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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
FAMILY COURT APPEAL NO.205 OF 2008

Anil Leeladhar Guje ...Appellant
vs.
Mrs.Vaishali Anil Guje ...Respondent

Mr.Shashank C. Thatte for the Appellant
Ms Kranti Bhamare for the respondent

CORAM : A.S.OKA, &
C.V.BHADANG, JJ.
DATE : FEBRUARY 4, 2016

ORAL JUDGMENT :

1 Mentioned by the learned counsel for the appellant and the respondent. The learned counsel tendered consent terms signed by both the appellant and the respondent. The consent terms are taken on record and marked 'X' for identification. The learned counsel for the parties states that both the appellant and the respondent are personally present in the Court and that they have accepted the correctness of the contents of the consent terms. As provided in clause (4), a demand draft in the sum of Rs.10,00,000/- more particularly described in the said clause has been handed over in the open Court by the Advocate for the appellant to the Advocate for the respondent. A sum of Rs.50,000/- is paid in cash by the Advocate for the appellant to the Advocate for the respondent.

2 The learned counsel for the appellant and the

learned counsel for the respondent on instructions state that a decree may be passed in terms of the consent terms by accepting undertakings therein. They are seeking a decree of divorce by mutual consent under section 28 of the Special Marriage Act, 1954.

3 We have perused the consent terms. The appellant-husband filed a petition for annulment of marriage in the Family Court at Mumbai which has been dismissed by the impugned Judgment and Decree. The marriage between the parties was solemnised on 9th January 2003. The parties are residing separately for considerably long time and in any event, at least from the year 2003. Thus, the parties have been residing separately for last more than 12 to 13 years. Apart from agreeing for dissolving the marriage by mutual consent, there is an overall settlement between the parties and the other two cases which are pending have been settled under the consent terms. We are satisfied that there is no collusion between the parties. As parties are unable to live together, they have mutually agreed that the marriage be dissolved by consent.

4 Accordingly, we dispose of the Family Court Appeal by passing the following order:

- (I) Undertakings of the parties in the consent term which is taken on record and marked 'X' are accepted;
- (II) By consent, the impugned Judgment and

Decree dated 19th October 2007 is set aside and the M.J. Petition No. A-1370 of 2003 stands restored;

- (III) By consent the said matrimonial petition is converted into the petition under section 28 of the Special Marriage Act, 1954;
- (IV) Amendment shall relate to the date of the institution of the matrimonial petition. On an application being made by the parties, the Registrar (Judicial-I) will permit the parties to carry out amendment to the matrimonial petition even before the record is dispatched to the Family Court;
- (V) The marriage solemnised between the appellant and the respondent on 9th January 2003 is hereby dissolved by a decree of divorce by mutual consent under section 28 of the Special Marriage Act, 1954. M.J. Petition No. A-1370 of 2003 accordingly stands decreed;
- (VI) In addition to aforesaid decree, there will be a decree in terms of the consent terms which is marked 'X' for identification;
- (VII) There will be no order as to costs.

(C.V.BHADANG, J.)

(A.S.OKA, J.)