

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 196 OF 2016

WITH

CIVIL APPLICATION NO.302 OF 2016

IN

FAMILY COURT APPEAL NO. 196 OF 2016

Dr. Sou. Manjusha A. Jadhav

...Appellant

Versus

Dr. Abhijit Vasant Jadhav

...Respondent

...

Mr. Rajesh A. More for the Appellant.

Mr. Vijay P. Agale for the Respondent.

CORAM : A.S. OKA &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 5th DECEMBER, 2016.

P. C. :

Not on board. Taken on board.

2. The learned counsel appearing for the Appellant and the learned counsel for the Respondent states that both the Appellant and Respondent are personally present in the Court. The learned counsel for the parties tender the Consent Terms duly signed by both the Appellant and the Respondent. The Consent Terms have been signed by the Advocates appearing for both the parties.

3. The Appellant and the Respondent, who are personally present, through their respective Counsel state that contents of the Consent Terms are true and correct and they have voluntarily signed the Consent Terms.

4. The learned counsel appearing for the Respondent-Husband has handed over to the learned counsel appearing for the Appellant a Demand Draft in the sum of Rs.6,00,000/- in terms of clause (5) of the Consent Terms.

5. In paragraph No.6 of the said Consent Terms, it is recorded that the ornaments and utensils mentioned therein have already returned by the Respondent to the Appellant. The learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent pray that the Appeal be disposed of in terms of the Consent Terms by setting aside the decree of divorce and by granting a decree of divorce under Section 13-B of Hindu Marriage Act, 1955.

6. We have perused the Consent Terms. The Appellant and the Respondent are staying separately almost for a period of four years.

The Respondent-Husband filed a petition for divorce which has been decreed under the impugned decree. By the common judgment and order, the petition for restitution of conjugal rights and a petition under section 18 of the Hindu Adoption and Maintenance Act, 1956 filed by the Appellant-wife have been dismissed.

7. Considering the allegations and the counter allegations, we are satisfied that there is no collusion between the parties and after finding that it is not possible to continue the matrimonial relationship, they have agreed for passing a decree of divorce by mutual consent.

8. We find from the Consent Terms that all other disputes such as maintenance, return of ornaments and personal belongings, etc. have been mutually settled between the parties. Therefore, there is no impediment in passing a decree under section 13-B of Hindu Marriage Act, 1955. Accordingly, we dispose of the appeal by passing following order:

ORDER

- (i) The statements and undertakings of the Appellant and the Respondent in the consent terms are accepted;
- (ii) The decree of divorce passed in Petition No.A-77/2014 is

hereby set aside and the said petition is restored;

(iii) We direct both the parties to carry out a formal amendment to the said petition for converting the same into a petition under section 13-B of the Hindu Marriage Act, 1955 within a period of one month from the date on which a certified copy of this order is produced by the learned counsel for the parties before the learned Judge of the Family Court;

(iv) The marriage between the Appellant-Wife and the Respondent-Husband, which was solemnised on 26th December, 2012 is hereby dissolved by a decree of divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955;

(v) In addition to the aforesaid decree, there shall be a decree in terms of the Consent Terms, which are taken on record and marked as "X-1" for identification;

(vi) The Appeal is accordingly partly allowed on above terms;

(vii) Pending applications, if any, do not survive and accordingly disposed of.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)