

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

Suit/Petition No. 1932 of 2022

Dinshaw Bejon Aga
Versus
Firoozeh Aga

Date of Hearing: 30.10.2023

Plaintiff: Through Mr. R.F. Virjee Advocate along with plaintiff in person.

Defendant: Nemo.

D E L E G A T E S

- (1) Mrs. Farida Dastoor,
- (2) Mrs. Pouruchisty Sidhwa,
- (3) Mrs. Rowena Hanostin,
- (4) Mr. Aspi Mobed,
- (5) Mr. Feroze J. Cawasji,
- (6) Mr. Shahveer C. Noshirwani and
- (7) Mr. Shahpur Maneckji in person

J U D G M E N T

Muhammad Shafi Siddiqui, J.- In the instant lis plaintiff Dinshaw Bejon Aga has brought a suit for divorce with his wife Firoozeh Aga, on the ground that she has deserted him (the plaintiff) since January 2019 when she came to Karachi for a short period before leaving for Germany where she had already gone in August 2016 for studies.

2. Heard the learned counsel. Notices were also issued to delegates who have also opined in favour of plaintiff. I have also perused material available on record.

3. The suit has been filed under the Parsi Marriage and Divorce Act, 1936 (Act No.III of 1936). In terms of Section 20 of this Act a special Court entitled the Parsi District Matrimonial Court is established, which is required to be presided over by the Judge of the 'Principal Court of

Original Civil jurisdiction in the District in which the Court is held, and in the trial of the cases brought under the Act, the Judge is to be aided by 7 delegates, who are appointed by the Provincial Government under section 24 of the Act. Thus, this Court, as being functioning or exercising the powers and performing the duties as the Principal Civil Court of original jurisdiction in the civil district of Karachi, has the jurisdiction and in pursuance thereof has issued notices under section 19 of the 1936 Act to all the delegates appointed by the government, amongst whom seven delegates have appeared after notice.

4. Before deliberating the matter further, it would be useful to give a brief history of the relationship between the parties. The plaintiff and the defendant were married at Karachi on 08.03.2015. The marriage was solemnized under the Parsi Marriage and Divorce Act. NADRA certificate and an extract from the Register under the provisions of Act XV of 1935 are annexed to confirm such fact. Both plaintiff and defendant resided together for some time at the house of plaintiff whereafter on 02.08.2016 defendant left for Germany for studies whereas plaintiff remained at Karachi. The plaintiff remained in touch with the defendant and had never desired a breakup of the relationship of husband and wife however the defendant's intention was otherwise and she herself proposed the dissolution. The defendant then came to Karachi for a short period and left on 01.01.2019. Plaintiff has thus filed this suit for dissolution of marriage/grant of divorce on the sole ground of her wife's desertion, in accordance with the provisions of section 32(g) of the Parsi Marriage and Divorce Act, 1936. It enables a husband to seek dissolution on the count of deserting for at least three years.

5. With regard to Parsi marriages, the Matrimonial Court is given jurisdiction either to declare a marriage null and void, or to dissolve the, marriage or to grant divorce. Here the plaintiff has come for divorce on

the ground of his wife's desertion, which is one of the several grounds for divorce specified in section 32 of the Act, as referred above.

6. The seven delegates have shown their appearance when the case has been heard who have been selected, out of the delegates appointed by the Provincial Government, to aid this Court in reaching a lawful conclusion. The delegates are:

- (1) Mrs. Farida Dastoor,
- (2) Mrs. Pouruchisty Sidhwa,
- (3) Mrs. Rowena Hanostin,
- (4) Mr. Aspi Mobed,
- (5) Mr. Feroze J. Cawasji,
- (6) Mr. Shahveer C. Noshirwani and
- (7) Mr. Shahpur Maneckji

7. Under section 6 of the Act, all questions of law and procedure are to be determined by this Court; but the decision on the facts is to be referred for the decision of these delegates. The delegates perform functions identical to jury and the decision may be a unanimous or by a majority. The jury delegates adjudicate a divorce petition based on their personal perception of societal and communal canons, moral principles and consciences.

8. However, in the present proceedings the notice was issued to defendant (contesting wife) at her address at Germany and in response thereto she has sent her affidavit sworn before Consular Attache Consulate General of Pakistan, Frankfurt in which she has categorically endorsed the submission of the plaintiff. The relevant paragraphs are reproduced as under:-

“3. That I have been living apart from my husband for more than three years in Germany and I positively have no intentions of coming back and even otherwise I am not mentally inclined to sustain this concept of marriage which has no basis.

4. *I endorse what my husband has said in the divorce petition and seriously want that this marriage be ended and will have no objections of (if) the divorce is granted to my husband so that we both could be free to lead our respective lives. In conclusion I also pray that this divorce petition be granted.”*

9. Thus, since defendant has opted not to contest the suit/dissolution, rather conceded to the prayer, no issues required to be framed as the matter being a non-contested matter. In such a situation there is no factual controversy left to be decided by the delegates. The delegates present in Court have conceded to such position and thus opined that a decree of dissolution of marriage may be passed.

10. In view of above, the marriage between the parties is dissolved under section 35 of the Parsi Marriage and Divorce Act, 1936, and the divorce is granted to the plaintiff. The suit as such is decreed in these terms. A copy of this decree shall be sent for registration to the Registrar of Marriages, appointed under section 7 of the Parsi Marriage and Divorce Act, 1936, who will thereupon act in accordance with the provisions of section 10 of the Act.

Dated:

J U D G E