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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.140 OF 2015
WITH
CIVIL APPLICATION NO.324 OF 2015**

Mrs. Hemlata Ganesh Salunkhe ... Appellant

Versus

Shri. Ganesh Shantaram Salunkhe ... Respondent

Mr. Hrishikesh Giri i/by Mr. Prashant Mohan Patil for the Appellant.
Mr. Rahul S. Kate for the Respondent.

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

DATE : 15th DECEMBER, 2016

PC.

1 Under the order dated 25th November, 2016 consent terms duly signed by the Appellant and Respondent have been taken on record. Paragraphs 2 and 3 of the order dated 25th November, 2016 read thus :-

“2. The appellant and respondent through their respective counsel state that they have accepted the correctness of the contents of the Consent Terms and that they have voluntarily signed the Consent Terms.

3. Though we are taking Consent Terms on record, the decree will have to be passed only after compliance is made with various conditions in the Consent Terms and in particular, conditions incorporated in clauses (C) to (E).”

2 The learned counsel appearing for the Appellant on instructions states that the cheque in the sum of Rs.9 Lakhs handed over by the Respondent to the Appellant has been since encashed and therefore, there is no impediment in the way of passing decree in terms of the consent terms. The learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent state that in view of the clear undertaking given by the Appellant in terms of clause (E) of the consent terms, the Appeal need not be kept pending till the cases referred in clause (E) are either quashed or withdrawn. We accept the said statement.

3 By the impugned decree passed on the Petition for divorce filed by the Respondent – husband, the learned Principal Judge of the Family Court at Pune has passed a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The marriage between the parties was solemnized on 6th May, 2009. It appears to us that the parties are continuously residing separately at least from the end of the year 2010. It appears to us that the Appellant and the Respondent have

realised that it is not possible for them to continue matrimonial relationship considering the disputes between them. That is the reason why they have agreed to dissolve the marriage by mutual consent.

4 We are satisfied that there is no collusion between the Appellant and the Respondent and that they have willingly agreed for taking divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955.

5 Accordingly, a decree will have to be passed in terms of the consent terms. Hence, we pass the following order :-

ORDER

- (i) The impugned judgment and decree dated 5th June, 2015 passed in the Petition bearing PA No.6 of 2012 is hereby quashed and set aside and the said Petition is restored to the file;
- (ii) By consent of the parties, the said Petition is converted into a Petition under Section 13-B of the Hindu Marriage Act, 1955. The Appellant and the Respondent shall carry out formal amendment to the Petition within a period of one month from the date on which this Judgment and Order is uploaded. The Family Court shall permit the parties to carry out amendment on

production of an authenticated copy of this order. The amendment shall relate back to the date of the institution of the said Petition;

(iii) The marriage solemnised between the Appellant and the Respondent on 6th May, 2009 is hereby dissolved by a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955;

(iv) The undertakings of the parties including undertaking of the Appellant - wife in terms of clause (E) of the consent terms is hereby accepted;

(v) In addition to the aforesaid decree of divorce, there shall be a decree in terms of consent terms taken on record and marked 'X-1' for identification;

(vi) Appeal is partly allowed on above terms with no orders as to costs;

(vii) Civil Application No.324 of 2015 does not survive and the same is disposed of accordingly.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)