

(1)

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

SECOND APPEAL NO. 152 OF 2011

Janardhan s/o Haribhau Lavle,
Age: 56 years, Occu: Agri. & Labour,
R/o Pandhryachiwadi,
Tq. & Dist. Beed

..APPELLANT

VERSUS

Sangita w/o Janardhan Lavle,
Age: 46 years, Occu: Household,
R/o. At present Uttreshwar Pimpri,
Tq. Kaij, Dist. Beed

..RESPONDENT

Mr G. K. Thigle, Advocate for appellant;
Mr R. T. Deshmukh, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 12th July, 2017

ORAL ORDER

The proceedings for divorce by mutual consent came to be dismissed as respondent – wife refused the consent for divorce by mutual consent, which order is confirmed by the lower appellate Court.

2. Learned Counsel appearing on behalf of the appellant submits that the amount of Rs.60,000/- paid to the respondent – wife towards one time alimony, which was condition precedent for divorce by mutual consent, be ordered to be refunded to the appellant.

(2)

3. Such prayer, in my opinion, cannot be considered within the ambit of provisions of Section 100 of the Code of Civil Procedure in absence of any finding by Courts below, as said issue in absence of prayer to that effect was not agitated and established before Court below.

4. As the said issue was not canvassed by the appellant before both the Courts below, in my opinion, appeal lacks merit and stands rejected.

(N.W. SAMBRE, J.)

sjk