

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3202 OF 2018

Shri.Anoop Sharad Mahajan
V/s.

...Petitioner

Mrs.Sara Jeanne Royer

...Respondent

Mr.Abid Mulani i/b Mr.Prasanna P. Patil for the Petitioner.

Mr.Pranav P. Patil for the Respondent.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 06th APRIL 2018

P.C.

1. The present petition is filed by the petitioner assailing the order dated 30th November 2017 passed by the Family Court at Pune. By the impugned order, the Family Court has refused to entertained the petition for mutual consent for divorce filed by the parties under Section 28 of the Special Marriage Act. The petition is verified by the petitioner No.1 and on behalf of the petitioner No.2 it is verified by her power of attorney holder. The impugned order refuses to accept the filing of the petition and directs that both the petitioners should remain present before the Court for presentation. The parties placed reliance on the judgment of this Court in case of

Mukesh Narayan Shinde Vs. Palak Mukesh Shinde¹ that the Family Court refused to accept the ratio of the said judgment on the ground that it is not applicable to the present case.

2. This Court had an opportunity of dealing with the identical issue in a petition filed under Section 13B of the Hindu Marriage Act which was filed before the Family Court, Pune, wherein the Family Court had rejected the registration of the petition and refused to accept the petition filed through the power of attorney holder. This Court in the case of ***Harshada Bharat Deshmukh V/s. Bharat Appasaheb Deshmukh***², a judgment pronounced on 06th April 2018, on consideration of provisions the Code of Civil Procedure and the authority of the “power of attorney as recognized by the Civil Procedure Code” was pleased to hold that the objection of the Family Court that the parties should remain present at the time of filing of petition, cannot be sustained and has quashed and set aside the order passed by the Family Judge and had directed the Family Court to accept the petition for registration. Further in terms of the judgment delivered by the Bombay High Court in the case of ***Mukesh Shinde V/s. Palak Shinde*** it is also

1 (2010 SCC OnLine Bom 473)

2 W.P. Stamp No.1788 of 2018 dated 06th April 2018

directed that the further proceedings for mutual consent as contemplated under Section 13B be recorded through Skype or by adopting any other technology, contemplated under Section 13B shall be complied with. In the light of the said judgment, the present Writ Petition deserves to be allowed. The impugned order passed by the Family Court is quashed and set aside.

3. The Judge Family Court is directed to accept the petition tendered by the parties seeking divorce by mutual consent under Section 28 of the Special Marriage Act. The Family Court is also directed not to insist on the presence of the parties and arrange recording of evidence on Skype or adopting any other technology and grant divorce as contemplated under Section 28 of the Special Marriage Act on being and disputed about the irreversible breakdown of marriage.

4. The Writ Petition is allowed in the aforesaid terms.

(SMT.BHARATI H. DANGRE, J.)