the absence of any impediments under their respective laws to contract a marriage.

19. To comply with the provisions of Article 248, the Petitioners applied to the Civil Judge at Margao for orders to declare that there was no impediment for contracting a marriage under their respective laws; the Civil Court considered the Petitioner's Birth Certificate (as proof of age), their Passports (as proof of identity) and several other documents which included Visa, Form 'C' which contained the name of the Petitioner as the one stated in her Passport, Certificate of Divorce of Petitioner No. 1, Residence Certificate of Petitioner No. 2 and Marriage Certificate of

the Petitioner No. 1 with her ex-husband, Stepan Grinko and then granted an order declaring that there was no legal impediment to the registration of the marriage contract between the Petitioners. The Civil Court has therefore considered the impediments under both laws governing the Petitioners, the difference in the maiden name of the Petitioner No.1 and the fact that she carried the name of her divorced husband on her Passport and held none of these to be legal impediment to registration of the marriage. In our opinion, orders passed under Article 248 of the Civil Registration Code for the State of Goa are binding on the Civil Registrar, since it is the Civil Court that is empowered to declare the lack of legal impediment, as an alternative to the production of certificates from Diplomatic or Consular Agents of their respective countries before the Civil Registrar. Orders under Article 248 being a binding declaration, the objections raised by the Sub Registrar is contrary to the scheme of the Registration Code and is therefore arbitrary and must be accordingly overruled.

20. It has further been submitted on behalf of the Civil Registrar that Article 43 of the Civil Code of marriage applicable to the State of Goa bars a wife who is divorced to use the surname of her divorced husband. It was submitted that under this provision of law, the Petitioner No.

1 cannot use her ex-husband surname “Grinko” as seen in her Passport for the purpose of registering the marriage and hence the marriage certificate cannot be issued with the name shown by the Petitioner No. 1 in her Passport.

21. We must take note of the fact that Article 43 and all other provisions of Law of Civil Marriage which confers right to contracting spouses, applies when both parties are “Portuguese Citizens” which is now to be read as “Indian Citizens” who are domiciled in the State of Goa and to whom the provisions of the Portuguese Civil Code apply. Article 43 cannot apply as a bar to the Petitioner No. 1, to use her ex-husband’s surname as she is a Russian by citizenship. The rights conferred under Article 43 on a husband of Goan origin to injunct or prohibit his divorced wife of Goan origin from using his surname, can apply only if both parties follow the Civil Law of Goa. In the present case, there is no suit for injunction brought by the ex-husband of the Petitioner No.1 or any Court order obtained by him to prohibit the Petitioner No.1 from using his surname “Grinko”; Article 43 would certainly not confer any rights on the Russian ex-husband of the Petitioner No.1 to injunct his ex-wife from using his surname. In any event, Article 43 confers a substantive right on the spouses for divorce and of Goan origin, but such right can be enforced

only by injunctive orders of a Civil Court to prohibit the other spouse from using a divorced spouse's surname.

22. This is precisely the basis on which the Judgment in *Neelam* (supra) where the ex-husband sought a restraining order from the Civil Court against his ex-wife from using his surname. It was such an order granting the husband an injunction against his wife from using his surname that was under challenged in that case. It was in that context that the Court in *Neelam* (supra) upheld the Civil Court's order. In the present case, there are no such orders of injunction issued by any Court in the favour of the ex-husband of the Petitioner no. 1 prohibiting her from using her ex-husband surname "Grinko" and hence there is no prohibition or impediment at law for the Petitioner No.1 to register her marriage using her name as stated in her Passport.

23. We also find support in our conclusions in the aforementioned paragraphs, in *Hema Gadgil* (supra), wherein this Court, whilst deciding validity of a communication issued by the Passport Authorities requesting the petitioner therein to submit no objection certificate from her ex-husband for renewal of her passport in the surname of her ex-husband which she continued to

use post divorce for many years, has allowed the Petition and has held as under:

“5. The case made out in the petition is that the petitioner is using the surname of her ex-husband for the past 42 years. We have already quoted what is stated in the impugned communication. There is no law which prevents a wife from using her name adopted after the marriage containing the name and surname of her husband even after a decree of divorce is passed by a Court of competent jurisdiction. In fact, it is the right of the petitioner to use any name, including the name of her divorced husband. Therefore, in our view, the direction issued by the passport authorities to obtain No Objection Certificate from the ex-husband is completely illegal. Right to obtain passport in accordance with law is held to be a fundamental right under Article 21 of the Constitution. The impugned communication being illegal violates the said right. In fact, the approach of the passport officer is perverse. We, therefore, proceed to set aside the communication dated 22nd May, 2012 and accordingly, we pass the following order :-

(i) We set aside the impugned communication dated 22nd May, 2012;

(ii) If the application made by the petitioner for renewal of passport is still pending, the same shall be decided by the passport authorities without insisting on the petitioner obtaining No Objection Certificate in writing from her ex-husband,

(iii) If the application is still pending, the same shall be decided within a period of one month from the date on which an authenticated copy of this order is produced by the petitioner before the concerned passport authorities;

(iv) The petition is allowed in the above terms. Petition allowed.”

24. On the principle laid down in the aforementioned judgement, and on our interpretation of Article 43 of the Civil Code of Marriage, the Civil Registrar has transgressed the powers vested in the authority, under the Code of Civil registration, in insisting that the marriage of the Petitioner No.1 be registered by using her maiden name. There is nothing in Article 43 that acts as a prohibition to a divorced spouse from using the other spouse's surname and in this case, there is a divorce decree produced where there is not such prohibition and claim at the behest of the ex-husband of the Petitioner No.1. As in the facts of the case of ***Hema Gadgil*** (supra), the Civil Registrars have no powers to call upon the parties contracting a marriage to file No objections of their ex-spouses to the use of their ex-spouses surname. So also Civil Registrars are not vested with powers to refuse registration of a civil Marriage using the provisions of Article 43 to claim there is such an embargo on the use of an ex-spouse's surname.

25. For all the reasons stated above, we pass the following order:

- a. Objections raised by the Civil Registrar at Salcete, Margao, are arbitrary and contrary to the law as discussed above. Consequently, they are quashed n set aside.

b. The Civil Registrar at Salcete, Margao, shall Register the marriage of the Petitioners with the name of the Petitioner No.1 as it is stated on her passport, i.e “Ekaterina Grinko”; in the event of uploading the Form on the NGDRS portal, if the Petitioner on.1 faces any technical difficulty due to difference in name of the Petitioner No.1 between her passport and Birth Certificate, the National Informatics Centre (NIC) be directed to keep its portal open and to accept the upload of the Form with the name of the Petitioner No.1 as it stands in her passport.

c. The Civil Registrar at Salcete, Margao, shall complete the process of registration of marriage within a week of passing of this order.

d. In view of the Rule being made absolute in terms of prayer clause ‘a’ of the petition, the Petition stands allowed.

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