

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL NO.162 OF 2014

Mr. Mahesh Ramakant Sawant Appellant.

V/s

Mrs. Aditi @ Kavita Mahesh SawantRespondent.

Mrs. Seema Sarnaik for the Appellant.

Mr. Harish P. Parmar for the Respondent.

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

DATE: 27th August, 2015

P.C.:-

1. Parties have settled the dispute and have filed Consent Terms. In the Consent Terms, it is provided that Petition may be converted into Petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955. Appellant has agreed to pay an amount of Rs 15,00,000/- (Rupees Fifteen Lakhs only) by way of full and final settlement towards maintenance, permanent alimony, residence and any other amount for past, present and future maintenance. Respondent has agreed that she shall not claim any amount either in the form of Streedhan or jewellery and documents etc from the Appellant. The Consent Terms are signed by the Appellant and the Respondent and their respective Advocates.

2. Appellant has paid a sum of Rs Rs 15,00,000/- (Rupees Fifteen Lakhs only) by Demand Draft drawn on HDFC Bank dated 26/08/2015. Parties are present in Court. 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 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

1 2013(1) Mh.L.J. 253

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. In view of the said judgment, there is no impediment in permitting conversion of the Petition in to a Petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955 and it is not necessary to wait for a period of six months from the date of application which is filed.

4. The Consent Terms are taken on record. Undertakings given by both the parties in the aforesaid Consent Terms are accepted. In view of the Consent Terms, the impugned judgment and order passed by the Trial Court is set aside. Decree is passed in terms of the Consent Terms under section 13-B of the Hindu Marriage Act, 1955. Decree be drawn up accordingly. Under the circumstances, there shall be no order as to costs.

5. Appeal is accordingly disposed of in the aforesaid terms.

(DR SHALINI PHANSALKAR-JOSHI, J.)

(V.M. KANADE, J.)