

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION (MAIN) NO.4 OF 2024

MALCOLM NEIL COLACO

.....PETITIONER

Versus

MERLINA ROSARIO DCOSTA AND ANR

.....RESPONDENT

Mr. Vibhav R. Amonkar, Advocate for the Applicant.

Mr. Priteesh Majalikar, Advocate for Respondent No.1.

CORAM:

BHARAT P. DESHPANDE, J

DATED:

8th May, 2024

P.C.:

1. Heard Mr. Vibhav Amonkar, learned Counsel for the petitioner and Mr. P. Majalikar, learned Counsel for respondent No.1.
2. This is an application for confirmation of a foreign decree granting divorce as per Articles 1101 and 1102 of the Law of Divorce.
3. The petitioner has placed on record the conditional order of the Family Court dated 25/10/2023 which was later confirmed vide order dated 07/12/2023.
4. In the said final order the H.M. Courts and Tribunals Service UK observed that a conditional order is required to be made final as

there was no contest or any dispute between the parties with regard to dissolution of marriage.

5. The Articles 1101 and 1102 reads 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 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.”

6. Accordingly a decree passed by foreign Court is required to be confirmed by this Court before the same is executed by cancelling necessary entry in the register of marriage.

7. Annexure-'A' produced in the petition shows that the marriage between the applicant and the respondent was registered in Goa on 16/09/2015. Accordingly and since the Family Court has already granted a decree of dissolution, the application filed as per prayer clause A needs to be allowed.

8. The application stands allowed in terms of the prayer clause (A).

9. The application stands disposed of in the above terms.

BHARAT P. DESHPANDE, J