

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (ST) NO.14211/2018
WITH
CIVIL APPLICATION NO.148/2018

Vishal Rajendra Lodha ... Appellant

V/s.

Richa Vishal Lodha ... Respondent

Mr. Vishal Rajendra Lodha, Appellant in persona
Mr. Hitesh P. Vyas for the Respondent

**CORAM: K.K. TATED &
B. P. COLABAWALLA, JJ**

DATED : MARCH 7, 2019

P.C. :

1 This Family Court Appeal has been filed by the Appellant - husband challenging the common judgment passed by the Family Court - II, Pune at Pune dated 3rd February 2018.

2 By the impugned judgment, the petition for divorce filed by the Respondent - wife was decreed and the marriage between the Appellant and the Respondent was dissolved by a decree of divorce u/s.13(1)(ia) of the Hindu Marriage Act, 1955. Apart from this, the impugned judgment also directed the Appellant -

husband to return the Stridhan mentioned in paragraph 14 of the divorce petition to the Respondent – wife within 30 days from the date of the impugned judgment. Over and above this, a direction was also passed, that the pen drive containing nude photographs of the Respondent wife be destroyed after the appeal period is over. The petition filed by the appellant - husband (Petition No.PA-498 of 2013) for restoration of conjugal rights was dismissed.

3 Aggrieved by this judgment, the Appellant has approached this court. We must mention here that after the filing of the above Appeal, several orders were passed recording that the parties were trying to negotiate a settlement.

4 Today, when the matter was called out, the Appellant is appearing in-person. The Respondent is represented by an Advocate. Consent Terms dated 7th March 2019 are tendered before us that are signed by the Appellant as well as the Respondent and the advocate for the Respondent. These have been signed after much deliberations and discussions between the parties as well as the Court. In fact these deliberations have been taken place for almost one and a half hours. Be that as it

may, we are pleased to note that the parties have signed the Consent Terms, under which the parties have agreed that the marriage between the Appellant and the Respondent dated 6th July 2011 stands dissolved by a decree of divorce by mutual consent u/s.13(B) of the Hindu Marriage Act, 1955. This divorce by mutual consent is subject to the terms and conditions, as more particularly set out in clauses 1(a) to 1(l) of the Consent Terms.

5 At the time of signing the Consent Terms, there was an apprehension on the part of the Appellant that in the event, the decree for divorce is passed today as per the Consent Terms and the Respondent, in the meanwhile get re-married before the quashing of the criminal proceedings (as provided in clause 1(d) & 1(d-1) of Consent Terms), serious prejudice would be caused to the Appellant. To obviate this apprehension, Mr. Vyas, the learned advocate for the Respondent, on instructions, has stated that the Respondent undertakes that she shall not re-marry till the Allahabad High Court quashes the criminal proceedings against the Appellant or till 7th June 2019 whichever is earlier. The statement is accepted as an undertaking to this court.

6 It is clarified that in terms of clause 1(d) and 1(d-1) of the Consent Terms, the Appellant shall approach the Allahabad High Court for having his Writ Petition (for quashing of the criminal proceedings filed against him) to be placed on board. Once the date is notified, the same shall be intimated to the Respondent at least 7 days prior thereto to ensure that the Respondent remains present and consents to the quashing of the criminal proceedings. In any event, liberty is also granted to the Respondent to make an Application to the Allahabad High Court for taking up the Writ Petition for the purpose of quashing the criminal case filed against the Appellant. It is made clear that, under any circumstances, the entire process of quashing the criminal proceedings should be done on/or before 7th June 2019.

7 The next apprehension of the Appellant was that the Consent Terms provide that the parties agree and undertake not to file or lodge any civil or criminal complaints/suits/petitions against each other in future arising from their matrimony. The Appellant suggested that apart from the parties, even the family members of the respective parties be included in clause 1(i). Mr.Vyas, the learned advocate for the Respondent, on instructions of the Respondent, states that the Respondent has

no objection, even if the family members are included within the purview of clause 1(i) of the Consent Terms so as to ensure that neither the parties nor their family members would institute any civil or criminal proceedings against each other in future and arising out of their matrimony. It is, accordingly, so ordered.

8 The Appellant has also requested that these Consent Terms, once executed, be treated as irrevocable and absolute in nature unless there is a willful breach of the Consent Terms mentioned therein by either party. Mr. Vyas has stated that the Respondent has no objection if these Consent Terms are treated as irrevocable and absolute in nature unless there is any breach of any of the terms and conditions of the Consent Terms by either party. It is, accordingly, so ordered.

9 The last apprehension raised by the Appellant was that in clause 1(g) of the Consent Terms, the Appellant has undertaken to destroy the nude photographs as well as mobile phones and pen drive and any other digital mode of storage on which photographs, documents etc. are stored. The Appellant submits that even the Respondent ought to be directed to destroy these photographs, if any, in her possession. Once again Mr. Vyas, on

taking instructions from the Respondent, has stated that if any such photographs are in her possession, same shall also be destroyed by the Respondent. This statement is also accepted as an undertaking to this court. It is clarified that the mobile phones, CDs, pen drives etc given in the custody of the Trial Court shall also be destroyed by the Trial Court on the signing of these Consent Terms.

10 Both the parties have signed these Consent Terms before us and have acknowledged that they have read and understood the terms of the Consent Terms and that they have been entered into with their free will and consent. The Consent Terms are taken on record and marked "X" for identification. The undertakings given in the Consent Terms are accepted. There shall be decree of divorce by mutual consent u/s.13(B) of the Hindu Marriage Act, 1955 in terms of the Consent Terms and in addition to what we have stated earlier in this order. The Consent Terms taken on record read thus:

CONSENT TERMS

The Petitioner and the Respondent abovenamed have settled all the disputes relating to their matrimony as follows:

- 1 That the parties herein, during the pendency of

the present appeal have decided to amicably settle the matrimonial dispute between them by seeking divorce by mutual consent on following terms and conditions –

- a That the marriage between the Appellant and the Respondent dated 6th July, 2011, shall stand dissolved by a decree of divorce by mutual consent on the signing of this consent terms.
- b That the Respondent agrees not to claim any permanent maintenance or alimony from the Appellant in future. That thus, the Respondent waived her right to claim maintenance or alimony from the Appellant.
- c That the Respondent agrees and undertakes not to claim her Streedhan, in future, as decreed by the Hon'ble Family Court, Pune, vide its Judgment and Decree dated 3rd February, 2018.
- d That the Respondent had lodged a criminal complaint against the Appellant and his family members under sections 420, 406, 504, 506 of Indian Penal Code, 1860, and section 3 and 4 of Dowry Prohibition Act. That the Respondent agrees and undertakes to remain present and give her consent for quashing of the proceedings of criminal case no. 11009 of 2014 in Writ Petition, bearing No.33899/2015, filed by the Appellant pending before the Hon'ble High Court, Allahabad, on passing of the order of the divorce by mutual consent by this Hon`ble Court

(d) (1) .In the event the Respondent does not appear before the Allahabad High Court, for quashing of the proceedings of criminal case no. 11009 of 2014 in Writ Petition, bearing No.33899/2015, filed by the Appellant pending before the Hon'ble High Court, Allahabad, then the Appellant will have liberty to file Application for recall of this present Consent terms.

- e That the Respondent agrees that the application filed by her before the Hon'ble Family Court, Pune, bearing Civil M.A. No.62/2018, against the Appellant herein shall stand disposed on the order of the mutual consent divorce by this Hon'ble Court.
- f That the Respondent agrees that the execution application filed by her before the Hon'ble Family Court, Pune, bearing Dkt. No.65/2018, against the Appellant herein shall stand disposed on the order of the mutual consent divorce by this Hon'ble Court.
- g That the Appellant agrees that the pen drive containing the nude photographs of the Respondent be destroyed as decreed by the Hon'ble Family Court, Pune, vide its Judgment and Decree dated 3rd February, 2018. That the Appellant and respondent further undertakes to destroy the mobile, CDs, the pen drives and/ or any other form of digital media storage on which copies of said photographs of Respondents are stored or copied, thereof containing the alleged photographs of the Respondent herein.
- h That the parties hereunto have exchanged their respective articles and belongings with each other. That neither party shall claim any right in each others' moveable as well as immoveable properties in future. That the Respondent herein shall not claim any Streedhan against the Appellant in future.
- i That the parties agrees and undertakes unto each other that neither of them will file or lodge any Civil or Criminal complaint/suit/petition against each other in future, arising out of their matrimony.
- j That the parties agrees and undertakes not to interfere in each other's personal as well as professional life in future.

k That the parties hereunto have unconditionally and unequivocally withdrawn the allegations made against each other in all the present and past litigations between them.

l Both the parties agree and confirm that, in the above terms this Hon`ble Court be pleased to pass Decree of dissolution of marriage u/s 13 B of Hindu Marriage act.

In the witness above composition both parties signed this Consent Terms on 13th day of August 2018 and present to the court for disposal of the pending proceedings between them.

11 In view of these Consent Terms and what is stated by us hereinabove, the decree of divorce by mutual consent is hereby granted u/s.13(B) of the Hindu Marriage Act, 1955. Accordingly, the impugned order is substituted by the Consent Terms read along with this order.

12 In view of the Consent Terms already executed between the parties and the decree of divorce being granted pursuant thereto, nothing survives in the Civil Application and same is disposed of accordingly.

13 It is clarified that the Family Court Appeal is kept on 14th June 2019 under the caption “for compliance” to ensure that the Writ Petition filed for quashing of the criminal proceedings in the

Allahabad High Court is allowed, as recorded in the Consent Terms.

14 Place this appeal on board on 14th June 2019 at 2.45 pm. in Chamber, for compliance.

(B. P. COLABAWALLA,J)

(K. K. TATED, J)