

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.12335 OF 2018

WITH

WRIT PETITION NO.14044 OF 2018

Nitin Laxmikant Meher	]	Petitioner
Vs.		
Nilima Nitin Meher	]	Respondent

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Mr. Atul P. Vanarse, learned Counsel for the Petitioner.

Mr. Bhushan Walimbe, learned Counsel for the Respondent.

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CORAM : R.G. KETKAR, J.

DATE : 25th MARCH, 2019.

P.C.

Not on board. At the joint request of learned Counsel for the parties, taken up in the production board.

2. Heard Mr. Vanarse, learned Counsel for the petitioner and Mr. Walimbe, learned Counsel for the respondent in both the Petitions at length.

3. Writ Petition No.12335 of 2018 takes exception to the order dated 27th September, 2018 passed by the learned Joint Civil Judge, Senior Division, Panvel below Exhibit 103 in H.M.P. No.89 of 2012. By that order, the learned trial Judge allowed application Exhibit 103 made by the respondent and directed the petitioner to deposit interim maintenance of Rs.3,00,000/- in the Court on or before next date of hearing. Grievance of the petitioner is that he had filed Petition at Exhibit 95 in the trial Court seeking review of the

common order dated 22nd June, 2017 passed by the learned trial Judge below Exhibit 64 and Exhibit 81. Though, this Review Petition is pending, the learned trial Judge by the impugned order had directed the petitioner to deposit Rs.3,00,000/-.

4. Writ Petition No.14044 of 2018 takes exception to the order dated 14th February, 2017 passed below Exhibit 61 as also the order dated 27th September, 2018 passed below Exhibit 114 by the learned trial Judge. By order dated 14th February, 2017, application Exhibit 61 made by the petitioner for cancelling Vakalatnama filed by Advocate Eknath Chavan for the respondent was rejected. By order dated 27th September, 2018 below Exhibit 114, the learned trial Judge rejected the application for condoning delay in filing the Review Petition.

5. The petitioner had instituted H.M.P. No.89 of 2012 against the respondent in the Court of Joint Civil Judge, Senior Division, Panvel under section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (for short 'Act') claiming divorce on the ground of cruelty. The learned trial Judge awarded interim maintenance @ Rs.12,000/- per month to the respondent. The learned trial Judge also directed the petitioner to deposit interim maintenance of Rs.3,00,000/- till 30th October, 2017.

6. The parties decided to settle the controversy amicably. The parties agreed to convert the Marriage Petition filed by the petitioner into Divorce Petition by mutual consent under section 13-B of the Act. The petitioner has agreed to pay lumpsum amount of Rs.23,00,000/- to the respondent towards permanent alimony. The respondent has agreed that save and except the amount of Rs.23,00,000/-, she will not have any future claim of whatsoever nature against the petitioner.

7. The matter was heard on 19th December, 2018. On that day, the consent terms duly signed by the parties and their Advocates were presented before this Court. Undertakings given by the respective parties were accepted as undertaking to this Court. It was observed that ordinarily Petitions could have been disposed of on the basis of the consent terms. However, the learned Counsel for the parties requested the Court to keep the Petitions pending till 4th March, 2019, since the compliance was to be made upto 1st March, 2019. The respondent was permitted to withdraw Rs.3,00,000/- deposited in this Court forthwith. In terms of clause (5) of the consent terms, the petitioner was required to pay Rs.20,00,000/- to the respondent by way of Banker's Cheque or demand draft before 1st March, 2019. These Banker's Cheques or demand drafts were to be made out in the maiden name of the respondent Nilima Vilas Mekade. The consent terms were marked 'X' for identification.

8. It is not in dispute that the petitioner has deposited Rs.3,00,000/- in this Court. From the office remark, it is evident that the respondent has withdrawn Rs.3,00,000/- on 15th March, 2019. The petitioner has agreed to pay balance amount of Rs.20,00,000/- by way of bankers cheques or demand drafts on or before 1st March, 2019. Upon payment of Rs.20,00,000/- by demand draft and upon compliance of all other terms, the matter was to be placed before this Court for passing order of divorce by mutual consent. The consent terms also provide that in case the amount is not paid on or before 1st March, 2019, consent of the respondent/wife for divorce by mutual consent will automatically come to an end and the money already paid to her shall be adjusted towards the maintenance amount.

9. The matter was placed before this Court on 1st March, 2019 when the learned Counsel for the petitioner produced following bankers cheques drawn on Bank of India, Panvel Branch in the maiden name of the respondent.

<u>Date</u>	<u>Banker's Cheque</u>	<u>Amount</u>
25/2/2019	027945	7,00,000/-
25/2/2019	027946	7,00,000/-
28/2/2019	227952	6,00,000/-

Total: Rs.20,00,000/-

(Rupees Twenty Lacks only)

The petitioner has filed affidavit dated 28th February, 2019 stating therein that he has complied all the terms incorporated in the consent terms. The petitioner has withdrawn the complaints. Thus, the petitioner has complied clauses 5 and 8 of the consent terms. At the time of hearing the Petitions, the respondent made grievance that she was not paid Rs.3,00,000/- as per the order dated 19th December, 2018. She, therefore, sought time. At her request, matter was adjourned to 28th March, 2019. As the petitioner and the respondent are present in the Court today, at the joint request of learned Counsel for the parties, the Petitions were taken up in the production board.

10. I have interacted with the respondent, her Advocate, the petitioner as also his Advocate in the open Court at length. During the course of interaction, the respondent expressed her willingness to give divorce by mutual consent. She also accepted that she has received Rs.3,00,000/- from the Registry. She is, however, not willing to accept the above bankers Cheques drawn in her maiden name. It was, therefore, suggested to her that she accepts the bankers cheques and to that effect, she signs the receipt. The Bankers Cheques will be retained by her Advocate. In case, she changes her mind, she can collect the Bankers Cheques from her Advocate. It was also made clear and explained to her that the Bankers Cheques are valid for a period of three

months from the date of issuance. She has understood the same. She has accepted this suggestion. Accordingly, she has signed the receipt which is taken on record and marked 'Y' for identification.

11. Learned Counsel for the parties seek leave to amend the Divorce Petition filed by the petitioner under section 13(1) (i-a) of the Act into Petition for divorce by mutual consent under section 13-B of the Act. They further submit that it may be made clear that the amendment relates back to the date of filing of the Divorce petition i.e 21st June, 2012.

12. In view thereof, leave to amend the Petition filed under section 13 (1) (i-a) into Petition for divorce by mutual consent under section 13-B of the Act is granted. Amendment shall relate back to the date of filing of the Divorce Petition. The respondent has acknowledged receipt of Bankers Cheques of Rs.20,00,000/-. The same shall be retained by her Advocate. After perusing the consent terms, I am satisfied that the controversy between the parties is lawfully settled in terms of the consent terms. The parties have acted upon the consent terms. The Petitions are, therefore, disposed of in terms of the consent terms. The decree shall be drawn accordingly.

13. The parties to act upon the authenticated copy of this order.

[R.G. KETKAR, J.]