

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

**FIRST APPEAL NO.876 OF 2018
WITH
CIVIL APPLICATION NO.2791 OF 2018
IN
FIRST APPEAL NO.876 OF 2018**

Hiraman Bango Patil ...Appellant

Versus

Mrs. Divya Hiranman Patil ...Respondent

....

Mr. Avinash Hari Fatangare for the Appellant.

Ms Nirmala Bhosale for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th OCTOBER, 2019.

P.C.:-

The Appellant herein had challenged the judgment dated 19th April, 2018 whereby the custody of the minor child was ordered to be handed over to the Respondent-mother.

2. The learned counsel for the Appellant and the Respondent have stated that the parties have arrived at an amicable settlement and that they have filed the consent terms in Marriage Petition No.577 of 2019, under which they have agreed to take divorce by mutual

consent. The learned counsel for the respective parties have stated that child has always been in custody of the father and that parties have agreed to continue with the custody of the child with the father. The parties have also agreed that the mother will have access as stipulated in clause (x) of the consent terms. They have placed on record copy of the consent terms filed before the CJ.S.D., Kalyan in Marriage Petition No.577 of 2019. The relevant clauses read thus:-

“(ix) The custody of minor child Tejas should be permanently with Petitioner No.1. The Petitioner No.2 has permanently waived her rights of custody of minor Tejas. It is agreed by the Petitioner No.2 that she will not claim the custody of the minor Tejas in present and future.

(x) It is agreed between both the Petitioners that the access of the minor Tejas will be given to the Petitioner no.2 if demanded, once in month on third Saturday as per the convenience of the both the parties. The access of the minor Tejas will be given in public place near and convenient for travelling to the minor Tejas. The access shall be given in the presence of the Petitioner No.1.

(xi) No attempt should be made by the Petitioner no.2 to contact

minor child Tejas by any means or through third person in absence of and/or without the consent of the Petitioner No.1.

(xv) That both the Petitioner agreed and undertake to this Hon'ble Court that they will file consent terms in the Hon'ble Court in Appeal No.876 of 2018 and shall get the order dated 19/4/2018 quash and set aside.”

3. The Appellant and the Respondent have also filed the minutes of order which read thus:-

“1. The Appellant and Respondent decided to settle the entire dispute mutually considering their age and future. Accordingly negotiations and talks took place between the Appellant and Respondent and their family members, in which both the parties decided to take divorce by mutual consent. Accordingly parties have decided to file consent terms before this hon'ble Court as under:-

2. That, the petitioner and respondent had already filed the divorce petition by mutual consent before the Civil Judge Senior Division Kalyan being No.577 of 2019 on the terms and conditions mentioned in the petition. A true copy of

the said petition is annexed hereto and marked as Exhibit -A.

3. In view of the said settlement Appellant herein agreed and undertake to honour the terms which are mentioned in the petition which is annexed as Exhibit-A with this consent term.
4. In view of aforesaid terms by consent of both the parties, the judgment and order dated 19th April, 2018 passed by District Judge, Thane in Misc. civil application no. 21 of 2017 shall quashed and set aside.
5. In view of the above, Regular Darkhast No.855 of 2018 filed by the Respondents before Civil Judge Senior Division, Thane also stands disposed off.”

4. The Appellant and the Respondent are present before this Court alongwith their respective counsel. They have confirmed the contents of the consent terms filed before the C.J.S.D., Kalyan as well as the minutes of order filed before this Court and they confirm the

contents of the same. The Appellant and the Respondent state that they have agreed to resolve the dispute amicably as per the consent terms filed before the C.J.S.D., Kalyan. The terms are voluntary and agreeable to the parties. The copy of the consent terms and the minutes of order are taken on record and marked 'X' and 'Y' for identification. Having gone through the records and considering the fact that the child has always been in the custody of the father, the consent terms relating to the custody of the child are in the interest of child.

5. Under the circumstances the terms are accepted. Appeal stands disposed of as per the consent terms. Decree be modified accordingly.

6. The Civil Application stands disposed of in view of disposal of the First Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)