

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 40 OF 2017
IN
FAMILY COURT APPEAL NO. 61 OF 2005

Smt. Sushma M. Mistry

.....Applicant

V/s.

Shri. Nalin S. Mistry

....Respondent

Ms. Kokila Karla for the applicant
None for the respondent.

**CORAM : SMT. VASANTI. A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 21, 2017.

P.C.

The applicant-appellant has sought the permission to withdraw the sum of Rs. 11,97,583/- along with interest accrued thereon, in terms of the judgment, dated 28/01/2010.

The appellant had filed the appeal bearing no. 61 of 2005 for a decree of divorce on the ground of cruelty as the petition filed by her for a divorce was dismissed by the trial Court. The family court appeal filed by the appellant-wife was allowed and the marriage solemnized between the parties was dissolved by a decree of divorce. In the operative part of the judgment,

dated 28/01/2010, this Court had permitted the appellant-wife to withdraw certain amount and since the respondent-husband was not represented in the Court at the time of hearing of the appeal, the Court had permitted the appellant to withdraw the amount of Rs. 11,97,583/-, if the respondent-husband does not withdraw the same within 7 years.

It is the case of the appellant-wife that the respondent-husband has not withdrawn the amount though 7 years have lapsed. It is prayed that the appellant may be permitted to withdraw the amount of Rs. 11,97,583/- with interest accrued there on, as the appellant has duly served the respondent-husband by paper publication in terms of the order passed by this Court on 27/11/2017.

On a reading of the judgment, dated 28/01/2010 and specially clauses 3, 4 & 5 of the operative part of the judgment, it appears that permission needs to be granted to the appellant to withdraw the amount of Rs. 11,97,583/- with interest accrued there on. The respondent-husband has not approached this Court for the withdrawal of the amount within 7 years from 28/01/2010. Since the respondent-husband could not be served by the regular mode of service, an application was made by the appellant for serving the respondent by substitute service. The appellant was permitted to serve the respondent by publishing the notice in the daily newspaper Free Press Journal. The notice is duly published in the said newspaper and the substituted service appears to have been effected on the respondent by paper

publication.

In this view of the matter, we direct the Registry/Office to permit the appellant to withdraw the amount of Rs. 11,97,583/- with interest accrued thereon. It would be necessary to clarify that even if the principal amount is either less or more than Rs. 11,97,583/-, the Registry/Office should permit the appellant to withdraw the said amount, with interest. On the appellant furnishing the bank account number, the Registry/Office should remit the amount in the account of the appellant either by RTGS or by any other convenient mode of transfer, immediately.

The civil application stands disposed of accordingly.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]