



Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION (MAIN) NO. 7 OF 2023.

SAPNA GUNJIKAR ... APPLICANT
Versus
ALLWYN JEROME DSOUZA ... RESPONDENTS

Mr. Brian A. F. Fernandes, Advocate for the Applicant.
Mr. Prachi Vilas Joshi, Advocate for Respondents

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 25th June, 2024

ORAL ORDER.

1. Heard learned counsel for the Applicant. The Respondent appears through learned counsel Ms. Joshi and waived notice.
2. This is an application for confirmation of decree of divorce passed by a Foreign Court under Article 1101 and 1102 of Family Laws.
3. The applicant has produced a certified copy of Certificate of Decree granted by the Court at Dubai dated 09.03.2023. On perusal of said documents, it is found that the marriage between the Applicant and the Respondent stands annulled and the contract between them stands dissolved by the said decree.
4. The provisions of Article 1101 and 1102 of the Portuguese Code of Civil Procedure read thus:-

“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 whose 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.

5. Since both the parties are before this Court and confirm that the decree is passed by the Foreign Court which is also confirmed by the documents produced on record, application needs to be allowed as per prayer clause (a) and (b). Accordingly, present application stands disposed of in view of the above order.

6. Proceedings stands closed.

BHARAT P. DESHPANDE, J.