

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.43 OF 2009

Stany Goveas	...Appellant
vs.	
Nancy Goveas	...Respondent

ALONG WITH
FAMILY COURT APPEAL NO.161 OF 2009 WITH
CIVIL APPLICATION NO.50 OF 2015

Nancy Goveas	...Appellant
vs.	
Stany Goveas	...Respondent

Mr.N.D'Monte for the Appellant in FCA 43 of 2009 and for
respondent in FCA 161 of 2009 and CAs
Ms Susan Abraham for the appellant in FCA 161/2009 and
for applicant in CAs and for the respondent in FCA
43/2009

CORAM : A.S.OKA, &
 A.A.SAYED, JJ.
DATE : JUNE 8, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Heard learned counsel for the parties. Family Court Appeal No.43 of 2009 is preferred by the husband for challenging the decree dated 23rd December 2008 passed by the Family Court at Bandra, Mumbai in a Petition No.A-1338 of 2005 filed by the wife. The said petition was filed by the wife for seeking a decree of divorce under various sections of Divorce Act,1869 (for short `the said Act'). Though the prayer for divorce was rejected, the husband was directed to pay a sum of Rs.5,000/- per month towards maintenance of the child and a permanent injunction was granted against the husband as regards the matrimonial home. The Family Court Appeal No.161 of 2009 is preferred by the wife

which takes exception to that part of the Decree by which the prayer for decree of divorce was rejected.

2 During the pendency of these appeals, the parties settled their dispute and on 9th March 2016, the consent terms were filed by the parties dated 18th February 2016 which were taken on record.

3 Today the learned counsel for the husband and wife state that both the parties are personally present and further state on their instructions that all terms and conditions incorporated in the consent terms have been acted upon. Therefore, the parties requested the Court to pass a decree in terms of the consent terms including a decree of divorce by mutual consent under section 10-A of the said Act.

4 We have perused the consent terms. Both the parties have accepted the correctness of the contents of the consent terms as recorded in the order dated 9th March 2016. It is an admitted position that all conditions incorporated in the consent terms have been acted upon and except for passing a decree in terms of the consent terms, nothing further is left to be done. From the evidence on record, we are satisfied that the parties are residing separately for a period of more than twelve years and they have not been able to live together as spouses. In fact, the marriage between them is irretrievably broken down. Therefore, this is a fit case to pass a decree of divorce under section 10-A of the said Act especially when the parties are residing separately for more than twelve years.

5 Accordingly, we dispose of the appeals by passing

the following order:

- (I) The impugned Judgment and Decree dated 23rd December 2008 is hereby quashed and set aside;
- (II) By consent of the parties, the Petition No.A-1338 of 2005 is permitted to be converted into a Petition under section 10-A of the Divorce Act,1869;
- (III) As Record and Proceedings of the Family Court is with this Court, the Registry will permit the parties to carry out a formal amendment to the petition within a period of one month from today;
- (IV) We make it clear that the amendment will relate back to the date of institution of the said petition;
- (V) The marriage solemnised between the parties on 18th November 1993 is hereby stands dissolved by a decree of divorce by mutual consent under section 10-A of the said Act;
- (VI) In addition, there will be a decree in terms of the consent terms dated 18th February 2016 taken on record on 9th March 2016 which are marked 'X' for identification;
- (VII) The appeals are disposed of on above terms. Pending Civil Applications do not survive and the same are also disposed of.

(A.A.SAYED,J.)

(A.S.OKA,J.)