

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

**FAMILY COURT APPEAL NO.147 OF 2018
with
CIVIL APPLICATION NO.167 OF 2018**

Devayani Devendra Suryavanshi ... Appellant

Vs

Devendra Madhavrao Suryavanshi ... Respondent

Mr.Tejas Hilage for the Appellant

Mr.Satyajeet Shirke i/b J.J. Bardeskar for the Respondent

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 5, 2019

P.C.:

1. This appeal is filed by the wife challenging the judgment and order dated 11.9.2016 passed by the Family Court, Kolhapur, in Petition No.F-148 of 2016. The brief facts are as under:

The appellant-wife and the respondent-husband got married on 28.3.2010. However, on or around 15.3.2012, they separated. Multiple family disputes reached the Courts. Both the sides decided to put an end to the marriage through mutual consent. Therefore, a mutual consent divorce petition came to be filed

before the Family Court, Kolhapur. Consent terms dated 7.11.2016 were presented before the Family Court. These consent terms were duly signed by both the sides. The consent terms envisaged the husband paying a total sum of Rs.11 lakhs to the wife by way of full and final monetary settlement. Based on these consent terms and the joint petition for divorce, the Family Court granted a decree of dissolution of marriage by the impugned judgment and order dated 11.9.2017.

2. In between, the wife filed an application at exhibit 9 in petition No.F-148 of 2016 on 14.2.2017 and sought to resile from her consent, principally on the ground that her consent was obtained under force and coercion. In the meantime, the husband had already paid a sum of Rs.8 lakhs directly to the wife and deposited a further sum of Rs.3 lakhs to comprise the total sum of Rs.11 lakhs as per the agreed terms before the Family Court. The Family Court, Kolhapur passed an order on 4.7.2017, the operative portion of which reads as under:

“ORDER

1. Application Exh. 9 is hereby rejected.
2. If petitioner No.2 does not intend to appear for second motion then she is directed to deposit an amount of

Rs.8,00,000/- (Rs.Eight lakhs only) in this court within the period of fifteen days from the date of this order.”

The Family Court thereafter proceeded to pass the main judgement and order dated 11.9.2017 and dissolved the marriage as per the original petition and the consent terms jointly presented by the parties. In this background, the wife has challenged the said order before us in the present Appeal.

3. Having heard the learned Counsel for the parties and having perused the documents on record, we do not find that the appellant has made out any ground for interference. The main ground for withdrawing the consent, as noted, was of coercion and undue influence. Elaborating this ground, the learned Counsel for the appellant submitted that the wife was forced by her mother-in-law and sister-in-law to sign the consent terms. This averment itself is not possible to be accepted. Firstly, the record would suggest that the husband and the wife were residing separately since March, 2012. The Family Court Petition was presented in 2014 and the consent terms in 2016. Obviously, therefore, the wife was not residing with the in-laws and the scope for exerting any

pressure would, therefore, not be present. The wife has not made any further specific averment with respect to the alleged force or coercion.

4. This apart, the wife received the sum of Rs.8 lakhs under the consent terms. The Family Court, therefore, had before disposing off her application at exhibit 9, offered her to hear further provided she agreed to deposit the said sum which she had received under the consent terms. She did not deposit the amount. It was thereupon that the Family Court rejected her application at exhibit 9.

5. In the facts of the case, we do not find that the Family Court has committed any error. The question whether once a party files a divorce petition by mutual consent, later on during the cool-off period before the decree, can withdraw the consent or not is not necessary for us to enter into. This is so for the reason that the wife having received substantial benefit under the consent terms, if desirous of withdrawing her consent, had to restore to the original position and return the benefit she had received. She having refused to do so, the Family Court correctly did not permit her to resile from the consent.

6. We are informed that the wife had refused to receive the remaining sum of Rs.3 lakhs out of total of Rs.11 lakhs payable under the consent terms. The husband has deposited the stated sum before the Family Court. Under the circumstances, while dismissing this appeal, we permit the wife to withdraw the said sum with accrued interest, if any.

7. Subject to the above observations, the Family Court Appeal is dismissed.

8. In view of the dismissal of the Appeal itself, Civil Application No.167 of 2018 also stands dismissed.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)