

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

**FAMILY COURT APPEAL NO. 219 OF 2015
WITH
CIVIL APPLICATION NO. 372 OF 2015
IN
F.C.A.NO. 219 OF 2015**

Sandip Prakash Latte ... Appellant/Applicant.

V/s.

Sou. Chaitali Sandip Latte ... Respondent.

Mr. Vishwanath Rajure, Advocate for the Appellant/Applicant.
Mr. Mithun Mahajan, Advocate for the Respondent.

**CORAM : V. M. KANADE AND
MRS.SWAPNA JOSHI,JJ.**

DATE : 26th SEPTEMBER, 2016

P.C. :

1 Heard the learned counsel appearing on behalf of the Appellant-husband and the learned counsel appearing on behalf of the Respondent-wife.

2 The appellant-husband is aggrieved by the order passed by the Family Court, dissolving the marriage under section 13-B of the Hindu Marriage Act, 1955. It is submitted on behalf of the appellant-husband that initially, a joint

petition for divorce under section 13-B of the Hindu Marriage Act was filed by the husband and wife but since the wife did not transfer the Flat to the name of mother of the husband, the appellant-husband withdrew the consent. It is submitted that the Family Court failed to consider that the consent for divorce is required not only after filing of the petition but also after expiry of the six months period. It is submitted that the Appellant-husband had withdrawn the consent before his statement in evidence was recorded by the Family Court and, therefore, the order of consent divorce under section 13-B of the said Act could not have been passed. Our attention is invited to the impugned judgment and order passed by the Family Court. It is not in dispute that on the date on which the judgment and decree was passed under section 13-B of the said Act, the Respondent-wife had in fact transferred the flat which was standing in her name to the name of the Appellant-husband's mother and secondly, she had also waived her maintenance right and also waived the custody rights of her daughter. Learned Judge has recorded that initially though it was agreed that the custody of the daughter would remain with the applicant no.2, the Respondent-wife herein but latter on she waived her right of custody of the child before the final order was passed by the Family Court. In our view, the Family Court has rightly held that the Respondent-wife had acted to her prejudice and had complied with the terms and conditions of the consent terms and, therefore, it was not open for the

husband to rescind from the solemn assurance given by him in the consent petition under section 13-B of the said Act.

3 It is well settled by a catena of judgments of the Apex Court and this Court that if a party seeks to withdraw his or her consent, it has to be established by the party concerned that the consent was obtained by fraud, force and/or with undue influence. In the present case, admittedly the appellant-husband has not established that the consent was obtained by force or fraud and/or with undue influence. We have perused the judgment and order of the Family Court and with the assistance of the learned counsel for the parties, we find that all these questions have been considered by the learned Judge of the Family Court and after taking into consideration the settled position in law, the learned Judge has not permitted the Appellant-husband to withdraw his consent. Thus, we see no reason to interfere with the said order.

4 Since the facts mentioned in the judgment and order of the Family Court are not disputed, in our view, it is not necessary to call for the record and proceedings in this case and therefore, we propose to dismiss the Appeal at the stage of admission.

5 The Appeal is accordingly dismissed.

6 In view of dismissal of the Family Court Appeal, the Civil application does not survive. It is disposed of accordingly.

7 Though before the Family Court, the respondent-wife has waived her right of custody of the child, we are of the view that in the interest and welfare of the child it will be necessary to make some provision regarding access of the child to the respondent-wife. We ask the Respondent-wife, who is present in the court, whether she is willing to have access of the child, she has answered in the affirmative. Only on this issue we adjourn the matter for two weeks. Stand over to 10.10.2016 at 3 p .m.

(MRS.SWAPNA JOSHI,J.)

(V. M. KANADE,J.)

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