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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.98 OF 2016

Mrs.Manjiri Prashant Bachhav ..Applicant.

V/s.

Prashant Ramkrishna Bachhav ..Respondent.

Ms.Vaishali Tikle for the Applicant.

Ms.Yogita Deshmukh for the Respondent.

Coram : N.M.Jamdar, J.

Date : 5 April 2017

P.C.:-

By order dated 10 June 2016, parties were referred for mediation. The learned counsel for the parties state that the mediation has been successful and consent terms have been arrived at and signed. It is informed that the parties are present in the Court. The learned counsel for the parties state that they have decided to withdraw / dispose of various proceedings filed between the parties and have decided to seek divorce by mutual consent.

2. I have gone through the consent terms. I do not find anything unconscionable therein. Consent terms seek to end all the disputes between the parties. The consent terms are taken on record

and marked 'X' for identification. For the sake of convenience, the consent terms agreed between the parties are reproduced as under:-

***“CONSENT TERMS FOR SETTLEMENT AND DIVORCE BY
MUTUAL CONSENT: -***

1. The above Miscellaneous Civil Application was filed for transferring the Petition bearing No. A/531/15 filed by the Respondent from the Bandra Family Court to the Nashik Road Court.

2. The dispute between the Applicant and Respondent is arising out of the matrimonial accord. That the present consent term is filed for divorce by mutual consent and for deciding the rights and liabilities of both the parties and their rights and liabilities in relation with their minor daughter Janhavi.

3. The Applicant and Respondent both have arrived at amicable resolution of the dispute through mediation on the following terms and conditions. Both the parties have agreed to request this Hon'ble Court to dispose of the above transfer petition on signing of this Consent Terms.

4. The Applicant and the Respondent were married to each other on 20-08-2014 at Buddha Vihar, Nashik Road, Nashik, Maharashtra and the said marriage was solemnized as per Buddhist Rites and Customs. Both are staying separate from each other since 21-12-2014.

5. The Applicant and the Respondent were earlier married on 01-09-2001. The said first marriage was dissolved by a Decree of Divorce dated 20-11-2008 U/S 13(B) of the Hindu Marriage Act, by the Hon'ble Family Court Bandra, Mumbai in Petition No. A-1939 of 2004, filed by Respondent for divorce.

6. One daughter is born on 26-06-2002 out of their first marriage, who is named as JHANAVI. Presently the said daughter is in the custody of the Applicant.

***I. DETAILS OF THE PENDING PROCEEDINGS INITIATED BY
THE APPLICANT AND RESPONDENT***

A) PROCEEDING INITIATED BY THE APPLICANT/WIFE

1. P.W.D.V.A NO. 67 of 2015: U/S 12 of the Domestic Violence Act- in the court of Judicial Magistrate First Class, Nashik.

2. Petition bearing no. A-374 of 2015 :U/S 9 of the Hindu Marriage Act for Restitution of Conjugal Rights in the Family court at Nashik

3. Case No. W 1508/16: filed in the court of Metropolitan Magistrate 17th Court through Samata Nagar Police Station U/S 498A,323,504,506,34.

4. Miscellaneous Civil Application No. 98/16: in the Hon'ble High Court, Mumbai for transferring the petition from Bandra Family Court to Nashik Family Court.

B) PROCEEDINGS INITIATED BY THE RESPONDENT/HUSBAND

1. S.C.Suit No.2676/16: along with Notice of Motion No. 3255/16 in the Dindoshi City Civil Court, Goregaon for Defamation.

2. S-2914/16: filed in the Court of Metropolitan Magistrate, Borivali for Defamation.

3. Petition No. A/531/15: filed before the Family Court at Bandra for Judicial Separation U/S. 10 of the Hindu Marriage Act.

4. Application No.174 of 2015: before Additional Sessions Court Nashik for stay against Interim Maintenance order passed in DV Matter.

4. Both the parties hereby withdraw all the allegations made against each other and their family members in all the above mentioned proceedings and the police complaints. Both the parties have agreed to file application before the Hon'ble Family Court, Bandra in Petition No. A/531/15, filed by the Respondent for Judicial Separation and convert the same into a Petition for

divorce by mutual consent U/S 13B of the Hindu Marriage Act. Both the parties have agreed to adopt and submit this CONSENT TERM before the Family Court Bandra for divorce by mutual consent.

III SETTLEMENT REGARDING MONEY CONSIDERATION OF APPLICANT/WIFE

- 1) That the Respondent / husband has agreed to pay total amount of Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand only) to the Applicant/ wife towards her claim of permanent alimony / maintenance and by way of full and final settlement of their on-going disputes in relation with the settlement of their matrimonial accord. It is hereby agreed between the parties that the said amount is inclusive of her past, present and future maintenance.*
- 2) The Respondent has agreed to pay the said amount towards the full and final settlement of the dispute to the Applicant- wife by way of an amount of Rs.11,50,000/- (Rupees Eleven Lakhs Fifty Thousand only).*
- 3) That Rs.2,00,000/- (Rupees Two Lakh Only) would be paid to the wife / Applicant upon signing of the consent terms, by way of cheque and Rs.1,00,000/- (Rupees One Lakh Only) to daughter Janhavi by cheque.*
- 4) The remaining Rs.9,50,000/- from the above mentioned total agreed settlement amount, will be paid to wife upon she giving consent to Quashing proceedings initiated by the Respondent – Husband for quashing all the criminal proceedings initiated by the Applicant – wife. The said amount will be paid to the wife at a stroke on the same day of passing of the Order on the quashing petition.*
- 5) The Respondent will give consent to Quashing proceedings initiated by the wife for quashing all the criminal proceedings initiated by the Respondent. The expenses of the Quashing Proceeding is to be paid by wife from her own pocket.*
- 6) The Applicant shall remain present and cooperate in the quashing proceedings by giving her consent and no objection for quashing before the Hon'ble High Court and this Consent Terms*

will be mentioned in the quashing proceedings. The Respondent has agreed to bear the expenses for his quashing proceedings.

7) The Applicant hereby undertakes to take the necessary steps and co-operate with the Respondent for withdrawing and / or disposing off the said case by filing necessary application wherever and whenever necessary.

8) The Applicant shall also withdraw her Domestic Violence Case and Petition for Restitution of Conjugal Rights within one month from the signing of the consent term.

9) The Applicant specifically declares that in view of the above settlement, she shall not have any claim in respect of the interim order of maintenance passed in the DV matter.

10) The final Order in quashing petitions (by consent) is to be obtained by both the parties on the same date.

11) After the final quashing order of the said Criminal Case, the Respondent shall also withdraw both the Civil and Criminal defamation cases filed by him. Both the parties undertake to file the certified copies of quashing/withdrawal/disposal of their respective cases before the Family Court Bandra before the date of decree of divorce.

III. SETTLEMENT REGARDING MONEY CONSIDERATION OF MINOR DAUGHTER – JANHAVI

1) The Respondent has agreed to pay the maintenance and educational expenses to minor daughter Janhavi till she clears her Class XII.

2) The Respondent / husband has agreed to pay Rs.5,000/- every month from 10th March to Janhavi by way of maintenance up to the results of Class XII. The monthly maintenance amount of January will be paid in the month of March. The said amount of monthly maintenance will be paid on 10th of every month.

3) Along with said amount, up to the result of Class XII, the Respondent hereby agrees to bear the school and/or the college tuition fees separately on the receipt of bill/ prospectus issued by the concerned institution.

4) *That Janhavi will have to secure admission on merits and the Respondent/ husband is not liable to make the payments if the admission is secured through management quota or otherwise.*

5) *If Janhavi joins any private tuition classes then yearly fees up to Rs.25,000/- will be borne by the Respondent/ Husband. The fees will be paid on the receipt of bill/ prospectus issued by the concerned institutions. Any private tuition/ coaching classes fees in addition to Rs.25,000/- will be borne by the Applicant / wife.*

6) *All the amounts will be released by drawing cheque in the name of Janhavi and / or by N.E.F.T and /or by R.T.G.S and the same will be deposited in the first 10 working days of every month in her account.*

7) *This abovementioned structure of fees and maintenance will remain in force only up to Janhavi finishing her XII standard.*

IV. OUTSTANDING MAINTENANCE OF DAUGHTER JANHAVI:

1) *That in addition to what has been mentioned above, the Respondent acknowledges that he is liable to pay the maintenance amount of Rs.5,000/- per month to Janhavi from June – 2015 to February- 2017 (i.e. for 20 months). The computation of the said amount comes to Rs.1,00,000/-. The said amount is paid to Janhavi on signing of the present consent term by cheque. Therefore, now, the Respondent has satisfied all his liability towards Janhavi's maintenance upto February – 2017.*

2) *In addition to this, for academic year 2016-17, the Respondent had already paid Rs. 11,000/- towards the fee for classes for the second term and the Applicant acknowledges the same. Therefore, for the academic year 2016-2017, there will not be any liability on the Respondents in relation with the tuition fees.*

3) *Over and above what has been agreed above, if any other expenses are to be made, then such expenses are to be borne by the Applicant on her own. In that case it is clarified and subsequently agreed that no further amount is to be paid to Janhavi by the Respondent.*

4) That the maintenance amount paid to Janhavi is to be fully used and utilized by Janhavi Only.

V. CUSTODY AND ACCESS RIGHTS OF THE APPLICANT AND RESPONDENT WITH REFERENCE TO MINOR DAUGHTER JANHAVI:

1) *That the Applicant (wife) shall have the custody of their minor daughter Janhavi up to she clears the Class XII. If the Applicant remarries in this stipulated period, then the Respondent will file appropriate application for the custody of the minor daughter.*

2) *The Applicant and Respondent hereby agree that the Respondent shall avail regular access to minor daughter Janhavi, twice a month as per the convenience of Janhavi and the Respondent.*

3) *The Respondent or his representative will meet Janhavi at Nashik and will pick up Janhavi at or about 11:00 am from the mutually agreed place by giving prior intimation to the other party and will also drop Janhavi at the same mutually agreed place by 9:30 pm. Thereafter from the said mutually agreed place the Applicant will take Janhavi back to her place of residence.*

4) *On the alternative weekends, the Respondent will be at liberty to take Janhavi to his Mumbai house and avail overnight weekend access and will return Janhavi to the Applicant before the reopening of school day.*

5) *Janhavi will be picked up and dropped at mutually agreed place.*

6) *That both the Applicant and Respondent will be having 50:50 accesses on all the connecting vacation holidays of Janhavi. If the Applicant / Respondent has decided to take Janhavi out of Nashik / Mumbai for connecting vacation holidays then it has to be informed to the other party in advance. If the Applicant takes the daughter out of Nashik the same shall be intimated to the Respondent.*

7) *That if Janhavi spends her one vacation fully with one party then the other party will have full access of Janhavi for her next connecting vacation holidays.*

8) *That unless the situation requires and in the case of emergency pertains to their minor daughter – Janhavi, the Applicant and the Respondents will not try to contact each other in any manner.*

9) *That the Respondent is allowed to have communication with Janhavi through telephonic calls, email or text messages and Skype as and when he wishes to. The Applicant will not interfere into and/ or control the said communication in any manner or vice versa.*

10) *The Applicant shall share all educational and medical progress and reports of daughter Janhavi with the Respondent.*

VI OTHER SETTLEMENTS

1) *The Applicant will not send any message in any form or will make calls or will not contact the Respondent or any of his friends or relatives in any manner to defame the reputation of the Respondent.*

2) *That both the parties to the dispute will not go to each other's house unless and until any such emergency arises regarding daughter.*

3) *None of the parties will be personally held liable for the personal wrong / liability created or imposed by any such other party to the dispute.*

4) *None of the parties to the dispute will contact the family members/ friends/ relatives of the other party in any manner.*

5) *The Respondent will return the Applicant's bag of cloths to the Applicant on the date of quashing proceedings and the Applicant will return all the Respondent's electronic gadgets possessed by her to him.*

6) *The Applicant states that all her Jewellery and stridhan are in her possession. Apart from what has been mentioned, the Applicant and Respondent agree that they do not have any claim against each other relating to articles, clothes, jewellery / ornaments, stridhan, shelter, etc.*

7) *The parties hereby agree and undertake to remove the name*

of each other wherever the other spouse is the nominee and /or the joint holder and /or the beneficiary in any Bank account, policies, investments and /or insurance companies etc., in due course of time.

8) The Applicant specifically declares that after receipt of Rs.11,50,000/- mentioned above, she shall not have any other or further claim of whatsoever nature against the Respondent or his family members at any point of time in future.

9) It is further agreed between both the parties that in case the Applicant fails to comply with the terms mentioned in the above clauses within the stipulated time, the Respondent shall be entitled to claim back the said amount of Rs. 11,50,000/- by initiating proper proceedings before the proper forum.

10) Both the parties state that there are no exchanges pending between them except what is specifically mentioned herein.

11) Both parties agree that they will lead their life independently and they will not interfere in each other's life in any manner whatsoever.

12) Both the parties state that any other complaints filed by either party or their family members against each other shall be deemed to be withdrawn on passing of decree of divorce.

13) It is further agreed between the parties that they shall not file any civil or criminal cases or complaints against each other or their family members in respect of any of the events pertaining to their matrimonial disputes.

14) Both the Parties agree and undertake not to claim any share, right, title, interest, profit or claim in the moveable and immoveable Property of either party or their respective family members or any of their ancestral properties, now or in future.

15) In view of the above full and final settlement, both the parties shall have no claim of whatsoever nature against each other in future, except what is specifically mentioned herein.

16) Both parties agree to abide by these consent terms and comply with their respective obligations. Both parties further agree that they will not withdraw from this consent terms at any point of time.

17) Both the parties state that their consent and willingness for the above consent terms are voluntary and not obtained by force, fraud, coercion or any kind of undue influence.

18) The aforesaid consent terms are read and understood by both the parties and are also explained to the Applicant and Respondent in their vernacular language by their Advocates.

Payments made on 1st March 2017

1) As stated above the Applicant/ Wife acknowledges that she has received two cheques i.e. (Rs.2,00,000/- towards her one time settlement) and (Rs.1,00,000/- towards the maintenance of Janhavi) today, from the Respondents/ husband.”

3. The miscellaneous civil application is disposed of in terms of the consent terms. As agreed between the parties, the parties will place a copy of this order along with the consent terms before the Courts mentioned in the consent terms.

4. Both the learned counsel submitted that in view of the fact that the proceedings are pending since the year, 2015, it is not necessary for the parties to wait for a period of six months for divorce by mutual consent. The concerned Court will take this into account and pass order accordingly. The Miscellaneous Civil Application is accordingly disposed of in terms of consent terms. All undertakings given in the consent terms are accepted. Both the parties will apply to the Courts for disposal and appropriate orders.

(N.M.Jamdar, J.)