

## ORDER

04 July 2018

City of Moscow

The Zyuzinsky District Court of Moscow represented by the presiding judge T.V. Solenova,

With minutes taken by the court reporter Y.I. Novikova,

Has heard in open court civil action brought by Farkhad Teimur-ogly Akhmedov seeking to restore lost proceedings.

IT WAS FOUND THAT:

Mr Akhmedov applied to court seeking to restore civil proceedings No. 2-1767/2000 issued upon the divorce application of Mr Akhmedov against Tatiana Mikhailovna Akhmedova. The divorce application was heard by the Zyuzinsky Inter-Municipal Court of Moscow (presiding judge S.V. Martusov, court reporter I.A. Kolobkova) on 18 August 2000 and as a result the order was made to dissolve marriage between Mr Akhmedov and Ms Akhmedova. The court order became effective on 29 August 2000. The applicant referred to the fact that the proceedings in issue have been lost and there are no court orders. The application to restore lost divorce proceedings is aimed at protection of applicant's rights and legitimate interests, honor, dignity and business reputation, restoration of justice and truth within the proceedings. Furthermore, the application was brought to stop the collection procedure in respect of the applicant's assets.

The applicant Mr Akhmedov did not appear at the court hearing though he was duly served with the proceedings. The applicant's counsel appeared at the court hearing, fully supported the application to restore the lost proceedings, asked to allow the application by ordering to restore the lost proceedings.

The interested party Ms Akhmedova did not appear at the court hearing though she was duly served with the proceedings. The interested party's counsel appeared at the court hearing and objected to allowing the application.

After hearing the counsel for the applicant and the counsel for the interested party, reviewing and assessing submitted written evidence in its entirety, this court finds that Mr Akhmedov's application for restoration of lost proceedings shall be dismissed on the following grounds.

When determining the claims, this court relies on Article 313(1) of the Russian Civil Procedure Code stating that civil proceedings (lost in full or in part) resulting in an order on the merits made or a procedural order made terminating proceedings shall be restored by court as prescribed by Chapter 38 of the Russian Civil Procedure Code.

It follows from Chapter 38 of the Russian Civil Procedure Code that restoration of lost proceedings is a special procedural action of a court and parties participating in proceedings aimed at restoration of information in the records of lost proceedings. This is the specific reason why this procedure results in a new court order recording the content of an initial order rather than in an additional (second) copy of the lost document.

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Restoration proceedings have another distinguishing feature – no substantive law is applied by court in hearing and determining the case. The subject matter of such proceedings is to find by court whether an order on the merits was made or a procedural order was made terminating proceedings and also to determine their exact content.

Pursuant to Article 318(1) of the Russian Civil Code, where records collected are insufficient for accurate restoration of a court order relating to the lost proceedings the court shall order to dismiss the restoration proceedings and explain to parties participating in such proceedings that they may issue new proceedings under a general procedure.

When hearing the restoration proceedings the counsel for the applicant submitted a copy of the divorce certificate I-MYu No. 865813 issued on 07 October 2003 evidencing that the marriage between Farkhad Teimur-ogly Akhmedov and Tatiana Ivanovna Akhmedova was dissolved on 29 August 2000 pursuant to the order of the Zyuzinsky District Court of Moscow of 18 August 2000. The respective entry No. 833 was introduced by the Meshchansky Registry Office on 07 October 2003.

There was also presented a copy of the extract from the order of the Zyuzinsky Inter-Municipal District Court of Moscow dated August 2000 dissolving the marriage between Farkhad Teimur-ogly Akhmedov and Tatiana Ivanovna Akhmedova. It can be seen from the extract from the court order that it was the copy of the copy and it was not duly certified to confirm the accuracy of such copy.

It follows from Letter No. 4518 dated 18 May 2018 delivered by the Meshchansky Registry Office of Moscow that according to the Office records there are details about the following records for the Meshchansky Registry Office: record No. 660 dated 10/07/1993 evidencing marriage between Farkhad Teimur-ogly Akhmedov and Tatiana Mikhailovna Soroka and record No. 833 dated 07/10/2003 evidencing dissolution of the marriage. The Meshchansky Registry Office is unable to submit a copy of the extract from the court order (or copy of the order) made by the Zyuzinsky Inter-Municipal Court of Moscow on 18/08/2000 dissolving the marriage between the above individuals as the storage period for these documents expired. Storage period is 5 years following the official registration of dissolution.

The index of civil cases of the Zyuzinsky District Court of Moscow for 2000 has a record made by the parties to the case: column "Respondent" states T.M. Akhmedova, column "Claimant" states F.T. Akhmedov, column "Content of claim, application" states dissolution of marriage, column "Case number as per registration card" states 1767.

It follows from the registration card for case No. 2-1767/2000 that the registration card for case No. 2-1767/2000 was created pursuant to the application received by court on 20 April 2000 and that there were the following parties to the case: Zoya Ivanovna Akhmed as claimant, of Moscow, ul. Khersonskaya 12-2-129, Vazir Akhmed as respondent, of Moscow, ul. Khersonskaya 12-2-129, with claims relating to dissolution of marriage.

Pursuant to the List of Records of Federal Courts of General Jurisdiction (with Storage Periods) approved by the Judicial Department of the Russian Supreme Court in its order No. 112 dated 09/06/2011 dissolution case records shall be stored during 5 years (Section 5, Clause 5.1, Sub-Clause 64). Previously the storage period for these categories of cases was the same.

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When lists of cases are created and documents are chosen for storage and deletion separate sets of court orders are prepared, namely court orders subject to deletion and court orders subject to permanent storage.

The set of court orders for 2000 (from No. 1750 to No. 1799) in respect of cases heard by the court and deleted there is a judgment by default issued on 22 May 2000 in proceedings No. 2-1767/2000 upon the divorce application of Zoya Ivanovna Akhmed against Vazir Akhmed. In addition to the judgment of 22 May 2000, the set of court orders has also the original certificate of marriage of 05 March 1968 between Akhmed Vazir and Zoya Ivanovna Akhmed.

It follows from explanations given by the counsel for the applicant in the course of the court hearing on the merits that it is impossible to submit any evidence confirming with 100% of certainty that in 2000 the place of registration or place of residence was within jurisdiction of the Zyuzinsky District Court of Moscow (Zyuzinsky Inter-Municipal District Court of Moscow) because during that period neither Mr Akhmedov, nor Ms Akhmedova were registered at their place of residence within jurisdiction of the Zyuzinsky District Court of Moscow. Mr Akhmedov informed that there could

have been temporary registration at their place of staying at: Moscow, ul. Krzhizhanovskogo 27 (or 31), which made it possible to apply to the Zyuzinsky District Court of Moscow.

The argument as to the possible registration at the place of staying within jurisdiction of the Zyuzinsky District Court of Moscow may not serve as sufficient grounds to restore the lost proceedings in respect of which Mr Akhmedov filed his application.

To determine the issue of restoration of the proceedings the court has reviewed evidence submitted by the applicant and has come to conclusion that the fact that civil proceedings were issued upon Mr Akhmedov's divorce application against Ms Akhmedova has not been proved, nor has been proved the fact that the Zyuzinsky District Court of Moscow made an order on the merits on 18 August 2000. As documents collected are insufficient for accurate restoration of the court order the court finds that the restoration proceedings must be dismissed because the applicant failed to submit sufficient and true details for accurate restoration of the court order relating to the lost proceedings.

This court did not find any circumstances stated in Article 317(2) of the Russian Civil Procedure Code that may serve as grounds for restoration of the lost proceedings.

This court may not accept the copy of the court order of 18 August 2000 dissolving marriage between the parties that was submitted in the course of these restoration proceedings as sufficient and accurate evidence necessary for accurate reproduction of the court order as such copy is inconsistent with copy certification requirements.

Under the circumstances, this court assessed the evidence in its entirety and found that these proceedings must be dismissed.

In view of the above and on the basis of Article 318, 224, 225 of the Russian Civil Procedure Code,  
IT WAS ORDERED BY COURT THAT:

The civil proceedings issued by Farkhad Teimur-ogly Akhmedov seeking to restore the lost proceedings must be dismissed.

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This order may be appealed against with the Court Panel for Civil Cases of the Moscow City Court (via the Zyuzinsky District Court of Moscow) during 15 days.

Judge:

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Judge \_\_\_\_\_

Reporter \_\_\_\_\_]

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[seal: Zyuzinsky District Court of Moscow]

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Judge \_\_\_\_\_

Reporter \_\_\_\_\_]

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