

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3747 OF 2025

Sachin Dhondiram Chavan

...Petitioner

Versus

Trupti Sachin Chavan

...Respondent

Mr. Shyamrishi Pathak, Mr. Satyavijay Yadav, Ms. Gayatri Pinkyar, for the Petitioner.

Mr. Abhijit Adagule a/w Ms. Ketaki Patil, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.
DATED: 26 MARCH 2025

JUDGMENT:

1. Heard Mr. Pathak, learned Counsel appearing for the Petitioner and Mr. Adagule, learned Counsel appearing for the Respondent.
2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the legality and validity of the Order dated 7th December 2024 passed by the learned Judge, Family Court, Kolhapur below Exhibit-12 in Petition No. A-205 of 2024. By the impugned order the learned Judge, Family Court, Kolhapur has rejected the Application filed by the Petitioner-husband seeking withdrawal of the consent given for passing the decree by mutual consent under Section 13-B of the *Hindu Marriage Act, 1955* (“H.M.A.”).
3. It is the submission of Mr. Pathak, learned Counsel appearing for the Petitioner that the consent terms were executed as the relatives of the Respondent have brought pressure on the Petitioner. He submits

that the Petitioner's wish is to save the marriage.

4. On the other hand, it is the submission of Mr. Adagule, learned Counsel appearing for the Respondent that in this case initially the Petition before the Family Court has not been filed under Section 13-B of the H.M.A. and the same has been filed seeking divorce on the ground of cruelty by the Respondent-wife under Section 13(i-a) of the H.M.A. and thereafter converted into a Petition filed under Section 13-B of the H.M.A. The Petitioner has taken benefit of the consent terms and after the Respondent complied with the consent terms the application seeking withdrawal of the consent terms has been filed which is not permissible. He relied on the decision of the Division Bench of this Court in *Prakash Alupal Kalandari v. Jahnni Prakash Kalandari*¹ and also on the decision of a learned Single Judge in the case of *Rajesh Pratap Sainani v. Bhavna Rajesh Sainani*².

5. Before considering the rival contentions, it is necessary to set out the factual position:

- i. The marriage between the Petitioner and the Respondent took place on 5th June 2010.
- ii. Son is born on 13th October 2012.
- iii. As there are serious disputes between both of them, they started staying separate since 16th December 2019. The Respondent-

1 2011 (4) Mh.L.J. 187

2 2008 (6) Mh.L.J 853

wife along with son started staying with her parents.

- iv. The Respondent filed Application under the provisions of the *Protection of Women from Domestic Violence Act, 2005* (“**DV Act**”) in the Court of the learned JMFC, Kolhapur bearing PWDV Application No.114 of 2023.
- v. The Petitioner filed Petition-A No.53 of 2023 in the Court of Family Court, Kolhapur under Section 9 of the H.M.A.
- vi. The Respondent-wife filed on 10th June 2024, Petition No. A-205 of 2024 seeking divorce on the ground of cruelty under Section 13(1) (ia) of the H.M.A.
- vii. As the parties decided to get the divorce by mutual consent, amendment Application has been filed jointly by both the parties under Order VI Rule 17 on 12th August 2024 for converting the said Petition being Petition No. A-205 of 2024 under Section 13(1)(ia) of the H.M.A. to Petition seeking decree by mutual consent under Section 13-B of the H.M.A. and the same has been allowed by the learned Judge, Family Court by the impugned Order dated 12th August 2024.
- viii. The agreed terms between the parties have also been brought on record by said amendment. The relevant terms are to be found in Paragraph Nos.6, 7, 8 and 9, which read as under:-

“६. यातील अर्जदार नं.२ यांनी अर्जदार नं.१ यांना विवाहसमयी घातलेले सोन्याचे गंठण व छोटे मंगळसुत्र हे अर्जदार नं.१ यांनी अर्जदान नं.२ यांना

परत करणेचे आहे. तसेच अर्जदार नं.१ यांचे आई वडिलांना अर्जदार नं. २ यांना साखरपुडयामध्ये घातलेली अंगठी व केदार यांचे विवाहात जावयाचा मान म्हणून घातलेली अंगठी अर्जदार नं.२ यांनी अर्जदार नं. १ यांना परत करणेची आहे. तसेच अर्जदार नं.१ व २ यांनी फ्लॅट नं. ९०३, ए विंग साई वेलॉसीटी फेज —१ सर्व्हे नं. ६८/६ पौड बावधन बुद्रुक, ता. मुळशी. जि. पुणे ही फ्लॅट मिळकत एकत्रात नोंदणीकृत खेरेदी करणेसाठी रजिस्टर करारपत्र झालेले आहे. तरी सदर करारपत्रो अर्जदार नं.१ हिला प्राप्त झालेले हक्क व अधिकार अर्जदार नं.१ हिने विनाहरकत अर्जदार लं.२ यांचे हक्कात सोडून देणेचे आहेत. त्याकरिता कराव्या लागणा—या नोंदणीकृत दस्तास उपस्थित राहून सही संमती देणेचे आहे. सदरची बाब यातील अर्जदान नं.१ व २ यांना मान्य व कबुल आहे.

७. यातील अर्जदान नं.१ या स्वच्छेने घटस्फोट घेणेस तयार असलेने त्यांनी अर्जदार नं. २ यांचेकडून पोटगीचा कायमस्वरूपी हक्क सोडून दिलेला आहे. अर्जदार नं.१ यांनी अर्जदार नं.२ यांचेकडून कायमस्वरूपी पोटगीचा हक्क सोडून दिलेने त्यांनी अर्जदार नं.२ व त्यांचे कुटुंबियांचे विरुद्ध यापुढे कोणत्याही कोर्टात पोटगी अथवा त्यांचे सीवर व जंगम मालमत्तेबाबत हक्कासाठी कोणताही दावा, पोटगी अर्ज, अपील कोणत्याही कोर्टात दाखल करणेचे नाही. तसेच अर्जदार नं.१ यांनी अर्जदार नं.२ यांच्या सीवर व जंगम मिळकतीमधील संपूर्ण हक्क कायमपणे सोडून दिलेला आहे.

८. अर्जदार नं.१ व २ यांचा मुलगा चि. अर्णव चव्हाण याचा कायमस्वरूपी ताबा अर्जदार नं.१ यांचेकडे राहणेचा असून त्याचे पालन —पोषण, शिक्षण, संगोपन हे सर्व अर्जदार नं.१ यांनीच करणेचे आहे सदरची बाब अर्जदार नं. १ व २ यांना मान्य व कबुल आहे. तसेच अर्जदार नं.२ हे चि. अर्णव याचे जनक वडिल असलेने अर्जदार नं.२ हे चि. अर्णव याला दोन महिन्यातु एकदा कोल्हापूर येथील कौटुंबिक न्यायालयात अगर त्यांना योग्य वाटेल या ठिकाणी भेटतील तसेच अर्जदार नं.२ यांना चि. अर्णव याला भेटवस्तु देणेची मुभा राहिल सदरची बाब यातील अर्जदार नं.१ व २ यांना मान्य व कबुल आहे. अर्जदार नं.२ यांनी चि. अर्णव यास भेटणेकरीतउ येणेपुर्वी किमान आठ दिवस अगोदर भ्रमनध्वनीद्वारे अर्जदार नं. १ यांना पूर्वकल्पना देणेची असून उभयतांचे सोयीनुसार भेटणेची वेळ व दिवस तसेच ठिकाण ठरविणेचे आहे. तसेच चि. अर्णव याचे शाळेची सुट्टीचे कालावधीमध्ये चि. अर्णव यास त्यांचे घरी आजरा येथे घेवून जाणेस अर्जदार नं.१ हिने अनुमती दर्शविलेली आहे. तथापि अर्जदार नं. २ यांचे बरोबर त्यांचे घरी जायचे की नाही हे सर्वस्वी चि. अर्णव याचे इच्छेवर अवलंबून असेल. तथापि चि. अर्णव यास अर्जदार नं.२ यांचे घरी आठ दिवस राहणेसाठी जाणेस अर्जदार नं.१ यांनी प्रोत्साहित करणेचे आहे.

९. अर्जदार नं. १ व २ यांनी भविष्यात एकमेकांचे विरुद्ध दिवाणी तसेच फौजदारी खटले, फिर्याद अथवा त्याप्रमाणे कोणतेही अर्ज कोणत्याही कोर्टात दाखल करणेचे नाहीत. अर्जदार नं.१ व २ यांनी सदरचा घटस्फोटाचा अर्ज दाखल केलेनंतर तसेच घटस्फोट मंजूर झालेनंतर एकमेकांचे वैयक्तिक आपुष्यात ढवळाढवळ करणेचे नाही असे सामोपचाराने मान्य व कबुल केलेले आहे.”

(Emphasis added)

The main terms of the said agreed consent terms are as

follows:

(a) The Respondent wife has agreed to transfer her right, title and interest in Flat No.903, "A" Wing, Sai Velocity, Phase-I, Survey No.68/6, Bavdhan, Budruk, Taluka-Mulshi, District-Pune in favour of the Petitioner-husband.

(b) Both the parties agreed to return back the ornaments to each other.

(c) The Respondent-wife has given up her right to seek maintenance.

(d) The Respondent-wife has agreed not to claim any right, title or interest with respect to any of the properties of the Petitioner.

(e) The son is to remain with the Respondent and it is her complete responsibility to maintain the son.

(f) Both the parties agreed not to institute any proceedings in any Court. Thus, in effect what is agreed is that all the pending proceedings between the parties would also be withdrawn.

ix. The said consent terms are dated 12th August 2024.

x. In compliance with the said consent terms on 27th August 2024 the Respondent wife has executed registered document

transferring the said flat in favour of the Petitioner-husband.

- xi. As per Clause No.9 of the said consent terms parties have to withdraw various cases filed against each other. In compliance with said Clause No.9, on 3rd October 2024, DV proceedings filed by the wife has been withdrawn.
- xii. After taking entire benefit of the consent terms and after getting transfer all the right, title and interest with respect to said flat in his favour and after withdrawal of the said DV case filed by the Respondent-wife against the Petitioner-husband, immediately within a period of 4 days i.e. on 7th October 2024, the Petitioner-husband has filed Application for withdrawal of the consent terms. It is absolutely clear that the Application which has been filed by the husband for withdrawal of the consent is malafide.
- xiii. In the above background, it is very important to consider the reasons given by the Petitioner for withdrawal of the consent in Application bearing Exhibit-12 filed in Petition No. A-205 of 2024, which reads as under:-

“यातील अर्जदार नं.२ यांचे अर्जदार नं.१ पत्नी व मुलगा अर्णव याचेवरती खुप प्रेम, लळा, माया असल्याने अर्जदार नं.२ यांना अर्जदार नं.१ व अर्णव यांचेबरोबर राहून संसार करणेचा आहे.

यातील अर्जदार नं.२ हे आजही अर्जदार नं.१ यांना नांदावयास तयार आहेत तरी प्रस्तुत समोपचाराने विवाह विच्छेदन अर्जास अर्जदार नं.२ यांनी दिलेली सहमती काढुन घेत आहेत. यातील अर्जदार नं.२ यांना प्रस्तुतचा अर्ज चालविणेचा नाही. तरी प्रस्तुतचा अर्ज काढुन टाकणेत यावा ही नम्र विनंती आहे.”

(Emphasis added)

xiv. The said contention raised is malafide can be seen from the following factual position:

- (a) On 12th August 2024 Consent Terms arrived at.
- (b) On 27th August 2024 the Respondent-wife transferred the flat in favour of the Petitioner.
- (c) On 3rd October 2024, DV proceedings filed by the Respondent-wife against the Petitioner-husband is withdrawn.
- (d) On 7th October 2024 i.e. within a period of four days after getting entire benefit out of the said Consent Terms, the application is filed by the Petitioner-husband seeking leave to withdraw the consent.

Thus, it is clear that the reasons given by the Petitioner-husband are totally false and in any case the Application filed is for malafide purpose.

6. In view of above factual position, it is necessary to see Section 13-B of the H.M.A. which is regarding divorce by mutual consent, which reads as under:

“13B. Divorce by mutual consent.—

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the

Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

(Emphasis added)

Thus, Sub-Section (2) of Section 13-B provides that on the motion of both the parties made not earlier then six months after the date of presentation of the Petition referred in Sub-Section (1) and not later than 18 months after the said date, if the Petition is not withdrawn, in the meantime, the Court shall on being satisfied after hearing the parties and after making such enquiry as it thinks fit that a marriage has been solemnized and that the averments in the Petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. Thus, relevant provision is that not earlier than six months after the date of the presentation of the Petition the decree of divorce cannot be granted. It means the consent which is given can be withdrawn within said period of six months or even till passing of the decree. Even in the Petition presented under Section 13-B

of the H.M.A. as per the decision of the Supreme Court in the case of *Amardeep Singh v. Harveen Kaur*³ it has been held that even said period of six months can be waived.

7. A Division Bench of this Court in the decision of *Prakash* (supra) was considering the similar situation as in the present case. The relevant Paragraph Nos.16 to 19 reads as under :-

“16. As aforesaid, if the Petition is filed "simplicitor under section 13B of the Act" for divorce by mutual consent, the Court must satisfy itself that the consent given by the parties continues till the date of granting decree of divorce. Even if one party unilaterally withdraws his/her consent, the Court does not get jurisdiction to grant decree of divorce by mutual consent in view of the mandate of section 13B of the Act. However, the situation would be different if the parties in the first instance resort to Petition for relief under section 9 or 13 of the Act and during the pendency of such Petition, they decide to invite decree for divorce by mutual consent. On the basis of agreed arrangement, if the parties were to execute Consent Terms and then file a formal Petition/Application to convert the pending Petition to be treated as having been filed under section 13B of the Act to grant decree of divorce by mutual consent, then, in the latter proceedings, before the decree is passed, one party cannot be allowed to unilaterally withdraw the consent if the other party has already acted upon the Consent Terms either wholly or in part to his/her detriment. In other words, the Court will have to be satisfied that: (i) there is sufficient, good and just cause for allowing the party to withdraw his consent, lest, it results in permitting the party to approbate and reprobate; (ii) that the other party would not suffer prejudice which is irreversible, due to withdrawal of the consent. If this twin requirement is not satisfied, the Court should be loath to entertain the prayer to allow the party to unilaterally withdraw his/her consent.

3 (2017) 8 SCC 746

17. Reverting to the facts of the present case, we are in agreement with the finding recorded by the trial Court that the sole reason or justification given by the appellant husband for withdrawing his consent already given (that he was denied access of the children), is not substantiated by him. Whereas, the material on record would indicate that the real reason was the inability of the appellant husband to meet the children as he was in jail in connection with criminal cases and also because the children were unwilling to meet the appellant. Thus, it was not a case of respondent coming in the way of providing access of the children to the appellant. In other words, there was no sufficient or just cause established by the appellant for permitting him to withdraw his consent. Further, it has come on record that the respondent acted upon the Consent Terms dated 6th October, 2008 and performed her obligations and committed herself to waive the claim of maintenance for herself and also streedhan including to withdraw civil and criminal actions initiated by her against the appellant. Even for this reason, the appellant cannot be permitted to withdraw his consent as it would result in bestowing premium on the appellant in spite of his unjust and inequitable request to allow him to of unilaterally withdraw the consent. We are in agreement with the said conclusion reached by the Family Court.

18. In this view of the matter, the rejection of the application preferred by the appellant for withdrawal of his consent was inevitable; and at the same time, the Court was duty bound to dissolve the marriage between the parties and pass a decree of divorce by mutual consent on the basis of the Consent Terms already filed on record accompanied by a formal application/Petition filed by the parties to grant such decree. The Family Court has also adverted to Rule 31 of the Family Courts (Maharashtra) Rules, 1987. The same reads thus:

"31. Settlement before Counsellor: When the parties arrive at a settlement before the Counsellor relating to the dispute or any part thereof, such settlement shall be reduced to writing and shall be signed by the parties and countersigned by the Counsellor. The Court shall

pronounce a decree or order in terms thereof unless the Court considers the terms of the settlement unconscionable or unlawful or contrary to public policy."

19. Notably, these Rules have been framed by the High Court in exercise of power bestowed in section 21 of the Family Courts Act, 1984. In terms of section 21(2) (c) of the Act, Rules can be framed to deal with the subject of efforts to be made by the Family Court and the procedure to be followed for assisting and persuading parties to arrive at a settlement. Rule 31. inter-alia deals with that subject. In terms of this Rule, therefore, the Court may pronounce a decree on the basis of the consent terms reduced into writing and signed by the parties, unless it were to be of the opinion that the terms of the settlement arrived at between the parties are unconscionable or unlawful or contrary to the public policy. None of these issues have been raised by the appellant. We, however, make it clear that Rule 31 will be of no avail to pass a decree on the basis of petition such as for relief under section 13 of the Act of 1955, as those petitions cannot be decreed merely because it is not defended or that parties have consented for passing decree on the ground pleaded therein. We have already alluded to this aspect hitherto."

(Emphasis added)

Thus, the Division Bench of this Court has made distinction between Petition which is originally filed under Section 13-B of the H.M.A. and a Petition which has been filed seeking divorce under Section 13 of H.M.A. or under Section 9 of the H.M.A. seeking restitution of the conjugal rights and the same has been subsequently converted into Petition seeking decree of divorce by mutual consent under Section 13-B of the H.M.A. What is held is that if the Petition is filed under Section 13-B of the divorce by mutual consent, the Court must satisfy itself that

the consent given by the parties continues till the date of granting decree of divorce and that even if one party unilaterally withdraws the consent, the Court does not get jurisdiction to grant decree of divorce by mutual consent in view of the mandate of Section 13-B of H.M.A. However, the situation would be different if the parties in the first instance resort to the Petition for relief under Section 9 or Section 13 of the H.M.A. and during pendency of such Petition they decide to invite decree by mutual consent. The Division Bench has held that in such a case one party cannot be allowed to unilaterally withdraw the consent if the other party has already acted upon the Consent Terms either wholly or in part to his/her detriment. In other words the Court will have to be satisfied that: (i) there is sufficient, good and just cause for allowing the party to withdraw his consent; (ii) that the other party would not suffer prejudice which is irreversible, due to withdrawal of the consent. If these twin requirements are not satisfied, the Court should not entertain the prayer to allow the party to unilaterally withdraw his/her consent.

8. Learned Counsel appearing for the Respondent has also relied on the decision of a learned Single Judge in ***Rajesh*** (supra). In that case, although the Petition is filed under Section 13-B of the H.M.A., the consent was withdrawn after a period of 7 months after getting all the benefits of the Consent Terms. In the said factual position, the learned Single Judge considered whether a party can be estopped from

withdrawing consent and discussed the same in Paragraph Nos.29 to 31, which read as under :-

"29. The Apex Court in the case of B. L. Sreedhar vs. K. M. Munireddy AIR 2003 SC 578 held as under:

"The essential factors giving rise to estoppel are, I think

(a) A representation or conduct amounting to representation intended to induce a course of conduct on the part of the person to whom the representation was made.

(b) An act or omission resulting from representation whether actual or by conduct, by the person to whom the representation was made.

(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted."

*30. In the case of Maddanappa (deceased) after him by his legal representatives vs. Chandramma and anr.. AIR 1965 SC 1812 the Supreme Court relying upon the judgment of Privy Council in the case of Saratchunder Dey vs. Gopal Chunder Laha 19 Ind App 203 (PC) explained the ingredients of the doctrine of estoppel and went on to hold that **a person who sets up an estoppel against the other must show that his position was altered by reason of the representation or conduct of the latter and unless he does that, even the general principle of estoppel cannot be invoked by him.***

*31. The general principle of estoppel is stated thus by the Lord Chancellor in Cairncross vs. Lorimer (1860) 3 H.L.C. 829: "The doctrine will apply, which is to be found, I believe, in the laws of all civilized nations that **if a man either by words or conduct has intimated that he consents to an act which is to be done and that he will offer no opposition to it, although it could not have been lawfully done without his***

consent, and he thereby induces others to do that from which they otherwise might have abstained, he cannot question the legality of the act he has so sanctioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct...I am of the opinion that generally speaking, if a party having an interest to prevent an act to be done has full notice of its being done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous licence.

32. Having examined the aforesaid legal position, it is clear that the estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice ”

(Emphasis added)

9. The learned Single Judge in the decision of **Rajesh** (supra) applied the above principles to the facts of that case and discussed the factual position in Paragraph Nos.33 and 34, which reads as under :-

“33. With the above understanding of law, if one turns to the facts of the case in hand, at the cost of repetition, I must observe that the Petitioner, by making representation that he was agreeable for divorce by mutual consent provided respondent-wife withdraws her criminal complaint, returns his ornaments given to her in the marriage and takes care and custody of the minor child with limited access to him. The said representation made by the husband was accepted and acted upon by the respondent- wife to her prejudice. She withdrew criminal complaint filed against the husband and his family members. She returned ornaments received by her in the marriage. She agreed to have a custody of the minor son and on the top of it waived present and future right to claim maintenance for herself as well as for minor son. Thus, it is clear like a day light that the respondent-wife acted to her prejudice by accepting terms of

compromise favourable to the petitioner-husband. The husband is, thus, estopped from withdrawing his consent.

*34. The Family Court cannot be helpless spectator and duplicity of the petitioner-husband to induce the hapless wife, the respondent to waive maintenance claim for not only herself and her son, also compelled her to withdraw the criminal complaint in the hope of starting her life afresh. The husband by his conduct has caused the wife huge disadvantage. **No spouse can unilaterally, wilfully be allowed to withdraw consent even on the grounds; such as fraud, undue force, representation unless grounds are proved satisfactorily.** In the present case, if the withdrawal of consent by the petitioner-husband is upheld, it will cause anamalous situation and serious prejudice to the respondent-wife, who is law abiding person. She will be left high and dry without recourse to any remedy and saddled with dead marriage. **The respondent-husband has resorted to fraud and misrepresentation which cannot be permitted by the Courts of Law and equity.***

(Emphasis added)

10. On the analysis of the above decisions, the following principles emerge :-

- A) If the Petition is filed under Section 13B of the H.M.A. for divorce by mutual consent, the Court must satisfy itself that the consent given by the parties continues till the date of granting decree of divorce. Even if one party unilaterally withdraws his/her consent, the Court does not get jurisdiction to grant decree of divorce by mutual consent in view of the mandate of section 13B of the H.M.A.
- B) Even in case of Petition filed under Section 13-B seeking

decree of divorce on the ground of mutual consent no spouse can unilaterally, wilfully be allowed to withdraw consent if other spouse has acted on the said Consent Terms prejudicially affecting the position of said spouse even on the grounds such as fraud, undue force, representation unless grounds are proved satisfactorily.

- C)** If the parties in the first instance resort to Petition for relief under Section 9 or 13 of the H.M.A. and during the pendency of such Petition, they decide to invite decree for divorce by mutual consent, one party cannot be allowed to unilaterally withdraw the consent if the other party has already acted upon the Consent Terms, either wholly or in part to his/her detriment.
- D)** In the case covered by clause (C), the Court will have to record satisfaction that:
- (i) There is sufficient, good and just cause for allowing the party to withdraw his consent.
 - (ii) That the other party would not suffer prejudice which is irreversible, due to withdrawal of the consent.

If these twin requirements are not satisfied, the Court should

not entertain the prayer to allow the party to unilaterally withdraw his/her consent.

11. The factual position in this case is required to be considered on the touchstone of the above principles. In the present case Respondent wife has filed Petition under Section 13(1)(ia) of the H.M.A. seeking divorce. The Petition was filed on 10th June 2024. Thereafter, parties agreed to get converted the said Petition under Section 13-B of the H.M.A. on 12th August 2024 and accordingly the said conversion is allowed by Order dated 12th August 2024. Thereafter, the Respondent - wife has performed her part of the said Consent Terms prejudicially and adversely affecting her interest :-

- (a) On 27th August 2024 the Respondent-wife transferred the flat in favour of the Petitioner.
- (b) On 3rd October 2024, DV proceedings filed by the Respondent-wife against the Petitioner-husband is withdrawn.

12. Thereafter, the Application for withdrawal of the consent has been filed on 7th October 2024 i.e. within a period of 4 days after withdrawal of the DV proceedings. As noted herein above, the said Application for withdrawal of the consent has been filed by the Petitioner after getting the benefit of the consent terms i.e. a valuable flat has been transferred by the Respondent in favour of the Petitioner and DV proceedings filed against the Petitioner by the Respondent has

been withdrawn by the Respondent.

13. The factual position in this case is required to be considered in view of the above position of law. The observations in the case of ***Prakash*** (supra) and ***Rajesh*** (supra) are also applicable to the present case. In the facts and circumstances of this case, the Petitioner-husband is estoppel from withdrawing his consent.

14. Although, it is the case of the Petitioner that consent has been given as the relatives of the wife has brought pressure on him, however, the position on record shows that on 12th August 2024 the consent terms were executed, on 27th August 2024 the flat has been transferred by the wife in favour of the husband, on 3rd October 2024 DV proceedings have been withdrawn by the wife. Thus, from 12th August 2024 till 3rd October 2024 during which the flat has been transferred and the DV proceedings have been withdrawn in terms of the consent terms at no point of time, it is the contention of the husband that although the consent terms are being implemented the consent terms have been arrived at as the relatives of the wife had brought pressure on him and immediately after getting the benefit out of the consent terms thereafter the application for withdrawal of the consent has been filed within a period of four days i.e. on 7th October 2024.

15. Thus, it is clear that not only the conduct of the Petitioner is malafide but the same amounts to interference in the administration of

justice as it is represented to the Court that the Petitioner would abide by the consent terms and after getting benefit of the consent terms including getting title to the valuable flat and withdraw of the DV case, thereafter, the consent has been withdrawn. However, as the Petitioner has filed affidavit dated 26th March 2025 tendering unconditional apology no further action is required to be taken. In the said affidavit it is vaguely indicated that the Petitioner is withdrawing the present Petition, however, in view of the conduct of the Petitioner the Writ Petition is decided on merits.

16. Thus, in the light of law laid down by the Division Bench of this Court in the case of ***Prakash*** (supra) and ***Rajesh*** (supra) it is clear that there is no illegality committed by the learned Family Court, Kolhapur in rejecting the said Application bearing Exhibit-12 seeking withdrawal of the consent terms.

17. At this stage, it is required to note that in the case of ***Prakash*** (supra) wherein, the Court has observed that although the Family Court in that matter has rejected the Application preferred by the husband for withdrawal of his consent, however, the Court has not passed the decree of dissolving marriage. In that context, the Division Bench has held that at the same time the Court was duty bound to dissolve the marriage and pass the decree by mutual consent on the basis of the consent terms already filed on record.

18. Both the learned Counsel state that the matter is before the learned Judge, Family Court, Kolhapur on 1st April 2025. The learned Judge, Family Court, Kolhapur is requested to pass decree of divorce in terms of the law laid down by the Division Bench of this Court in the case of ***Prakash*** (supra) immediately on 1st April 2025.

19. Accordingly, the Writ Petition is dismissed, however, subject to above clarification and as the conduct of the Petitioner-husband is malafide and amounts to interference in the administration of justice, the Writ Petition is dismissed with cost of Rs.50,000/-.

[MADHAV J. JAMDAR, J.]