

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.308 OF 2018
IN
FAMILY COURT APPEAL NO.293 OF 2014

Tajinder Singh Kamaljeet Singh Chhabda ...Petitioner

vs.

Smita @ Jasveen Kaur Tajinder Singh Chhabda ...Respondent

Mr. Suhas Deokar, for the Petitioner

Mr. Chandrakirti Zende I/b. Jayesh Kocheta, for the Respondent.

CORAM : AKIL KURESHI &
N.B. SURYAWANSHI, JJ.

DATE : AUGUST 23, 2019

P.C.:

. This Contempt Petition is filed by the husband alleging breach of the undertaking given by the Respondent-wife to this Court, in consent terms presented before the Court, which were accepted while disposing of Family Court Appeal No. 293 of 2014 filed by the wife.

2. The Appeal was filed by the wife challenging the judgment and decree of dissolution of marriage sought by the husband. In such Appeal the husband and wife arrived at settlement which was reduced in writing and accepted by the Court. The divorce decree

was set aside with consent. The relevant terms of the agreement between the husband and wife reads as under:

- “1. The parties have amicably settled their disputes out of the Court and have decided to stay together.*
- 2. By consent the order dt.3rd October, 2013 passed by learned Family Court, Pune in P.E. 308/12 & in Petition No.A-1233 of 2012 is set aside.*
- 3. The Appellant wife agrees and undertakes to withdraw all the complaints filed against the Respondent husband and his family members.*
- 4. The Appellant wife further agrees and undertakes not to file any false and/or frivolous complaints against the Respondent husband and his family members.*
- 5. The parties agree that in case of any dispute in future the parties will mutually separate by filing Petition for divorce by mutual consent without any claims against each other.*
- 6. The parties agree in case of separation by mutual consent the custody of the son “Jasveer Singh Chabda” will remain with father i.e. Respondent herein.*
- 7. In view of the above present Family Court Appeal as well as Criminal Revision Application No. 14 of 2014 shall stand disposed of.”*

3. The case of the husband in the present Contempt Petition is that the wife, some time thereafter once again walked out of the house and has now filed application for maintenance under section 125 of the Code of Criminal Procedure. According to the counsel for the husband, this amounts to clear breach of the undertaking given by the wife to the Court and by virtue of which the divorce

decree granted to the husband by the Family Court came to be set aside.

4. We have heard learned counsel for the parties and perused the documents on record.

5. We do not find any case for taking out Contempt Petition against wife is made out. As per the consent terms, the parties tried to dissolve their disputes and live together as husband and wife. However, it appears that the disputes returned die down. It is true that paragraph 5 of the agreement records that if any dispute arises in future between the parties, they will mutually separate by filing divorce on mutual consent. However, this does not mean that whether wife desire to dissolve the marriage or for the moment it is not possible to cohabit, she would be compelled to concede to the dissolution of marriage on mutual consent.

6. Though copy of the application for maintenance filed by her is not produced on record, the counsel for the husband made a copy thereof available for our perusal which shows that the wife's allegation in such application is that, the husband had once again

started ill treating her making it impossible to live in the same matrimonial home. In clear terms, therefore this is not a case where the wife desires dissolution of the marriage. No case of willful breach of any undertaking given by the wife to the Court arose. Contempt Petition is dismissed.

7. This dismissal does not foreclose any of the rights of the husband, if any.

(N.B. SURYAWANSHI, J.)

(AKIL KURESHI, J.)