

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.240 OF 2013

Mrs. Suvarna Rajesh @ Rudrappa Hundekari. .. Appellant

Vs

Mr. Rajesh @ Rudrappa Hundekari. .. Respondent

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Shri Mihir Raut i/b Shri Nitin P. Deshpande for the Appellant.

Shri Rajesh More for the Respondent.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 9TH JANUARY 2017

PC.

1. Not on board. Taken on board.

2. By the impugned judgment and order, the Petition for divorce filed by the wife against the husband was dismissed. A counter-claim filed by the husband for restitution of conjugal rights has been decreed. By the impugned judgment and order, even the Petition for maintenance under Section 125 of the Code of Criminal Procedure, 1973 has been allowed. The Family Court Appeal takes an exception to the decree passed in the Petition for divorce as well as the Counter-claim in Petition No.A-1184 of 2009.

3. Today, the consent terms are tendered across the bar by the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent. The same are taken on record and marked "X1" for identification. The consent terms have been signed by the Appellant and the Respondent as well as their respective Advocates.

4. The Appellant and the Respondent through their respective learned counsel state that the consent terms have been voluntarily signed by them and the contents thereof are true and correct.

5. We have perused the consent terms. The consent terms record a complete settlement of the matrimonial dispute between the parties to the Appeal. It is recorded that the parties to the Appeal have agreed to take divorce by mutual consent.

6. The parties are residing separately atleast from the year 2009. Even after the decree of restitution of conjugal rights, the parties have not resumed cohabitation. The only son has attained majority long back.

7. After realizing that the matrimonial relationship cannot be resumed, the parties have agreed to take divorce under Section 13B of

the Hindu Marriage Act, 1955 by mutual consent. We find that there is no collusion between the parties. As all the matrimonial disputes appear to have been settled, a case is made out for passing a decree of divorce by mutual consent. Accordingly, we pass the following order:

ORDER :

- (a) The statements made by the parties in the consent terms tendered on record and marked "X1" for identification are accepted;
- (b) By consent of the parties, the impugned decree dated 3rd September 2013 in Petition No.A-1184 of 2009 and the counterclaim therein is hereby set aside and the said Petition is restored to the file;
- (c) We direct the Appellant and the Respondent to carry out formal amendment to the said Petition by converting the same into a Petition under Section 13B of the Hindu Marriage Act, 1955;
- (d) Amendment shall be carried out in this Court within a period of one month from today. The Registrar (Judicial-I) shall ensure that the R&P is retained in this Court to enable the parties to carry out necessary

amendment. Amendment carried out shall relate back to the date of the institution of the Petition;

- (e) The marriage solemnized between the Appellant and the Respondent on 5th February 1990 is hereby dissolved by a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955;
- (f) We record the statement of the Appellant that the Respondent has paid the sum of Rs.48,000/- by a cheque to the Appellant;
- (g) Apart from the aforesaid decree of divorce, there shall be a decree in terms of the consent terms marked "X1" for identification;
- (h) Family Court Appeal is accordingly partly allowed on above terms;
- (i) There will be no orders as to costs.