

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.136 OF 2016 IN
FAMILY COURT APPEAL NO.95 OF 2011

Umesh Suresh Kalamkar ...Applicant
vs.
Jyoti Umesh Kalamkar ...Respondent

Mr.Sachin Punde for the applicant in CA and for the respondent in FCA
Mr.M.M.Sathaye for the respondent in the CA and for the appellant in FCA.

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : JUNE 15, 2016

1 This application is filed by the husband who is
the respondent in the Family Court Appeal No.95 of
2011 filed by the wife. In the Family Court
Appeal , the challenge is to the Decree passed by
the Family Court of Divorce on the petition filed
by the applicant-husband. The applicant in this
application is relying upon the compromise pursis by
and between the wife and husband in criminal
application No.69 of 2014. A copy of the said
compromise pursis is annexed as Exhibit-C to this
application. He is relying upon sub-clause (b) of
clause 2 which reads thus:

"2-b It is decided between the parties that the applicant has admitted the decree of divorce granted by the Honourable Family Court, Pune and hence, the applicant has

decided to withdraw the said appeal pending before the Honourable High Court of Judicature at Bombay within two months from today on her own costs. The relation between the parties as husband and wife has come to an end."

2 It appears that on 30th July 2014, the learned 6th Judicial Magistrate (First Class), Satara passed an order on the said compromise pursis recording that the contents of the same were read and explained to both the parties and that both the parties have admitted the contents as true and correct. It also records that the parties have admitted their respective signatures. Accordingly, the compromise pursis has been read and recorded. A true copy of the receipt signed by the wife dated 30th July 2014 is annexed which shows that the wife has received a sum of Rs.95,200/- from the husband in terms of the sub-clause (c) of clause 2 of the compromise pursis.

3 The learned counsel for the respondent wife has placed on record photo copies of the envelope and letter dated 26th April 2016 sent by him to the respondent-wife informing the respondent-wife about filing of the present application. It appears from the photo copy of the envelope that on two occasions, intimation of the letter was delivered by the post office to the respondent-wife but the said letter has been returned as "unclaimed" to the Advocate for the respondent. Photo copies of the

letter and envelope are taken on record and marked 'X-2' (collectively) for identification. Hence, the Advocate for the respondent has not received any instructions from the respondent. In view of the solemn assurance given by the respondent-wife before the learned Judicial Magistrate (First Class), Satara to withdraw the Family Court Appeal within a period of two months from 30th July 2014, the respondent-wife ought to have withdrawn the appeal.

4 As the respondent-wife has not withdrawn the appeal, the same will have to be disposed of in view of the consent terms.

5 Accordingly, we pass the following order:

- (I) Civil application is allowed;
- (II) Family Court Appeal No.95 of 2011 stands disposed of in view of the compromise between and the husband and wife recorded in criminal application No.69 of 2014 by the learned 6th Judicial Magistrate (First Class), Satara a copy of which is annexed as Exhibit-C to the application;
- (III) There will be no order as to costs.

(A.A.SAYED,J.)

(A.S.OKA,J.)