

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.102 OF 2017
IN
FAMILY COURT APPEAL NO.114 OF 2016

Dhiraj Gobindram Bellara .. Applicant/ appellant
Versus
Tanya Dhiraj Bellara .. Respondent

Ms. Krupali Hiren Rajani for applicant/ appellant
Mr. Mustafa Kachwala i/b. Kachwala Misar & Co. for respondent.

CORAM : V.M.KANADE &
C.V.BHADANG, JJ.

DATE : 28th April 2017.

P.C.

1] The civil application is for restoration of the family court appeal No.114 of 2016. For the reasons stated in the application, the civil application is allowed. Family court appeal is restored to file. The delay in filing this civil appeal is also condoned.

2] Learned Counsel for the appellant and learned Counsel for the respondent have submitted that they have settled the dispute amicably and arrived at consent terms. It is submitted that the

appellant under the consent terms has agreed to pay to the respondent wife an amount of Rs.30 lakhs towards alimony of the respondent and their son towards past, present and future maintenance. It is agreed that the amount of Rs.15 lakhs shall be paid by D.D. and in the name of the son Jahan Bellara on the date of execution and filing of these consent terms. Secondly, it is further agreed that the appellant shall hand over to the respondent wife a D.D. for Rs.15 lakhs on the date of execution of the consent terms.

3] It is further agreed that the respondent undertakes to vacate her matrimonial house along with her son within 24 hours from the date of execution of the present consent terms and on receipt of D.D. for Rs.30 lakhs. It is further agreed that the appellant and respondent would convert this appeal into petition for divorce by mutual consent. Both the appellant and respondent have withdrawn all the allegations and counter allegations made by them against each other and their respective family members.

4] The respondent wife is present in Court. The learned Advocate for respondent identifies her. Power of Attorney holder of

appellant is present as the appellant is at present in South America. Learned Advocate for appellant identifies him. Both demand drafts for Rs.15 lakhs each are handed over to the respondent wife by learned Advocate for appellant. The appeal is accordingly disposed of in terms of consent terms.

5] The family court appeal is allowed to be converted into petition for divorce by mutual consent under section 13-B of Hindu Marriage Act. This Court in a recent judgment in *Santosh Lalmani Tiwari vs. Aaradhana Devi Santosh Tiwari*¹ has held that if an application is filed for converting the Petition into Petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act, it is not necessary to wait for a period of six months as provided under section 13-B of the said Act. It is further held that the said mandatory period of six months will not apply if an application is made at the appellate stage for converting the Petition into a Petition for divorce by mutual consent. In para 6 of the said Judgment, it has been observed as under:-

“6. The intention of the Legislature was to provide minimum period of six months for re-thinking of the

1 2013(1) Mh.L.J. 253

parties. If the said provision is made applicable to the Appellate Court, it would be powerless to grant that relief on the basis of the application filed in the lower Court because 18 months must have elapsed by the time the matter reached the appellate forum although the parties are still fighting relentlessly in the Appellate Court and, therefore, in our view, the said waiting period of six months can be waived in a suitable case by the Appellate Court because it could not have been the intention of section 13-B(2) that the Appellate Court should, in each case, insist that the parties should go through the futile and meaningless ceremony of again waiting for completion of six months. We are of the view, therefore, that when the Appellate Court is fully satisfied on the proved facts that marriage tie should be severed by mutual consent immediately since parties have been living separately for more than the time prescribed under section 13-B and that they have been fighting for sufficiently long period and in such a case, section 13-B does not impose any fetter on the powers of the Court to grant instant decree of divorce.”

6] We are satisfied that in the present case, the parties are residing separately for the last two year i.e. from March 2015 onwards. The appellant is residing in South America. There are no chances of conciliation or co-habitation. We are also satisfied that in the interest of appellant as well as respondent, divorce by mutual consent can be granted immediately after filing consent terms. The appeal is, therefore, allowed. Permission granted to convert the

application into petition for divorce by mutual consent. Divorce by mutual consent is granted under section 13-B of the Hindu Marriage Act. The marriage between the appellant and respondent shall stand dissolved after the undertaking given by both parties is adhered to. The respondent has given an undertaking that she will vacate her matrimonial house along with her son within 24 hours of signing the consent terms. The appellant has already handed over two D.Ds. of Rs.15 lakhs each to the respondent. Appeal is accordingly allowed in the aforesaid terms. Decree is passed in terms of consent terms.

(C.V.BHADANG, J)

(V.M.KANADE, J.)