

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2767 OF 2015
IN
WRIT PETITION NO.5205 OF 2015**

Mrs.Nikita Hitesh Khatri .. Applicants

IN THE MATTER BETWEEN

Mr.Hitesh Dhanraj Khatri ..Petitioner

V/s.

Mrs.Nikita Hitesh Khatri .. Respondent

Mrs.Nikita H. Khatri, petitioner is present.

Mr.Rajesh Devgharkar I/by Mr.M.S. Mhambrey for Respondent.

CORAM : R.M. SAVANT, J.

DATE : 26th APRIL, 2016.

P.C.

1. The subject matter of the above Writ Petition is the order dated 17th April 2015, passed in interim application No.122 of 2014 in Petition No.C-06/2014, by the learned Judge of the 06th Family Court, Mumbai. The above Civil Application has been filed in the above petition claiming withdrawal of the amount of Rs.2,30,000/- deposited by the Respondent-husband in this Court, pursuant to the order dated

20th August 2015. Whilst the above Writ Petition as well as the Civil Application is pending the parties have filed consent terms in the Sessions Court, Greater Bombay, when the Anticipatory Bail Application No.1569 of 2015 had come up before the Sessions Court. The said consent terms are dated 03rd December 2015 and have been signed by the Respondent-husband as well as the petitioner/applicant-wife Mrs.Nikita Hitesh Khatri. In-terms of the said consent terms and especially vide clause (f) thereof. The petitioner wife was to withdraw Application no.C-06/2014 pending in the Family Court, Bandra, Mumbai as well as Application No.137/DV/2014 pending in the Court of the Learned Metropolitan Magistrate, 61st Court at Kurla, Mumbai, on deposit of the pay order by the respondent-husband in the Sessions Court. It seems that the pay order has been deposited and that the petitioner-wife has accordingly, withdrawn Application No.C-06/2014 pending in the Family Court, Mumbai as well as Application No.137/DV/2014 pending in the Court of the learned Metropolitan Magistrate, 61st Court at Kurla, Mumbai. As indicated above the order impugned in the above petition was

passed in the said application No.C-06/2014. In view of the withdrawal of the said application itself the challenge to the impugned order has turned infructuous. The petition is disposed of having turned infructuous.

2. In so far as the Civil Application No.2767/2015 is concerned, as indicated above the same has been filed for withdrawal of the amount deposited pursuant to the order dated 20th August 2015 by the respondent-husband. In so far as the withdrawal of the said amount is concerned the same is governed by clause (j) of the consent terms which provides that the petitioner-wife would be entitled to withdraw the amount deposited after the decree of divorce is passed, which is one of the conditions amongst the four conditions which are mentioned in the said clause (j). In so far as the remaining three conditions are concerned the learned counsel appearing for the respondent-husband instructed by Shri.Mhambrey states that the said conditions have been complied with. The above Civil Application has been filed prior to the consent terms being filed by the parties in the Sessions Court in December 2015.

Hence the factum of the said consent terms being filed and the conditions mentioned in the consent terms is not a part of the above Civil Application. Since the withdrawal by the petitioner is permitted after the decree of divorce is passed in terms of clause (j) of the consent terms the above civil application has also turned infructuous and accordingly, disposed of on the said ground. However, it would be open for the petitioner-wife to file a fresh application for withdrawal of the amount in the above petition though the above petition is disposed of, since she has been permitted to withdraw the amount pursuant to Clause (j) of the consent terms albeit on fulfilling the condition mentioned therein. If any such application is filed the same would be considered on its own merits and in accordance with law. The copy of the consent terms tendered by the learned counsel appearing for the Respondent-husband are taken on record and marked 'X' for identification.

(R.M. SAVANT, J.)