

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.280 OF 2014

Bharat Ramesh Joshi. .. Appellant
Vs
Pratibha Bharat Joshi. .. Respondent
—
Ms. Sangeeta Shankar Salvi for the Appellant.
Mrs. Sarojini Upadhyay, Advocate appointed for the Respondent.
—

CORAM : A.S. OKA & A.A.SAYED, JJ
DATED : 1ST OCTOBER 2016

PC.

1. Perused the consent terms and supplementary consent terms. Today, the Appellant husband has tendered an affidavit dated 1st October 2016 recording that as per the consent terms, the Respondent has handed over the custody of minor son to him on 29th September 2016.

2. Both the husband and wife are present. The husband through his learned counsel undertakes to the Court to pay maintenance amount payable to the Respondent wife for the month of September 2016 on or before 15th day of October 2016 by transferring the same to the account of the Respondent wife. We accept the said undertaking.

3. Even the Respondent has filed an affidavit today recording that the custody of minor son has been handed to the Appellant husband on 29th September 2016 at about 11.30 a.m.

4. There is no dispute that a sum of Rs.10 lakhs has been deposited by the Appellant husband in this Court. According to both the parties, the compliance which remains to be done is now restricted to withdrawal of various proceedings which are listed in Paragraphs 18 and 19 of the main consent terms. The learned counsel appearing for the Appellant husband on instructions of the Appellant husband states that in view of the handing over of the custody of the minor son by the Respondent wife, he will not press the Contempt Petition No.161 of 2015 pending before this Court. He undertakes to the Court to withdraw the proceedings mentioned in Item Nos.(i) and (iii) of Clause 18 of the main consent terms within a period of two weeks from today. These statements of the Appellant husband are accepted as his solemn undertakings. The learned counsel appearing for the Respondent wife on instructions of her client states that the Respondent wife undertakes to withdraw the proceedings mentioned in Paragraph 19 of the main consent terms within a period of two weeks from today. We accept the said undertaking.

5. Under the main consent terms, the parties have agreed to dissolve their marriage by a decree of divorce under Section 13B of the Hindu Marriage Act, 1955 (for short “the said Act”). After having perused the impugned judgment and decree and material on record, we find that the matrimonial tie is irrevocably broken down and there is no possibility of reconciliation. The parties are staying separately at least from April 2013. We are satisfied that both the husband and the wife have voluntarily agreed to dissolve their marriage under the provisions of Section 13B of the said Act and there is no collusion. There is no collusion between the parties.

6. Hence, we dispose of the Family Court Appeal by passing the following order:

ORDER :

- (a) The impugned judgment and decree dated 18th October 2014 passed in the Petition No.D-82 of 2014 is hereby quashed and set aside and the Petition is restored to the file;
- (b) By consent, the said Petition shall be converted into a Petition under Section 13B of the Hindu Marriage Act, 1955. Formal amendment shall be carried out by the parties;

- (c) As the records and proceedings of the Family Court is with this Court, the Registrar (Judicial-I) shall permit amendment to be carried out to the said Petition within a period of one month from the date on which this order is uploaded. The record of the Family Court shall not be forwarded to the Family Court unless amendment is carried out by the parties;
- (d) The Petition No.D-82 of 2014 shall be treated as the Petition under Section 13B of the Hindu Marriage Act, 1955. Amendment permitted under this order shall relate back to the institution of the Petition;
- (e) The marriage solemnized between the parties on 26th November 2009 is hereby dissolved by a decree of divorce under Section 13B of the Hindu Marriage Act, 1955;
- (f) The undertakings of both the parties which are recorded in the consent terms as well as the supplementary consent terms and the undertakings recorded under this order are hereby accepted;

- (g) In addition to the decree of divorce, there shall be a decree in terms of the consent terms both main and the supplementary;
- (h) The sum of Rs.10 lakhs deposited by the Appellant husband in this Court shall be invested by the Registry of this Court in any nationalized bank for such period which will fetch maximum interest;
- (i) By consent, there shall be two Fixed Deposits as aforesaid in the sum of Rs.5 lakh each;
- (j) The quarterly interest accrued on the Fixed Deposits shall be transferred to the account of the Respondent wife;
- (k) We direct the Respondent wife to furnish with the Registrar (Judicial-I) all particulars of her bank account along with a cancelled cheque of her bank account so that interest can be transferred to the said bank account. The said affidavit shall be filed within a period of four weeks from today;

- (l) Both the parties state that in terms of the agreed terms, the custody of the minor son has been handed over by the Respondent wife to the Appellant husband on 29th September 2016 at 11.30 a.m.;
- (m) The Appeal is disposed of on above terms;
- (n) The Civil Applications do not survive and the same are disposed of;
- (o) Needless to add that the parties are bound to comply with all the terms and conditions incorporated in the consent terms as well as the supplementary consent terms which shall form part of the decree.

(A.A. SAYED, J)

(A.S. OKA, J)