

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FAMILY COURT APPEAL NO. 51 OF 2004
WITH
CIVIL APPLICATION NO. 3480 OF 2009
AND
CIVIL APPLICATION NO. 4505 OF 2009
AND
CIVIL APPLICATION NO. 6357 OF 2017**

Vishwas s/o. Vasantrao Muglikar .. Appellant
Age. 43 years, Occ. Government Servant [original
R/o. Permanently residing at Dhankawadi, petitioner]
Near Petrol Pump, Pune.

Versus

Jyoti Murlidhar Muglikar, .. Respondent
Age. 44 years, Occ. Household, [original
R/o. Omerga, Tq. Omerga, respondent]
Dist. Osmanabad
C/o. Murlidhar Shriniwasrao Muglikar,
R/o. Omerga, Tq. Omerga,
Dist. Osmanabad.

Mr.R.N. Dhorde, Sr. Counsel i/b. Mr.V.R. Dhorde, Advocate
for the appellant.
Dr.S.D. Tawshikar, Advocate for sole respondent.

**CORAM : T.V.NALAWADE &
S.M.GAVHANE, JJ.
DATED : 18.09.2017**

JUDGMENT [PER : S.M. GAVHANE, J.] :-

1. This Family Court Appeal has been filed by the husband challenging the judgment and decree dated 19.07.2004 passed by the Principal Judge, Family Court, Aurangabad dismissing his Petition No.A-173 of 1997 under section 11 of the Hindu Marriage Act, 1955 for nullity of marriage or in the alternative for annulling the marriage between him and the respondent by a decree of nullity, as per section 12 of the Hindu Marriage Act, 1955.

2. The respondent/wife has filed Civil Application No.4505 of 2009 thereby praying to direct the appellant/husband to pay interim alimony of Rs.10,000/- per month, pending hearing and disposal of the aforesaid Family Court Appeal and further to direct the respondent to deposit interim maintenance of Rs.13,200/- in this Court immediately, so also to direct him to deposit fees of advocate and expenses of Rs.6000/- in this Court with

liberty to withdraw the same with other suitable and equitable reliefs.

3. The appellant/husband also filed Civil Application No.3480 of 2009 thereby praying to allow him to produce additional evidence as per the list of documents annexed to the Civil Application.

4. However, during the pendency of the above proceedings i.e. the Family Court Appeal and the Civil Applications, the matter was referred to the Mediation. As per the Mediator's report the Mediation was successful and as per consent terms annexed to said report the parties have agreed to settle the dispute and they have agreed to end their relationship and to obtain a decree of divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955.

5. Thereupon, the parties have filed Civil Application No.6357 of 2017 on 25.04.2017 thereby praying

to treat their Family Court Appeal No.51 of 2004 as a petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955 and to pass decree of divorce by mutual consent under section 13-B of the Hindu Marriage Act, 1955. To support the contentions in the application, the parties have relied upon the ratio laid down in the case of Vinod Batra Vs. Sushma Rani, FAO No.10044 of 2014 of Punjab and Haryana High Court at Chandigarh, decided on 22.02.2017 and in the case of Smt. Ekta w/o. Navin Patil & Anr. Vs. Shri Navin s/o. Sukhram Patil, FCA Nos.129/14, 132/14 with WP No.4161/14 [Nagpur Bench of Bombay High Court] decided on 10.02.2017, respectively seeking permission to convert the petition originally filed under section 13 of the Hindu Marriage Act, 1955 into one under section 13-B of the Hindu Marriage Act, 1955 and Civil Application (CAO) No.156/2017 Family Court Appeal No.129/14 for permission to convert the proceedings of the said appeal into a petition under section 13-B of the Hindu Marriage Act, 1955, which were allowed. We have perused the facts and

orders in the above decisions.

6. As per order dated 08.08.2017, this Court interacted with the appellant and respondent and they stated that the compromise arrived at between them and they have decided to settle the dispute amicably. The appellant husband has paid Rs.1,50,000/- to respondent wife as mentioned in above order. Thereafter, the matter was fixed today for further consideration. Along with the application, the parties have filed consent terms [Exh.C-1]. As per the said consent terms, the respondent wife has agreed to accept Rs.21,50,000/- towards one time settlement against all their past, existing and future rights and both have requested to pass decree for dissolution of marriage by mutual consent in terms of clause Nos.(a) to (e) of the consent terms.

7. Today the parties are present. Learned Sr. Counsel for the husband and learned Counsel for the wife are heard. Necessary enquiry is made. Learned Sr.

Counsel submitted that total amount is paid towards settlement and demand drafts of amount of Rs. 20,00,000/- (Rupees Twenty Lakhs) are brought and they are handed over to the learned Counsel for wife. Photocopy of the demand drafts are taken on record. Learned Counsel for wife undertakes to give separate receipt to the husband in respect of this amount. Considering the submissions made by the learned Sr. Counsel for the husband and learned Counsel for the wife and the ratio laid down by the Hon'ble Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur, Civil Appeal No. 11158 of 2017** relied upon by the parties, decided on 12th September, 2017 and particularly the observations in para 21 i.e. "Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation", the consent terms Exh.C-1 filed by the parties to this proceeding along with Civil

Application No. 6357 of 2017, having regard to the fact that the parties are residing separate since last 35 years and there are no chances of their coming together and that the Mediation was successful, it is just to dissolve the marriage between the appellant - original petitioner and the respondent, by mutual consent under section 13-B of the Hindu Marriage Act, 1955 by allowing above application by waiving six months period under section 13B(2) of the Hindu Marriage Act, 1955 and by setting aside the impugned order by allowing the appeal.

8. Hence, the following order is passed :-

(A) The appeal is allowed. The impugned judgment and decree dated 19.07.2004 passed in Petition No. A-173 of 1997 by the Principal Judge, Family Court, Aurangabad is quashed and set aside and it is substituted by the following decree.

(i) Civil Application No.6357 of 2017 filed by the parties for divorce by mutual consent under section 13-B of the Hindu Marriage

Act, 1955 treating the Family Court Appeal as a petition under section 13-B of the Hindu Marriage Act, 1955 is allowed. The appellant/ original petitioner shall make necessary amendment in the original petition forthwith.

(ii) The marriage performed between the petitioner and the respondent stands dissolved under the provisions of section 13-B of the Hindu Marriage Act, 1955 in terms and condition as stipulated in consent terms Exh.C-1, annexed to the application and decree be drawn accordingly.

(B) The Family Court Appeal and all connected Civil Applications stand disposed of in above terms.

[S . M . GAVHANE , J .]

[T . V . NALAWADE , J .]