



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 67 OF 2022

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Karunakar Shetty	]	
Age: 82 years, Occupation – Retired	]	
Residing at: SanthoorParari House,	]	
Pilar Post, Santhoor Village,	]	
Kapu Taluk, Udupi – 574 113	]	.. Appellant
v/s.		
Shanta Chandappa Alva	]	
Age 72 years, Occupation – NIL	]	
Residing at: B-104, Amber Lok Rachna	]	
CHS., Amar Nagar, Mulund (West)	]	
Mumbai 400 082.	]	.. Respondent.

Adv. Ms. Disha Shetty, for the Appellant-Husband.

Adv. Mr. R. M. Bhandari, for the Respondent-wife.

Mr. Karunakar Shetty- Appellant-Husband is present in Court.

CORAM: B. P. COLABAWALLA &  
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON: AUGUST 16, 2024  
PRONOUNCED ON: AUGUST 23, 2024

JUDGEMENT (Per FIRDOSH P. POONIWALLA, J.):-

1. The present Appeal is filed challenging the Judgement dated 31<sup>st</sup>  
March 2021 passed by the Family Court No.3 at Bandra, Mumbai, in Petition

No. B-79 of 2017, whereby the learned Family Court Judge dismissed the said Petition under Order 2 Rule 2 of the Code of Civil Procedure, 1908 (“**the CPC**”). The said Petition No. B-79 of 2017 was filed by the Appellant seeking a declaration of sole ownership of Flat No. 104, 1<sup>st</sup> Floor, ‘B’ wing, Ambar Lok Rachana Co-operative Housing Society Limited, Amar Nagar, Goregaon Link Road, Mulund (West), Mumbai 400 082 (“**the Suit Flat**”), standing in the joint name of the Appellant and the Respondent. In the alternative it was prayed for auctioning the Suit Flat and dividing the sale proceeds in equal shares between the parties, along with other ancillary reliefs.

2. On 15<sup>th</sup> May 1967, the marriage between the Appellant and the Respondent was solemnized as per the Hindu Vedic Rites. On 6<sup>th</sup> April 1968 and 4<sup>th</sup> April 1970 respectively, two sons were born to the Appellant and the Respondent from the said wedlock namely – Sathyapal and Dharmaraj, and in 1996-97, the Suit Flat was purchased in the joint names of the Appellant and the Respondent.

3. In 2013, the Appellant filed a Petition for Divorce against the Respondent before the Additional Senior Civil Judge, Udupi, bearing M. C. No.52 of 2013, on the ground of cruelty and desertion, and an ex-parte decree was passed on 30<sup>th</sup> September 2013 dissolving the marriage.

4. Being aggrieved by the ex-parte decree of divorce, the Respondent filed Miscellaneous Application No. 4 of 2019 before the Principal Senior Civil Judge, Udupi to set aside the said decree dated 30<sup>th</sup> September 2013. The said Application came to be dismissed by an Order dated 13<sup>th</sup> November 2019. An Appeal, being Appeal No. 1 of 2020, was filed by the Respondent before the Court of District and Sessions Judge at Udupi challenging the said Order of dismissal dated 13<sup>th</sup> November 2019. We are informed by the learned Counsel for the Respondent that the said Appeal has also been dismissed. In other words, the decree granting a divorce to the Appellant herein has attained finality.

5. In the meanwhile, in December 2017, another Petition was filed by the Appellant, being Petition No.B-79 of 2017, before the Family Court No.3 at Bandra, seeking reliefs in respect of the Suit Flat and other ancillary reliefs. Thereafter, on 27<sup>th</sup> August 2019, an application was filed by the Appellant for amendment of the said Petition by adding an additional prayer. By an Order dated 16<sup>th</sup> November 2019, the Family Court at Bandra rejected the said Application on the ground that issues had already been framed, evidence was filed, and cross-examination had already begun. The Appellant challenged the said Order in this Court by filing a Writ Petition No. 128 of

2020. By Order dated 25<sup>th</sup> February 2020, this Court allowed this Writ Petition and permitted the Appellant herein to carry out the amendment by observing that the said relief [which was sought by way of an amendment] would be necessary for the Trial Court in deciding the real controversy between the parties. The prayers in Petition No.B-79 of 2017, after the amendment, read as under:-

- “(a) That this Hon’ble Court be pleased to declare that the Petitioner is sole owner in respect of Suit Flat i.e. Flat No.B-104, 1<sup>st</sup> floor, Ambar Lok Rachana CHS Ltd. Mulund (W), Mumbai 400 082;*
- (b) That this Hon’ble Court be pleased to declare that Respondent has no any title or interest of any nature whatsoever in respect of Suit Flat i.e. Flat No.B-104, 1<sup>st</sup> floor, Ambar Lok Rachana CHS Ltd., Mulund (W), Mumbai 400 082;*
- (c) That this Hon’ble Court be pleased to pass a Mandatory Order directing the Respondent to quit, vacate and handover the free, vacant and peaceful possession of the suit premises i.e. Flat No.B-104, 1<sup>st</sup> floor, Ambar Lok Rachana CHS Ltd., Mulund (W), Mumbai 400 082;*
- (d) That this Hon’ble Court be pleased to pass a Permanent Order and injunction restraining the Respondent from selling, transferring, alienating, encumbering or creating any third party rights of any nature whatsoever in respect of the Suit Flat i.e. Flat No.B-104,1<sup>st</sup> Floor, Ambar Lok Rachana CHS Ltd., Mulund (W);*
- (e) In the alternative, this Hon’ble Court be pleased to auction the said suit premises and to divide the proceeds in equal shares between the parties;*

(f) *For costs; and*

(g) *For such further and other reliefs as the facts of the case may require.”*

6. Thereafter, the Family Court No.3 at Bandra passed an Order dated 24<sup>th</sup> February, 2021 in Petition No.B-79 of 2017. In the said Order, it is recorded that the Petition was filed regarding declaration of sole ownership of the Appellant in respect of the Suit Flat and other reliefs. It was further noted [in the said order] that by a Decree of Divorce dated on 30<sup>th</sup> September 2013 passed in M. C. No.52 of 2013, the Additional Senior Civil Judge at Udupi, Karnataka, had dissolved the marriage between the Appellant and the Respondent. The said Order also noted that a perusal of the decree of divorce revealed that it was filed only for divorce on the ground of cruelty and desertion under Section 13 of the Hindu Marriage Act, 1955, and the Appellant herein (the Petitioner before the Trial Court) had not claimed any relief in respect of the Suit Flat in the said Divorce Petition. Therefore, the Appellant herein was called upon to make submissions as to why the provisions of Order 2 of Rule 2 of CPC may not be applied to the Petition filed before the Family Court.

7. After the order dated 21<sup>st</sup> February 2021, by the impugned Order dated 31<sup>st</sup> March 2021, the Family Court No.3 at Bandra dismissed the Appellant's Petition No.B-79 of 2017 under Order 2 Rule 2 (3) of the CPC. The said Order reads as under:-

*"1:- As per order dated 24.02.2021, I have heard Ld. Counsel for the petitioner. It is argued by citing ratios of Hon'ble Supreme Court in the case of Rathvanti Vs. Kavita reported in 2015 (1) AIR (Bom)60 R and 2014 (1) BC 1-9 that unless and until there is a identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of bar contened under order 2 Rule 2 of code of civil procedure.*

*2. I have gone through the above citations which are pertaining to property matters i.e. one in relation to injuction suit and specific perfomance of contract suit while other is pertaining to order passed by Debts Recovery Trabunal, Alahabad in respect of relief claimed by the bank. There is no dispute about the ratio led down in the said rulings but the said facts in the said cases are different than that of the case in hand. In the present case, the petitioner earlier had filed a suit for divorce bearing no. MC 52/13 before Additional Senior Civil Judge, Court at Udipi, Karnataka on 30.09.2013, which was decreed by granting divorce to him. It is seen that at the time of presentation of the said suit, the Petitioner was having the present suit property standing in the name of him and his wife respondent. When he went to dissolve his marital tie with the respondent by filing said petition, he should have solve the property issue of the flat jointly owned by them as the present suit property was not separable from the family of the petitioner with the respondent. But he has not choosen to include the said flat in the said petition. Further, in the present case, one cause of action which was arosed at the time of filing of the divorce petition by the petitioner while in case in ratio cited, there were two distinct cause of action. Besides, the said ratio is not pertaining to matrimonial dispute. Hence, the argument of Ld. Counsel for the petitioner can not be accepted and rulings cited by the Ld. Counsel are not applicable to the present case as the facts of present case are different. Hence, I am of the opinion that the petition is not*

*maintainable i.e. there is a bar under order 2 Rule 2 (3) of Code of Civil Procedure to the present suit. In the result, I proceed to pass the following order :-*

**ORDER:**

*The suit stands dismissed under order 2 Rule 2 (3) of Code of Civil Procedure.*

8. In this factual backdrop, Ms. Disha Shetty, the learned Advocate appearing for the Appellant, submitted that the Learned Judge had committed an error in passing the said Order dated 31<sup>st</sup> March, 2021 as the Learned Judge had failed to appreciate that the earlier Petition filed for divorce by the Appellant was based on a different cause of action than the subsequent Petition filed by the Appellant seeking reliefs in respect of the Suit Flat. Ms. Shetty submitted that since the causes of action in respect of the earlier Petition and the subsequent Petition were different, the provisions of Order 2 Rule 2 of the CPC would not apply to the present case, and, therefore, the Learned Judge had committed a grave error in dismissing the Petition by relying upon the provisions of Order 2 Rule 2 of the CPC.

9. In support of her submissions, Ms. Shetty relied upon the judgement of the Hon'ble Supreme Court in ***Rathnavathi and Another***

*v/s. Kavita Ganashamdas*<sup>1</sup> and also to a judgement of the Delhi High Court in *Gaurav Mangla and Others v/s. Rohit Mangla*<sup>2</sup>. Ms. Shetty submitted that the said judgements clearly laid down that, if the cause of action is different, then the provisions of Order 2 Rule 2 of the CPC are wholly inapplicable. Consequently, Ms. Shetty submitted that the impugned Judgment dated 31<sup>st</sup> March 2021 ought to be set aside and the Petition be restored to the file of the Family Court No.3 at Bandra to be heard on merits.

10. On the other hand, Mr. Bhandari, the learned counsel appearing on behalf of the Respondent, submitted that the cause of action for dissolving the marriage between the Appellant and the Respondent, and the cause of action for seeking a declaration that the Appellant is the sole owner of the Suit Flat, was one and the same. Once this is the case, then, under the provisions of Order 2 Rule 2, the Appellant could not, without the leave of the Court, sue for reliefs which he had omitted to sue for when he filed his Petition for divorce/dissolution of marriage. He submitted that this is *ex-facie* clear from the provisions of Order 2 Rule 2 (3) of the CPC. Once this is the case, Mr. Bhandari submitted that there was no merit in the arguments

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<sup>1</sup> (2015) 5 SCC 223

<sup>2</sup> MANU/DE/2415/2024



canvassed on behalf of the Appellant and consequently prayed for dismissal of the above Appeal.

**ANALYSIS AND FINDINGS:-**

11. At the outset, it is important to note that the Respondent had not filed any Application under Order 2 Rule 2 of the CPC seeking dismissal of the suit. The Learned Family Court Judge has *suo moto* raised this point and thereafter proceeded to dismiss the Petition filed before the Family Court which sought certain reliefs in relation to the Suit Flat. In this Appeal, we are not going into the question whether the Learned Judge could have *suo moto* raised the point regarding the suit being barred under the provisions of Order 2 Rule 2 of the CPC. For the present purposes, we will assume for the sake argument that the Learned Judge had the power to do so. Hence, we are deciding the Appeal on merits.

12. Before we deal with rival contentions, the provisions of Order 2 Rule 2 of the CPC need to be noted. They read as under:-

**“2 Suit to include the whole claim:-** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make ***in respect of the cause of action***; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim:-** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs:-** A person entitled to more than one relief ***in respect of the same cause of action*** may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation – For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

(emphasis supplied)

13. The provisions of Order 2 Rule 2 of the CPC provide that every suit should include the whole of the claim which the Plaintiff is entitled to make in respect of the cause of action; and where the Plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Hence, the provisions of Order 2 Rule 2 of the Code of Civil Procedure mandate that all claims arising out of the same cause of action should be made in one suit, and that if a party omits to make such a claim or intentionally relinquishes it, then, in a subsequent suit, that party would be barred from suing in respect of the said claim.

14. This position in law has also been clarified in judgements of the Hon'ble Supreme Court and the Delhi High Court. In this regard, the judgement of the Hon'ble Supreme Court in *Rathnavathi (supra)* is illustrative and reads as under:-

**"22.** Coming first to the legal question as to whether bar contained in Order 2 Rule 2 CPC is attracted so as to non-suit the plaintiff from filing the suit for specific performance of the agreement, in our considered opinion, the bar is not attracted.

**23.** At the outset, we consider it apposite to take note of the law laid down by the Constitution Bench of this Court in *Gurbux Singh v. Bhooralal* [AIR 1964 SC 1810] , wherein this Court while explaining the true scope of Order 2 Rule 2 CPC laid down the parameters as to how and in what circumstances, a plea should be invoked against the plaintiff. Ayyangar, J. speaking for the Bench held [AIR 1964 SC 1810] as under: (AIR p. 1812, para 6)

"6. In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, **for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.**"

**24.** This Court has consistently followed the aforesaid

enunciation of law in later years and reference to only one of such recent decisions in *Virgo Industries (Engg.)(P) Ltd. v. Venturetech Solutions (P) Ltd.* [(2013) 1 SCC 625 : (2013) 1 SCC (Civ) 679] , would suffice, wherein this Court reiterated the principle of law in the following words: (SCC p. 632, para 11)

“11. The cardinal requirement for application of the provisions contained in Order 2 Rules 2(2) and (3), therefore, ***is that the cause of action in the later suit must be the same as in the first suit.*** It will be wholly unnecessary to enter into any discourse on the true meaning of the said expression i.e. cause of action, particularly, in view of the clear enunciation in a recent judgment of this Court in *Church of Christ Charitable Trust and Educational Charitable Society v. Ponniammam Educational Trust* [(2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] . The huge number of opinions rendered on the issue including the judicial pronouncements available does not fundamentally detract from what is stated in *Halsbury's Laws of England* (4th Edn.). The following reference from the above work would, therefore, be apt for being extracted hereinbelow:

““Cause of action” has been defined as meaning simply a factual situation existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from the earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. “Cause of action” has also been taken to mean that particular action on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.”

**25.** In the instant case when we apply the aforementioned principle, we find that the bar contained in Order 2 Rule 2 CPC is not attracted because of the distinction in the cause of action for filing the two suits:

**25.1.** So far as the suit for permanent injunction is concerned, it was based on a threat given to the plaintiff by the defendants to dispossess her from the suit house on 2-1-2000 and 9-1-2000. This would be clear from reading Para 17 of the plaint. So far as the cause of action to file suit for specific performance of the agreement is concerned, the same was based on non-performance of agreement dated 15-2-1989 by Defendant 2 in the plaintiff's favour despite giving legal notice dated 6-3-2000 to Defendant 2 to perform her part.

**25.2.** In our considered opinion, both the suits were, therefore, founded on different causes of action and hence could be filed simultaneously. Indeed even the ingredients to file the suit for permanent injunction are different than that of the suit for specific performance of the agreement.

**25.3.** In case of former, the plaintiff is required to make out the existence of prima facie case, balance of convenience and irreparable loss likely to be suffered by the plaintiff on facts with reference to the suit property as provided in Section 38 of the Specific Relief Act, 1963 (in short "the Act") read with Order 39 Rules 1 and 2 CPC. Whereas, in case of the latter, the plaintiff is required to plead and prove her continuous readiness and willingness to perform her part of the agreement and to further prove that the defendant failed to perform her part of the agreement as contained in Section 16 of the Act.

**26. One of the basic requirements for successfully invoking the plea of Order 2 Rule 2 CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based.** As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order 2 Rule 2 CPC to successfully non-suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.

**27. Indeed when the cause of action to claim the respective reliefs were different so also the ingredients for claiming the reliefs, we fail to appreciate as to how a plea of Order 2 Rule 2 CPC could be allowed to be raised by the defendants and**

*how it was sustainable on such facts.*

**28. We cannot accept the submission of the learned Senior Counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff prior to filing of the first suit, the second suit was hit by bar contained in Order 2 Rule 2 CPC.**

**29.** The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order 2 Rule 2 CPC. ***It is the cause of action which is material to determine the applicability of bar under Order 2 Rule 2 CPC and not merely the pleadings. For these reasons, it was not necessary for the plaintiff to obtain any leave from the court as provided in Order 2 Rule 2 CPC for filing the second suit.***

**30. Since the plea of Order 2 Rule 2 CPC, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, the reliefs claimed in both the suits and lastly, the legal provisions applicable for grant of reliefs in both the suits.**

**31.** In the light of foregoing discussion, we have no hesitation in upholding the finding of the High Court on this issue. We, therefore, hold that the second suit (OS No. 2334 of 2000) filed by the plaintiff for specific performance of agreement was not barred by virtue of the bar contained in Order 2 Rule 2 CPC.”

(emphasis supplied)

15. The Delhi High Court also has taken a similar view in *Gaurav Mangla (supra)*. Paragraphs 20 and 26 of the said decision are relevant and read as under:-

“20. A bare perusal of the aforesaid provision would show that it is an omission to sue in respect of, or an intentional relinquishment, of any portion of the claim, that cannot be entertained in a later suit. **Order II Rule 2 CPC is based on the principle that no person should be vexed twice for one and the same cause of action.** It disallows splitting-up of claims, and thus, splitting of remedies. Omission to sue in respect of the claim which would have been available, disentitles the plaintiff to sue afresh in respect of the same in a subsequent suit. **However, the rule does not preclude a second suit based on a distinct and separate cause of action. There are two pertinent conditions that must be satisfied: firstly, that the previous suit and the present suit must arise out of the same cause of action, and secondly, that the two suits must be involving the same contesting parties or the parties under whom they had been litigating.**

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26. In our opinion, the sine qua non for invoking Order 2 Rule 2(2) against the plaintiff by the defendant is that the relief which the plaintiff has claimed in the second suit was also available to the plaintiff for being claimed in the previous suit **on the causes of action pleaded in the previous suit** against the defendant and yet not claimed by the plaintiff.”

(emphasis supplied)

16. In the light of this settled position in law, the Appellant’s Petition No. B-79 of 2017, seeking reliefs in respect of the Suit Flat, could have been dismissed only if it was based on the same cause of action as the

Petition bearing M. C. No. 52 of 2013 for dissolving of the marriage on the ground of cruelty and desertion.

17. In our view, both the said Petitions are filed on different causes of action and, therefore, Petition No. B-79 of 2017 could not have been dismissed under Order 2 Rule 2 of the Code of Civil Procedure. The cause of action for filing Petition bearing M.C. No. 52 of 2013 for dissolving of marriage were the marital disputes between the parties and the cruelty and desertion alleged by the Appellant in that Petition. On the other hand, the cause of action for filing Petition No. B-79 of 2017, seeking reliefs in respect of the Suit Flat, was based on a different cause of action, namely the claim of the Appellant that he was the sole owner of the Suit Flat.

18. In fact, Section 7 of the Family Courts Act, 1984, which provides for the jurisdiction of the Family Court, makes a distinction between these two kinds of suits. The Explanation to the said Section 7 enumerates the suits and proceedings over which the Family Court would have jurisdiction. Sub-clause (a) of the Explanation reads as under:-

“(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage)



or restitution of conjugal rights or judicial separation or dissolution of marriage.”

**19.** The Petition for dissolution of marriage was filed by the Appellant under this Sub-clause (a). On the other hand, the Petition in respect of the Suit Flat was filed by the Appellant under Sub-clause (c) of the Explanation to Section 7 which reads as under:-

“(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.”

**20.** The aforesaid also clearly shows that both the Petitions are based on separate and distinct causes of action. Section 7 of the Family Courts Act, 1984 itself makes the said distinction. In our view, in the aforesaid circumstances, the finding of the Learned Judge in the impugned judgement dated 31<sup>st</sup> March 2021 that when the Appellant filed the Petition for dissolving his marriage, he should have included the claim of the Suit Flat also, as the Suit Flat was not separable from the family of the Appellant with the Respondent, is clearly erroneous. As held by us earlier, the causes of action in respect of the two proceedings are completely different and, therefore, it was not necessary for the Appellant to include the claim in respect of the Suit Flat in his earlier Petition for dissolving the marriage. Merely because the Appellant could have joined two separate and distinct

causes of action [one for dissolving the marriage and the other for a declaration that the Suit Flat solely belongs to him] in one Petition, would not attract the bar under Order 2 Rule 2 of the CPC. For the bar to be attracted, the cause of action in the earlier Petition must be the same as in the subsequent Petition, and between the same parties. The Learned Judge's finding, that both the Petitions arose out of the same cause of action, is therefore clearly erroneous.

**21.** In the light of the aforesaid discussion, and for the aforesaid reasons, the Order dated 31<sup>st</sup> March 2021 is required to be set aside. Hence, we pass the following order:-

- (a) The Judgement and Order dated 31<sup>st</sup> March, 2021 passed by the Family Court No. 3 at Bandra in Petition No.B-79 of 2017 is hereby set aside;
- (b) Petition No.B-79 of 2017 is restored to the file of the Family Court No.3 at Bandra;
- (c) In the light of the fact that the said Petition No.B-79 of 2017 is pending since 2017, and also in light of the advanced age of the Appellant who is the Petitioner therein, Petition No.B-79 of 2017 is expedited;

(d) The Family Court No.3 at Bandra is requested to dispose of the said Petition expeditiously, and, in any case, within a period of six months from the date of this Order.

**22.** The present Appeal is allowed in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

**23.** This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]