
(1991) 12 BOM CK 0046

In the Bombay High Court

Case No : M.J. Petition No. 1814 of 1991

Ronald Lawrence Pereira

APPELLANT

Vs

Flory Pereira and Benny Gonsalves

RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Divorce Act, 1869 — Section 10

Citation : (1994) 2 DMC 618

Hon'ble Judges : I.G. Shah, J

Bench : Single Bench

Advocate : Clive D" Souza, for the Appellant; None, for the Respondent

Judgement

I.G. Shah, J.—The Petitioner, who is a husband of the Respondent has filed this Petition u/s 10 of the Indian Divorce Act to claim dissolution of the marriage and Rs. 8,000/- by way of damages from the co-respondent.

2. Both the respondent and the co-respondent though duly served, are absent and have not participated in the proceedings.

3. The Petitioner examined himself and has deposed that his marriage with the respondent took place on 15th November, 1969, as per Christian rites. He deposed that the respondent is also Christian. He produced in support of his contention an extract of the Marriage Certificate issued by the Church. In view of this, the Petitioner is able to establish that he is legally married husband of the Respondent. He also further deposed that after residing with the Respondent after their marriage four issues were born to them. The eldest daughter, however, is married and there are two other daughters and the son who are minors. He also deposed that in August 1984, he secured a job in Kuwait as a carpenter and, therefore, he went to Kuwait. On 5th August, 1987, he returned from Kuwait for a short vacation and at that time he noticed that the respondent was having an affair with the co-respondent. The respondent also admitted the said relationship of her with the co-respondent. He also claims that the

respondent actually requested him to give a consent in writing and permission to her to stay with the co-respondent. But he refused to do so and thereafter the respondent ran away with the co-respondent on 13th September, 1987 and thereafter, she was found to be residing with the co-respondent. He also deposed that he himself returned to Kuwait in October 1987 and later on, on 19th October, 1990, he returned to Bombay. He also learnt at that time that the respondent had given birth to a child during his absence out of illicit relationship with the co-respondent and that she was again pregnant from the co-respondent. According to him the respondent is living in adultery with the co-respondent and, therefore, he is entitled to dissolution of the marriage. As the evidence stands unrebutted, the Petitioner is entitled to a decree of dissolution of marriage as per Section 10 of the Indian Divorce Act.

4. The Petitioner has also deposed that the minor children are in his custody and the eldest daughter has already got married. He has also claimed Rs. 8,000/- by way of damages from the co-respondent. As far as the damages are concerned, except the bare statement that he may be given damages of Rs. 8000/-, nothing else is deposed to by him. The damages obviously are claimed on the basis that the co-respondent had developed illicit relations with his wife during the subsistence of her marriage with him.

5. The Petitioner, in view of the evidence on record is clearly entitled to a decree for dissolution of marriage and costs of this Petition. The minor children are already in his custody and, hence, it is not necessary to pass any order in respect of the custody of the minor children.

6. In the result, the marriage of the Petitioner with the Respondent is dissolved. The Respondent and the Co-Respondent are ordered to pay costs of Rs. one thousand of this Petition to the Petitioner. No order is passed in respect of the claim of damages.

DEPOSITION OF THE PETITIONER

I do hereby state on solemn affirmation as under :

My name is : Ronal Lawrence Pereira. Age : 48 years.

Address : 16 Lila Mansion, Gokhle Road, South Dadar,

Bombay : Occupation, Service.

Examination-in-Chief by Shri Clive D'souza for Petitioner.

1. I am the Petitioner. I am the Christian. Respondents are also Christians. On 15-11-1969, I married Flory Pereira the Respondent, at the Church of Our Lady Salvation, Dadar, Bombay, according to Roman Catholic rites. I produce extract of the marriage certificate issued by the Church Ex.-B. After the marriage, I cohabited with the Respondent at Dadar. On 5-8-1984, I secured a job in Kuwait as a carpenter. So I went to Kuwait on 5-8-1987. I returned to Bombay, for short vacation. At that time I learnt that the respondent was having illicit relations with

the co-respondent who also resides in the same building in which I and my wife used to reside. When I questioned the respondent about it, she admitted that she was having an affair and she sought my consent in writing to permit her with the co-respondent. I declined to give that consent. She, therefore, ran away with the co-defendant on 13-9-1987. Since then she is not staying with me. The respondent has been residing with the co-respondent.

2. On 2-10-1987, I went back to Kuwait. Later on I returned to Bombay from Kuwait on 19-10-1990. Then I learnt from my daughters who are born to the respondent from me that the respondent had given birth to a child named Crystalline and she was about two years age at that time. I also found that the petitioner was again pregnant from the co-respondent. The respondent therefore is now living him in adultery with the co-respondent.

3. I am, therefore, entitled to the dissolution of the marriage u/s 10 of the Indian Divorce Act.

4. The respondent has four issues born to her out of my wedlock with her. Out of the four daughters, the eldest is married. The second daughter is of about 17 years of age. Through error in the petition, instead of 17 years, 27 years is mentioned. The third daughter is of about 14 years of age. The youngest is the son of about 11 years of age. All the minor children are in my custody. The respondent has no love and affection for the children.

5. I claim Rs. 8000/- as damages from the co-respondent. There is no collusion between me and the respondent in filing this Petition. I may also be awarded the cost of the petition.

Respondent and Co-respondent absent.

Read over and admitted to be correct.