

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.244 OF 2015
IN
FAMILY COURT APPEAL NO.144 OF 2015**

Karuna alias Vandana Arjun Jadhav

...Applicant
(orig. Appellant)

Versus

Shri Arjun Haribhau Jadhav

...Respondent

...

Mr. Vijaykumar G. Peshave for the Applicant.

Mr. Moinuddin Kamaluddin Syed and Ms Rashida Kamaluddin Syed for
the Respondent.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 21st DECEMBER, 2016.

P. C. :

Heard the learned counsel appearing for the Applicant and
the learned counsel appearing for the Respondent. The operative part
of the impugned judgment and decree reads thus :

- “1. The Respondent's application at Exh.90 is rejected.
2. The petition is decreed.
3. The marriage between the Petitioner and Respondent
solemnized on 25/12/1994 is hereby dissolved by a
decree of divorce by mutual consent.

4. Consent terms at exh. 85 to form part of the decree.
5. Both the parties to bear their respective costs.
6. A decree be drawn accordingly.”

2. The Family Court Appeal challenging the said decree has already been admitted on 16th December, 2016.

3. Today, the present application is kept for hearing. The prayer in the application is for stay of the execution of the impugned decree. Prayer for stay is in relation to clause 3 of the operative part of the decree by which then marriage solemnized between the Appellant and Respondent has been dissolved by a decree of divorce under section 13 (B) of the Hindu Marriage Act, 1955.

4. The learned counsel appearing for the Respondent -Husband submits that in view of sub section 2 of section 19 of the Family Court Act, 1994, the present appeal is not maintainable as the impugned judgment and order has been passed by consent of the parties.

5. The aforesaid contention cannot be accepted for more than one reason. Firstly, by the impugned order, an application at Exhibit 90 made by the Applicant-wife seeking to withdraw her consent for

grant of a decree of divorce by mutual consent has been also decided and the said application has been rejected. The rejection of the said application is followed by the impugned decree of divorce. Therefore, the order passed on application at Exhibit 90 cannot said to be an interlocutory order. Moreover, the issue involved in the appeal is whether the decree of divorce by mutual consent could have been passed by the Family Court and whether the Applicant /Appellant was entitled to withdraw her consent. Therefore, in our view, the bar created by sub section 2 of section 19 will not apply and the appeal will be maintainable under sub section 1 of section 19 of the Family Court Act, 1984.

6. Another submission of the learned counsel appearing for the Respondent is that an ad-interim order dated 7th August, 2016 passed by this Court of the stay of the decree is being misinterpreted by the Applicant. By the said order, the execution and operation of the impugned decree of divorce has been stayed. Therefore, in our view there is no scope to misinterpret the ad-interim order.

7. The issue of legality and validity of the impugned decree of divorce goes to the root of the matter. Therefore, the stay of execution and operation of the impugned decree of divorce must follow.

Accordingly, we dispose of this application by passing following order:

“Till the final disposal of the family court appeal, the execution and operation of clauses 2, 3 and 4 of the operative part of the impugned judgment and decree shall remain stayed.”

9. At this stage, the learned counsel appearing for the Respondent -Husband seeks fixing an early date of hearing of the main appeal. The Family Court Appeals of the year 2008 onwards are pending in this Court. Hence, no priority can be given to the appeal filed in the year 2015. Accordingly, the request is rejected.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)