

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.72 OF 2016
IN
PETITION NO.A-1217 OF 2010

Mrs. Aarti Vinod Sawant. .. Appellant

Vs

Mr. Vinod Dinkar Sawant. .. Respondent

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Ms. Trupti Kapadia and Ms. Nidhi Singh i/b M/s.Joy Legal Consultants
for the Appellant.

Ms. M.R. Patel for the Respondent.

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CORAM : A.S. OKA & PD. NAIK, JJ

DATED : 28th APRIL 2016

PC.

1. The Appeal was fixed for hearing today in chamber. During the course of hearing, both the Appellant and the Respondent have agreed to settle their dispute.

2. Accordingly, the matter is taken up in Court. The consent terms are tendered. The consent terms tendered have been signed by the Appellant and the Respondent as well as their respective Advocates. The Appellant and the Respondent are personally present in the Court. They accepted the correctness of the contents of the consent terms. On the consent terms, both the Advocates have made an endorsement that the contents thereof have been explained to both the parties in Marathi language which is known to them.

3. The consent terms are taken on record and marked "X1" for identification.

4. The Appellant/wife filed a Petition for divorce before the Family Court at Mumbai seeking a decree of divorce on the ground of cruelty under the Hindu Marriage Act, 1955. By the impugned decree, the learned Judge of the Family Court dismissed the Petition. The parties have been staying separately since December 2009. In the consent terms, they have stated that there is no possibility of reconciliation as the marriage has been completely broken down. The consent terms record that the parties are agreeable to the passing of a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. The consent terms record that there are no other subsisting claims against each other. In Paragraph 10 of the consent terms, it is recorded that the Appellant has received all her stridhan and belongings and has no other claim as against the Respondent husband. She has stated that she has no claim in respect of the property of the Respondent. The Respondent has stated that he has no claim in respect of any property held by the Appellant wife.

5. After having talked to the parties in chamber, we are satisfied that there is no possibility of reconciliation and, therefore, the

parties have agreed for passing a decree of divorce by mutual consent. We find that the parties are not acting in collusion and, therefore, a case is made out for passing a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955.

6. Accordingly, we dispose of the Appeal by passing the following order.

ORDER :

- (a) The impugned judgment and decree dated 6th February 2014 passed by the learned Judge of the Family Court at Mumbai in Petition No.A-1217 of 2010 is hereby quashed and set aside;
- (b) The parties are permitted to amend the said Petition for converting the same into a Petition under Section 13-B of the Hindu Marriage Act, 1955;
- (c) The Family Court shall permit the parties to carry out formal amendment to the Petition within a period of six weeks from the date of production of an authenticated copy of this order;
- (d) Amendment shall relate back to the date of the institution of the Petition i.e. 15th May 2010;

- (e) The statements made by the parties in the consent terms are accepted. The parties have unconditionally withdrawn the allegations made against each other;
- (f) The marriage solemnized between the Appellant and the Respondent on 31st August 2006 according to the Hindu Vedic Rights is hereby dissolved by a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955;
- (g) The Petition No.A-1217 of 2010 stands disposed of accordingly;
- (h) In addition to the aforesaid decree, there shall be a decree in terms of the consent terms tendered today and marked "X-1" for identification;
- (i) The Appeal is partly allowed on above terms;
- (j) There will be no order as to costs.