

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.131 OF 2015
ALONG WITH
FAMILY COURT APPEAL NO.132 OF 2015

Dr.Shri Rahul Sudhakar Jagtap. .. Appellant
Vs
Sau. Asha Rahul Jagtap. .. Respondent
—
Shri Girish R.Agrawal for the Appellant.
Shri Abhijit B. Kadam for the Respondent.
—

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

DATED : 16TH DECEMBER 2016

PC.

1. Not on board. Taken on board.
2. Both the Appellant and the Respondent are personally present in Court through their respective learned counsel. They tender consent terms which are taken on record and marked “X1” for identification.
3. Learned counsel appearing for the Appellant and the Respondent states that the consent terms have been duly signed by both the Appellant and the Respondent. Even the learned counsel appearing for both the parties have signed the consent terms.

4. Both the Appellant and the Respondent are personally present in the Court. Through their respective counsel, they state that the contents of the consent terms are true and correct and that they have voluntarily signed the same.

5. Family Court Appeal No.131 of 2015 takes an exception to the decree passed by the learned Judge of the Family Court on 19th December 2014 in Petition No.A-229 of 2012 and the Petition No.A-314 of 2012. The Petition No.A-229 of 2012 was filed by the Appellant husband against the Respondent wife for seeking a decree of divorce under Clause (ia) of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955. The Petition No.A-314 of 2012 was filed by the Respondent wife seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. By the impugned judgment and decree, the Petition for divorce filed by the Appellant husband has been dismissed and by allowing the Petition filed by the Respondent wife, a decree of restitution of conjugal rights has been passed. The Appeal No.131 of 2015 takes an exception to the decree by which the Petition for divorce filed by the husband was dismissed and the Appeal No.132 of 2015 takes an exception to the decree of restitution of conjugal rights passed on the Petition filed by the Respondent wife.

6. The marriage between the Appellant and the Respondent was solemnized on 11th June 2011 and after 16th December 2012, they are continuously residing separately.

7. It appears that after realising that the matrimonial relationship cannot continue that the parties have agreed to take a divorce by mutual consent. The Appellant husband has already paid a sum of Rs.10 lakhs by Demand Draft to the Respondent wife. The parties have given undertakings in terms of Paragraph 11 of the consent terms.

8. We are satisfied that there are no collusion between the parties and this is a fit case to pass a decree under Section 13B of the Hindu Marriage Act, 1955.

9. Accordingly, we pass the following order:

ORDER :

- (a) The impugned decree passed in Petition No.A-229 of 2012 as well as in Petition No.A-314 of 2012 is quashed and set aside and both the Petitions are restored to the file;

- (b) We permit the parties to convert the Petition No.A-229 of 2012 into a Petition under Section 13B of the Hindu Marriage Act, 1955. The parties shall carry out formal amendment to the said Petition within a period of four weeks from the date on which the order is uploaded. The amendment shall relate back to the institution of the Petition. The Family Court shall permit the amendment to be carried out on production of an authenticated copy of this judgment and order;
- (c) The marriage between the Appellant and the Respondent solemnized on 11th June 2011 is hereby dissolved by a decree of divorce under Section 13B of the Hindu Marriage Act, 1955. To that extent, the Petition No.A-229 of 2012 stands allowed;
- (d) Petition No.A-314 of 2012 stands disposed of;
- (e) In addition to the decree of divorce as aforesaid, there shall be a decree in terms of the Clauses 1 to 11 of the consent terms;

- (f) Undertakings of both the Appellant and the Respondent in the consent terms are accepted;
- (g) The Appeals are disposed of on above terms with no order as to costs;
- (h) Civil Application No.235 of 2015 in FCA No.132 of 2015 is disposed of.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)