

FULL BENCH.

Before Falshaw, Dulat, and Bishan Narain, JJ.

MARIANNE MANDL,—Petitioner.

versus

STEFAN MANDL. —Respondent.

Original Matrimonial Application No. 3-D of 1954.

Indian Divorce Act (IV of 1869)—Section 17—Domicile—Parties Austrians by birth—Married in Vienna in 1936—Forced to flee from Austria in 1939—Living in India since then—No intention to go back to Austria—Whether domiciled in India.

1955

April, 6th

Held, that in the circumstances of this case the lower court was right in holding that the parties are domiciled in India.

Petition under section 17 of Indian Divorce Act, IV of 1869, for confirmation of the decree nisi passed by the Additional District Judge, Delhi on 13th March, 1954.

J. N. SETH, for Petitioner.

NEMO, for Respondent.

JUDGMENT.

FALSHAW, J. This case has come before us for confirmation of the decree nisi granted by the Additional District Judge at Delhi to the petitioner Mrs. Marianne Mandl for dissolution of her marriage with the respondent Steffan Mandl on the 13th of March, 1954.

Falshaw, J

The petitioner sued in the Court at Delhi for the dissolution of her marriage with the respondent on the grounds of adultery and desertion. The suit was undefended and the petitioner's allegations of constructive desertion by the respondent by turning her out and failing to maintain her for a period of more than two years, and adultery, appear to be fully established by the evidence

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produced by the petitioner and the respondent has not appeared in this Court to contest the confirmation of the decree *nisi* although he has been personally served with notice of the proceedings.

The only point on which I feel any difficulty at all is the question of domicile of parties who are admittedly Austrians by birth and were in fact married at Vienna in Austria in October, 1936. The petitioner's case is that they were forced to flee from Austria as political refugees in 1939 when the country was seized by the Nazis and since then they had been living in India and resided together last at Delhi where the respondent began misbehaving and turned the petitioner out. Since then she has been living in Bombay and is in employment and she has stated that she has no intention or wish to return to her native country. The respondent also appears to have settled in India since at present he is employed at Sindri (Bihar) by the Coke Ovan Construction Company and service has been effected on him there. In the circumstances, I would accept the finding of the lower Court that the parties are domiciled in India and confirm the decree *nisi* for the dissolution of the petitioner's marriage with the respondent with costs.

DULAT, J. I agree.

BISHAN NARAIN, J. I agree.

Dulat, J.
Bishan
Narain, J.