

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.139 OF 2012 WITH
CIVIL APPLICATION NO.5 OF 2013 WITH
CIVIL APPLICATION NO.82 OF 2016 WITH
SUO MOTU CONTEMPT PETITION NO.357 OF 2013**

Smt. Kirti Kulin Mehta

... Appellant

Versus

Shri Kulin Rejandra Mehta

... Respondents

Mrs. Kirti Kulin Mehta Appellant in person in FCA and for Applicant in CA/5/2013 and for Respondent in CA/82/2016.

Mr. L.M. Shukla for the Respondent in FCA and CA/5/2013 and for Applicant in CA/82/2016 and Respondent in CP/357/2013.

Mr. S.S. Deshpande, Court Receiver, High Court, Bombay.

**CORAM : A.S. OKA &
P. D. NAIK, JJ.**

DATE : 1st APRIL, 2016

PC.

1 The Appellant in the Family Court Appeal appearing in person is present. The Respondent – husband in the FCA is also present. The Appellant appearing in person and the counsel for the Respondent on instructions of the Respondent state that all the terms and conditions incorporated in the consent terms already filed on record and marked 'X' for identification have been complied with. Even the order dated

17th March, 2016 passed by this Court records the same fact in terms of paragraph 2 thereof. As far as the withdrawal of Company Petition is concerned, there is no actual order passed but an application made by the Appellant is already pending. Order of withdrawal could not be passed as the concerned Bench is not available for the time being. The Appellant assures the Court that in terms of her undertaking recorded in paragraph 3 of the consent terms, as soon as the Bench is available, the said Petition will be withdrawn.

2 Both the Appellant and the Respondent seek forgiveness for whatever has happened in the past as now both of them want to start a new life. We appreciate this gesture of the parties.

3 Now, what remains to be done in terms of the consent terms is passing of a decree of divorce by mutual consent in terms of Section 13-B of Hindu Marriage Act, 1955. Though the consent terms provided that parties will file an application for seeking divorce by mutual consent before the Family Court, as all the subsisting disputes between the parties have been settled, we permit the parties to present a formal application to this Court for seeking a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (for short “the said Act”). Accordingly, Civil Application No.82 of 2016

has been filed. The Appellant appearing in person states that she has signed the application. The learned counsel for the Respondent states that the Respondent who is present in person states that he has signed the said application. Application has been also signed by the Advocate for the Respondent.

4 The Appeal arises out of the Judgment and Decree dated 12th January, 2012 passed by the Family Court in Petition No.A-12/2008. The Appellant and the learned counsel appearing for the Respondent agree that by setting aside the decree, a permission may be granted to convert the same Petition into a Petition under Section 13-B of the said Act.

5 After having perused the record of the Family Court Appeal as well as the averments in the Civil Application, we find that the prayer for passing a decree under Section 13-B of the said Act is not collusive. Due to differences between the parties they have found that the marriage cannot continue and that is the reason why they have agreed for passing a decree for divorce by mutual consent.

6 Accordingly, a case is made out for passing a decree of divorce as well as decree in terms of consent terms.

7 In view of the settlement of the entire dispute, now nothing
further remains to be done even in the Contempt Petition.

8 Accordingly, we pass the following order :-

ORDER

- (i) The impugned Judgment and Decree dated 12th January, 2008 passed by the Family Court in Family Court Appeal No. A-12 of 2008 is hereby set aside and the said Petition is restored. The parties are permitted to carry out formal amendment to the said application for converting the said Petition into a Petition under Section 13-B of the said Act. Registrar (Judicial-I) will permit the parties to carry out formal amendments within a period of four weeks from today;
- (ii) We may clarify that the amendments which will be carried out to the Petition shall relate back to the date of institution of the said Petition, it being purely procedural amendments;
- (iii) The marriage solemnized between the Appellant and the Respondent on 21st December, 1986 is hereby dissolved by a decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955;

- (iv) In addition, there will be a decree in terms of the consent terms already filed on record and marked 'X' for identification;
- (v) The statements made in the joint affidavit of the Appellant and the Respondent dated 7th May, 2014 which are annexed to the consent terms are hereby accepted. The documents annexed to the consent terms shall also form a part of the consent decree;
- (vi) Undertaking of the Respondent dated 15th October, 2015 is hereby accepted;
- (vii) Nothing further is required to be done by the office of the Court Receiver;
- (viii) Family Court Appeal No.139 of 2012 is accordingly disposed of in above terms;
- (ix) Decree be drawn accordingly;
- (x) Civil Application No.5 of 2013 does not survive and the same is disposed of;
- (xi) Sue Motu Contempt Petition No.357 of 2013 is disposed of in view of the settlement and the Notice of Contempt is discharged.

(P. D. NAIK, J)

(A.S. OKA, J)