

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.140 OF 2014

Sangeetha Arun Kulsange		Appellant
V/s.		
Arun Bansi Kulsange		Respondent

Mr. Satyaram R. Gaud for the Appellant.

Mr. Girish Nair for the Respondent.

CORAM : V.M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 30TH OCTOBER, 2015.

P.C. :

1. Heard learned counsel for the parties.
2. Parties have amicably settled the dispute. They have filed Consent Terms. Consent Terms are taken on record and marked "X" for the purpose of identification. By consent of the parties, the Petition for Divorce is converted into a 'Petition for Divorce by Mutual Consent' under Section 13-B of the Hindu Marriage Act, 1955. Since the Petition for Divorce was pending in the Trial Court for quite some time, we are of the view that, it is in the interest of both the parties that the mandatory period of six months,

which is required to be followed as per Section 13-B of the Hindu Marriage Act, 1955, will have to be waived. This Court in a recent judgment in ***Santosh Lalmani Tiwari vs. Aaradhana Devi Santosh Tiwari***¹ has held that if an application is filed for converting the Petition into Petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act, it is not necessary to wait for a period of six months as provided under section 13-B of the said Act. It is further held that the said mandatory period of six months will not apply if an application is made at the appellate stage for converting the Petition into a Petition for divorce by mutual consent. In para 6 of the said Judgment, it has been observed as under:-

“6. The intention of the Legislature was to provide minimum period of six months for re-thinking of the parties. If the said provision is made applicable to the Appellate Court, it would be powerless to grant that relief on the basis of the application filed in the lower Court because 18 months must have elapsed by the time the matter reached the appellate forum although the parties are still fighting relentlessly in the Appellate Court and, therefore, in our view, the said waiting period of six months can be waived in a suitable case by the Appellate Court because it could not have been

¹ 2013(1) Mh.L.J. 253

the intention of section 13-B(2) that the Appellate Court should, in each case, insist that the parties should go through the futile and meaningless ceremony of again waiting for completion of six months. We are of the view, therefore, that when the Appellate Court is fully satisfied on the proved facts that marriage tie should be severed by mutual consent immediately since parties have been living separately for more than the time prescribed under section 13-B and that they have been fighting for sufficiently long period and in such a case, section 13-B does not impose any fetter on the powers of the Court to grant instant decree of divorce.”

3. The Appellant had filed a criminal complaint, being C.C. No.845/Misc/2004 before the 8th Magistrate Court at Esplanade, which is still pending. She has given an undertaking that she will withdraw the said complaint or give her consent for withdrawal of the said complaint after the Decree of Divorce by mutual consent is passed by this Court.

4. There is a flat which is in their joint name. The flat has already been transferred in the name of the Appellant by a Gift Deed, which was duly registered. Appellant has paid an amount of Rs.7,00,000/- to the Respondent by cheque, which is drawn on State Bank of India, Mumbai Central Branch, dated 30th October, 2015, which is handed over to the

Respondent in the Court today. The Appellant undertakes that the cheque will not be dishonoured. The undertaking given by the Respondent that he will vacate the flat and hand over quiet and peaceful possession of the flat to the Appellant is accepted.

5. Both the parties are present in the Court and they have reiterated and agreed to all the terms and conditions, which are mentioned in the Consent Terms. Undertaking is given by both the parties. In view of this, the Petition for Divorce is converted into Petition for Divorce by mutual consent. Decree of Divorce is granted by mutual consent. The marriage between the Appellant and the Respondent is dissolved accordingly in the aforesaid terms. Decree be drawn up accordingly in accordance with the Consent Terms.

6. Under these circumstances, there shall be no order as to costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V.M. KANADE, J.]