

Judge Solyonaya T.V.
Case No. 33-45878/2018

APPEAL RULING

16 October 2018

The Judicial Panel on Civil Cases of the Moscow City Court comprised of the chairing judge Vyugova N.M.

judges Salnikova M.L., Dubinskaya V.K.,
with clerk Ivanova A.Yu.,

having reviewed in an open hearing, based on the presentation by judge Salnikova M.L., the special appeal filed by the representatives of applicant Akhmedov F.T.o. acting by power of attorney Scheglova I.V., Rybalko V.D. from the ruling of the Zyuzinskiy District Court of the City of Moscow dated 04 July 2018 that directed to:

Terminate the civil proceedings under an application from Akhmedov F.T.o. seeking to restore lost judicial proceedings,

has found:

Akhmedov F.T.o. applied to the court seeking to restore the lost judicial proceedings on civil case No. 2-1767/2000 on the claim of Akhmedov F.T.o. to Akhmedova T.M. for the dissolution of marriage, upon review of which, on 18 August 2000, the Zyuzinskiy District Court of the City of Moscow comprised of the chairing judge SV. Martusov, with clerk I.A. Kolobkova, issued a judgment to grant the dissolution of marriage between Akhmedov F.T. ogly and Akhmedova T.M.; the judgment took effect on 29 August 2000; the application argued that the above judicial proceedings were lost and there were no judicial rulings available. Applying for the restoration of the lost divorce proceedings, the applicant seeks to defend his rights and lawful interests, stay the expropriation proceedings with respect to the applicant's assets, protect his honour, dignity and business reputation, and to restore justice and truth in the case.

Applicant Akhmedov F.T. ogly did not appear in court while being properly notified of the date, time and venue of the hearing on the merits. The applicant's representatives attended the hearing, and supported the application to restore the lost judicial proceedings in its entirety, asking to grant the application and issue a decision to restore the lost judicial proceedings.

The interested party Akhmedova T.M. did not appear in court while being properly notified of the date, time and venue of the hearing on the merits, the interested party's representative attended the hearing and objected to the application.

The court issued the ruling mentioned above which the representatives of the applicant Akhmedov Farkhad Teimur ogly acting by power of attorney Scheglova I.V., Rybalko V.D. ask to repeal as illegal in their special appeal arguing that the court incorrectly applied the rules of procedural law.

Upon checking the case file, and hearing the explanations of the representatives of the applicant Akhmedov Farkhad Teimur ogly acting by power of attorney Scheglova I.V., Rybalko V.D. who supported the arguments of the special appeal, explanations of the representative of the interested party Akhmedova T.M. acting by power of attorney Kuznetsov Yu.I. who objected to the arguments of the appeal, after discussing the arguments of the special appeal, the judicial panel comes to the conclusion that there is no basis for repealing the appealed ruling that was issued in line with the facts of the case and the requirements of applicable law.

In the course of review of the application to restore the lost judicial proceedings the applicant's representatives submitted a copy of the divorce certificate series I-MU No. 865813 issued on 07 October 2003 showing that the marriage between Akhmedov F.T.o. and Akhmedova T.M. was terminated on 29 August 2000 under the judgment of the Zyuzinskiy District Court of

the City of Moscow dated 18 August 2000, and on 07 October 2003 the Meschanskiy Civil Records Office of the City of Moscow (ZAGS) made an entry of the dissolution of marriage No. 833.

A photocopy was submitted of an excerpt from the judgment of the Zyuzinskiy Inter-Municipal Court of the City of Moscow from August 2000 of the dissolution of the marriage between Akhmedov F.T.o. and Akhmedova T.M. The excerpt from the judgment shows that the photocopy was made from a copy that had no proper certification of it being a true copy of the document.

From the information received from the Meschanskiy Civil Records Office of the City of Moscow dated 18 May 2018 it follows that according to copies of civil records: there is civil records data about the conclusion of marriage – entry No 660 dated 10 July 1993 in the Meschanskiy Civil Records Office in the names of Akhmedov F.T.o. and Soroka T.M. and entry No. 833 dated 07 October 2003 of the dissolution of marriage. It is not possible to produce a copy of an excerpt from the judgment (or a copy of the judgment) of the Zyuzinskiy Inter-Municipal Court of the City of Moscow dated 18 August 2000 on the dissolution of the marriage between the above individuals because the time limit for the custody of such documents has expired (the custody period is 5 years from the state registration of the dissolution of marriage).

The alphabetical index of the Zyuzinskiy District Court of the City of Moscow on civil cases for the year 2000 contains an entry showing as parties to the case, in the box “Respondent” - Akhmedova T.M., in the box “Claimant” - Akhmedov F.T., in the box “Subject of claim, application” - on d/m, in the box “Case number in the statistical record card” - 767.

The statistical record card for civil case No. 2-1767/2000 shows that the statistical record card for civil case No. 2-1767/2000 was created based on an application received by the court on 20 April 2000, with the parties: Claimant - Akhmed Z.I., address - *, respondent - Akhmed V., address - *, claim on d/of marriage.

According to the List of Documents of Federal Courts of General Jurisdiction with Periods of Custody enacted by the order of the Judicial Department of the Supreme Court of the Russian Federation dated 09 June 2011 No. 112, files on the dissolution of marriage shall be kept in custody for a period of 5 years (section 5, cl. 5.1. sub-clause 64) (the same custody period for this category of files existed previously).

When the nomenclature of files is compiled, and when documents are selected for storage and disposal, warrants of court judgments are formed for files to be destroyed and judicial resolutions to be kept permanently.

The warrant of court judgments issued in cases that the court proceeded on and files of which were destroyed, for the year 2000, between number 1750 and number 1799, contains a court judgment issued in absentia in civil case No. 2-1767/2000 at the claim of Akhmed Z.I. to Akhmed V. for the dissolution of marriage issued by the court on 22 May 2000, and together with the court’s judgment issued in absentia dated 22 May 2000, the warrant contains the original of the certificate of marriage concluded between Akhmed V. and Chernetsova Z.I. on 05 March 1968.

From the explanations provided by the applicant’s representatives in the hearing on the merits, it appears that it is impossible to provide proof showing with certainty that a place of registration or a place of residence existed in the territory under the jurisdiction of the Zyuzinskiy District Court of the City of Moscow (Zyuzinskiy Inter-Municipal Court of the City of Moscow) in the year 2000, because at the time, neither Akhmedov F.T. ogly nor Akhmedova T.I. had registration as residents in the territory covered by the jurisdiction of the Zyuzinskiy District Court of the City of Moscow. According to Akhmedov F.T. ogly, it is possible that there was a temporary registration at the place of temporary residence at the address: *, and this allowed to apply to the Zyuzinskiy District Court of the City of Moscow.

Pursuant to the provisions of article 318 of the Code of Civil Procedure of the Russian Federation, when the collected materials are insufficient for an accurate restoration of the judicial resolution issued in connection with the lost judicial proceedings, the court shall issue a ruling to terminate the proceedings on the restoration of the lost judicial proceedings and shall explain to the parties their right to file a claim in the general procedure (part 1).

Denying the claim to restore the lost judicial proceedings, the court has come to a reasonable conclusion that the collected materials are insufficient for an accurate restoration of the judicial resolution issued in connection with the lost judicial proceedings, while proceeding from the fact that the applicant failed to prove that the court instituted proceedings on the civil claim of Akhmedov F.T. ogly to Akhmedovoy T.M. seeking dissolution of marriage, failed to prove that on 18 August 2000 the Zyuzinskiy Inter-Municipal Court of the City of Moscow issued a decision on the merits of the case. The court did not consider the argument about a possible registration at the place of temporary residence in the territory under the jurisdiction of the Zyuzinskiy District Court of the City of Moscow sufficient grounds for deciding to restore the lost judicial proceedings for which Akhmedov F.T. ogly applied. The court did not accept as evidence the copy of the court's judgment on the dissolution of the marriage between the parties on 18 August 2000 that was submitted in the proceedings because it did not comply with the requirements to the certification of document copies.

The judicial panel agrees with the court's conclusions in their entirety.

As seen from the case file, the applicant failed to provide sufficient and credible data allowing accurate restoration of the judicial resolution issued in connection with the lost judicial proceedings.

The court did not find the facts mentioned in part 2 article 317 of the Code of Civil Procedure of the Russian Federation that are grounds for restoring the lost judicial proceedings.

The arguments of the special appeal cannot be the basis for repealing the ruling issued by the court because they do not disprove the court's conclusions about the existence of legal basis for the restoration of the lost judicial proceedings, and are aimed at a different interpretation of the evidence filed to the case and express the applicant's position on how his application should be considered.

The arguments of the special appeal do not contain legal grounds described by the provisions of art. 330 of the Code of Civil Procedure of the Russian Federation for repealing the ruling issued by the court.

Based on the above, relying on art. 334 of the Code of Civil Procedure of the Russian Federation, the judicial panel

has ruled:

Ruling of the Zyuzinskiy District Court of the City of Moscow dated 04 July 2018 shall be left unchanged and the special appeal shall not be granted.

Chairing Judge

Judges