

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

WRIT PETITION NO.12841 OF 2016

Mrs. Reshma Ajit Shevade : Petitioner.
versus
Ajit Balkrishna Shevade : Respondent.

Mr. Rajesh G Bane for the Petitioner.

CORAM : R. M. SAVANT, J.
DATE : 28th November 2016

P.C.

1 The writ jurisdiction under Article 227 of the Constitution of India is invoked against the order dated 03/02/2016 passed by the learned Judge of the Family Court No.2, Mumbai by which order the Application (Exhibit 13) for setting aside the Consent Terms came to be rejected.

2 The marriage between the Respondent and the Petitioner herein took place on 30/10/2007. The Petitioner and the Respondent were staying together till April 2014. It seems that they have separated since May 2014. The Respondent herein filed Marriage Petition No.A-53 of 2015 seeking decree of divorce on the ground of cruelty. Pending the said Marriage Petition, it appears that the parties were referred to the Marriage Counsellor pursuant to which the Marriage Counsellor submitted the Consent Terms on 12/06/2015. However, at the time of verification of the said Consent Terms before the learned Judge of the Family Court, the Petitioner herein did not give her

consent, hence the said Consent Terms were not recorded. The Application (Exhibit 10) for converting the Petition for divorce by mutual consent was also rejected on the same day.

3 It appears that thereafter the parties were once again referred to the Marriage Counsellor before whom they executed the Consent Terms being Exhibit 12. The learned Judge of the Family Court verified the said Consent Terms and accepted the said Consent Terms. The Petitioner herein had accordingly accepted the Consent Terms. In terms of the said Consent Terms the husband i.e. the Petitioner in the Marriage Petition has deposited a sum of Rs.5,77,000/- as also the custody of minor son Parth was also handed over to the husband. Hence the husband has accepted the Consent Terms though he was the Petitioner in the said Marriage Petition claiming divorce on the ground of cruelty. The Family Court has observed that the Consent Terms were accepted by the husband, though they were against his interest. The said Consent Terms were accepted on 30/06/2015. It is thereafter on 15/09/2015 that the instant Application (Exhibit 13) has been filed for setting aside/withdrawal of the said Consent Terms. Except stating to the following effect “the Petitioner fraudulently played game against me”, the said Application is bereft of any particulars as regards any coercion or fraud played upon the Petitioner herein.

4 The said Application (Exhibit 13) has been rejected by the learned Judge of the Family Court No.2, Mumbai by the impugned order dated 03/02/2016. The gist of the reasoning of the learned Judge of the Family Court revolves around the fact that the Consent Terms have already been acted upon and that the said Consent Terms were executed before the Marriage Counsellor and that the Petitioner i.e. the husband has already deposited an amount of Rs.5,77,000/- as also the custody of the minor son Parth has been handed over to him.

5 The learned counsel appearing on behalf of the Petitioner wife would seek to contend that the Petitioner wife was forced to enter into the Consent Terms on account of misrepresentation and deception played upon her by the Respondent husband.

6 As indicated above except stating to the effect as mentioned herein above, the Application (Exhibit 13) is bereft of any particulars hence the said case was not even required to be tested, by the parties being permitted to lead evidence.

7 The Petitioner wife having accepted the said Consent Terms before the Marriage Counsellor, pursuant to which they have been acted upon by the parties to the extent of the deposit made by the husband and the custody of the

child being handed over to the husband. In my view, the course of action adopted by the Petitioner wife cannot be permitted as the same militates against the finality to the proceedings. In that view of the matter, the exercise of the writ jurisdiction of this Court is not warranted. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]