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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
FAMILY COURT APPEAL NO.4 OF 2008 WITH
FAMILY COURT APPEAL NO.31 OF 2008

Dr.Aditi Shailesh Deshpande ...Appellant
vs.
Dr.Shailesh Ramchandra Deshpande ...Respondent

Mr.Vilas Babanrao Tapkir for the
applicant/Appellant-wife in both the appeals
Mr.Sukrut S. Khude a/w Mr.B.S.Nayak for the
respondent-husband in both the appeals

CORAM : A.S.OKA, &
A.A.SAYED, JJ.
DATE : AUGUST 3, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 The consent terms duly signed by both the parties were filed in this Court on 10th September 2015. The consent terms were taken on record on that day and were marked as 'X-1' for identification. The order dated 10th December 2015 records that the parties were present who had accepted the correctness of the contents of the consent terms. Even the undertakings contained in the consent terms were accepted.

2 Today, the respondent has filed compliance report recording compliance of the terms and conditions of the consent terms. As agreed between the parties, the husband has acquired a flat being flat No.1106 in Building "Alina" (Tower-F in the project called as "Bella Casa", at Pune. The flat

is more particularly described in Agreement for Sale dated 12th July 2016 executed by and between M/s.Rachana Life Spaces, Pune and the husband. There is a separate Memorandum of Understanding executed between them in respect of a terrace which is a part of the said flat. In the open Court, the Advocate for the husband has handed over to the Advocate for the wife the keys of the said flat. The learned counsel for the husband states that the possession of the flat has been obtained by the husband from the developer. The keys are handed over by the learned counsel for the wife to the wife in the open Court. The wife has signed the possession receipt which is taken on record and marked 'Y-1' for identification. The possession receipt records that the wife has received the possession of the flat.

3 The learned counsel for the husband has handed over a Cheque dated 2nd August 2016 drawn on Kotak Mahindra Bank, Pune in the sum of Rs.4,95,000/- to the wife who is personally present in the Court. The wife has accepted the said cheque.

4 The learned counsel for the husband and wife on instructions of the husband and wife agree that sub clause (iii) of clause (E) of the paragraph 2 of the consent terms filed on 10th December 2015 which refers to maintenance charges in respect of the said flat will include all property taxes payable to the Municipal Corporation in respect of the said flat and therefore, the wife will be liable to pay

property taxes in respect of the said flat. To that extent, sub-clause (iii) of clause (E) of paragraph 2 stands modified/clarified.

5 Clause (F) of paragraph 2 of the consent terms provides that the husband shall pay a sum of Rs.6,00,000/- to the wife. A sum of Rs.4,95,000/- paid today by cheque is towards the said amount. In compliance report filed by the Advocate for the respondent, he has stated that he has paid a sum of Rs.1,05,000/- by cheque No.4840 dated 12th July 2016 towards maintenance charges of the said flat. A receipt issued by the developer for the said amount is annexed to the said report. The learned counsel for the respondent on instructions states that that said amount is paid to the developer towards maintenance charges of the said flat for the period of two years. We have perused a copy of the receipt which is at Exhibit-G which shows that the amount of Rs.1,05,000/- has been paid by the husband towards maintenance charges of the said flat.

6 As per the terms and conditions incorporated in the consent terms, the wife is liable to pay the maintenance charges. Therefore, after considering the payment of Rs.1,05,000/- and the payment of Rs.4,95,000/- made by cheque today by the husband, we record that there is a compliance made by the husband with clause (F) of paragraph 2 of the consent terms.

7 The learned counsel for the wife made a

grievance regarding the delay in depositing a sum of Rs.15,00,000/- by the husband, as provided in clause (D) of paragraph 2 of the consent terms. We find that the husband has made a substantial compliance with the clause (D) and hence, no grievance in that behalf by the wife can be entertained.

8 The learned counsel for the husband expressed an apprehension that if the wife commits default in payment of monthly charges and property taxes in respect of the said flat, the husband will be prejudiced as the flat stands in his name and he will have to face recovery proceedings. There is some merit in the apprehension expressed by the learned counsel representing the husband. Therefore, while disposing of the appeals, we propose to grant liberty to the husband to move this Court by filing appropriate proceedings in the event the wife commits default in payment of maintenance and property taxes in respect of the flat in question.

9 The husband and wife who are personally present before this Court through their respective counsel state that now there is complete compliance with the terms and conditions of the consent terms.

10 Family Court Appeal No.4 of 2008 has been preferred by the wife for challenging the Judgment and Decree dated 24th August 2007 passed by the Family Court at Pune on a Petition filed by the husband. The said petition has been decreed by

passing a Decree of Divorce under sub-section 1 of section 13 of the Hindu Marriage Act, 1956. The wife filed a petition bearing A.No.182 of 2016 for restitution of conjugal rights. The said petition was dismissed by the impugned Judgment and Decree. Being aggrieved by the dismissal of the said petition, the wife has preferred Family Court Appeal No.31 of 2008.

11 Under the consent terms, the husband and wife have agreed that the marriage solemnised between them on 3rd May 1995 has been dissolved by the Decree of Divorce by mutual consent.

12 In view of the aforesaid clause, Decree of Divorce passed under sub-section (1) of section 13 of the Hindu Marriage Act will have to be set aside and by permitting the parties to convert the Divorce Petition into a petition under section 13-B, Decree of Divorce by mutual consent will have to be passed.

13 Hence, we dispose of the appeals by passing the following order:

(I) We declare that in view of the discussion made in this order, the parties to the appeals have complied with the terms and conditions incorporated in the consent terms marked 'X-1' for identification;

(II) Sub clause (E) of paragraph 2 of the consent terms marked 'X-1' stands modified. It is made clear that the maintenance charges will

be payable by the appellant-wife which will be inclusive of monthly property taxes in respect of the flat in question;

(III) The impugned Judgment and Decree of divorce passed by the Family Court in Petition No.A-231 of 2005 is hereby quashed and set aside. The said petition shall be converted into a petition under section 13(B) of the Hindu Marriage Act,1956. As the record of the case is received by this Court, we direct the Registrar (Judicial-I) to permit the parties to formally amend the said petition for converting the same into a petition under section 13(B) of the Hindu Marriage Act,1956. The amendment shall be carried out within a period of six weeks from today;

(IV) Conversion of Petition No.A-231 of 2005 will relate back to the date of institution of the said petition;

(V) We are satisfied that considering the fact that the marriage cannot be saved, the parties have voluntarily decided to dissolve the marriage by Decree of Divorce and there is no collusion between the parties;

(VI) Accordingly, the marriage solemnised between the appellant and the respondent on 3rd May 1995 is hereby dissolved by Decree of Divorce under section 13(B) of the Hindu Marriage Act,1956;

(VII) The statements made and the undertakings in the consent terms have been already accepted under the order dated 10th December 2015. Hence,

in addition to the Decree of Divorce, there shall be a decree in terms of the consent terms taken on record marked 'X-1' for identification subject to above modification. Decree shall be drawn accordingly;

(VIII) We direct that the Special Civil Suit No.1291 of 2011 filed by the appellant-wife in the Court of Civil Judge (S.D.), Pune, Darkhast Nos.99 of 2014, 150 of 2014 and 37 of 2015 and Contempt Petition No.53 of 2015 pending before the Family Court at Pune stand disposed of as withdrawn by the appellant-wife;

(IX) On production of an authenticated copy of this Judgment and Order, the concerned Courts shall pass a formal order recording the withdrawal of the said proceedings;

(X) Civil Application No.328 of 2010 does not survive and the same is disposed of.

(A.A.SAYED,J.)

(A.S.OKA,J.)