

BDPPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.26 OF 2017**

Archana Singh

..... Appellant.

V/s

Vishwardhan Singh

..... Respondent.

Mr. Karl Shroff a/w Ms. Geetika Jain i/b Bilawala & Co. for the Appellant.

Mr. Jayesh R. Vyas for the Respondent.

**CORAM: V. M. KANADE &
A.S. GADKARI, JJ.**

DATE: 21st March, 2017

P.C.:-

1] Heard the learned Counsel appearing on behalf of the Appellant and the learned Counsel appearing on behalf of the Respondent.

2] Parties have amicably settled the dispute and they have filed Consent Terms. The Consent Terms are taken on record and marked 'X' for the purpose of identification. Both the parties have made an application for converting Family Court Appeal into a Petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act. Permission is granted.

3] Appellant and Respondent got married on 29th April, 2013 and

thereafter on account of differences and disputes between them, they are living separately for more than one year. Respondent/husband has paid an amount of Rs 30 lakhs to the Appellant/wife by way of permanent alimony.

4] We have interviewed both the parties. Appellant as well as Respondent have stated that they are not willing to continue as husband and wife on account of serious disputes between them and they have agreed to take divorce by mutual consent. This Court in *Santosh Lalmani Tiwari vs. Aaradhana Devi Santosh Tiwari*¹ has held that if the Court is satisfied that there is no possibility of reconciliation and divorce is in the interest of parties then it is not necessary for the Appellate Court to wait for mandatory period of six months which is prescribed under Section 13-B of the Hindu Marriage Act. In para 6 of the said Judgment, this Court has observed as under:-

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

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

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.”

5] We are satisfied that this is a fit case where Petition for divorce by mutual consent should be allowed without waiting for six months at the appeal stage. Secondly, the marriage was solemnized on 29th April, 2013 and soon thereafter parties have started staying separately. Respondent/husband has paid an amount of Rs 30 lakhs to the Appellant/wife by a Demand Draft which has been received by her. Parties therefore had sufficient time to reconsider their decision and therefore breathing period which is provided under Section 13-B has already been exhausted.

6] We are of the view that it is not necessary to remand the matter to Family Court since this Court has permitted the parties to convert the Family Court Appeal into a Petition for divorce.

7] Undertaking given by the parties in the Consent Terms is accepted. In view of the Consent Terms, the impugned judgment and order passed by the Trial Court is set aside. Decree is passed in terms

of the Consent Terms under Section 13-B of the Hindu Marriage Act, 1955. Decree be drawn up accordingly. Under the circumstances, there shall be no order as to costs.

8] Petition/Family Court Appeal is accordingly disposed of.

(A.S. GADKARI, J.)

(V.M. KANADE, J.)