

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Family Court Appeal No.43 of 2019

Sau. Purva Ganesh Kulkarni,
Age 26 years,
Occupation : Nil,
C/o Shri Ashok Vitthal Garbhe,
R/o 2, Gurukul Niwas, Gokulnagar,
Beside Bhistobag Road, Savedi,
Ahmednagar,
Taluka and District Ahmednagar. .. **Appellant.**

Versus

Ganesh s/o Mukund Kulkarni,
Age 32 years, Occupation: Service,
R/o DM Petit High School,
Madhyamik Division, Sangamner,
Taluka Sangamner, Dist Ahmednagar. .. **Respondent.**

Mrs. Charuta S. Deshmukh, Advocate, for appellant.

Shri. Appasaheb A. Shelke, Advocate for respondent.

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Date: 06 NOVEMBER 2019

ORAL JUDGMENT (Per T.V. Nalawade, J.):

1) Heard learned counsel for the appellant and the
learned counsel for the respondent.

2) Today, the learned counsels for both the sides submitted that the parties have settled the dispute and though the original proceeding was filed under section 13(1)(i-a),(i-b) of the Hindu Marriage Act 1955 by the wife for relief of divorce, the parties now seek divorce by mutual consent as provided under section 13B of the Hindu Marriage Act 1955. The terms and conditions of the compromise are produced on record.

3) The learned counsel placed reliance on the decision of Family Court Appeal Nos.132/2008 (Husband v. Wife) and 109/2008 (Wife v. Husband) decided at Principal Seat of this Court on 13-10-2017. The counsels submitted that in that proceeding also the original proceeding was filed for divorce under section 13(1)(i-a) of the Hindu Marriage Act, 1955 but during pendency of the appeals as compromise took place, the Court allowed to convert the proceedings and make it a proceeding for divorce by mutual consent. This Court has carefully gone through the reasoning given in the said matter. Further, the learned counsel for the wife submitted that the appeal is continuation of the proceeding and so the amendment

of that nature can be allowed to be made in the main proceeding. There is substance in this submission. This Court is hereby granting permission to the wife and the husband to amend the main proceeding and make it for divorce by mutual consent.

4) The submissions made and the terms and conditions of the compromise show that it has become impossible for the parties to cohabit and live together and they have come to that conclusion. There has been separate residence since 2014. This circumstance shows that already separate residence was there and the trial court must have made attempt of reconciliation but that must have been proved to be futile. In view of these circumstances this Court passes following order.

5) The appeal is allowed. The petition filed for divorce under section 13(1)(i-a)(i-b) of the Hindu Marriage Act is allowed to be converted to make it a proceeding for divorce by mutual consent under section 13B of the said Act. Amendment is to be shown in the main proceeding itself.

6) The marriage solemnised between the parties on 18-12-2011 stands dissolved by a decree of divorce under section 13B of the Hindu Marriage Act, 1955.

7) In Clause (B) of the terms and conditions in stead of name "Purva Ganesh Kulkarni" the name be substituted as "Rupali Ashok Garbhe" and the cheque is to be issued in that name of the amount mentioned in the compromise document. The other terms and conditions of the compromise are already complied with by the parties.

8) Decree be drawn accordingly.

Sd/-
(S.M. GAVHANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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