

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FAMILY COURT APPEAL (FCA) NO.69 OF 2014

Keith De'Figueiredo S/o Late Mr.
Ep'Ihm, aged about 45 years, Occup.
Business, R/o The Heaven, Mohan,
Nagar, Nagpur

.... Appellant
(Ori. Respdt.)

...VERSUS...

Mrs. Marie Colette W/o Keith
De'Figueiredo, aged about 37 years,
Occup. : Service, R/o 281, Mohan
Nagar, Nagpur.

.... Respondent
(Ori. Petitioner)

Ms. P. D. Rane, Advocate for the appellant
Shri. A. Mirza, Advocate for the respondent.

CORAM : A. S. CHANDURKAR AND
N. B. SURYAWANSHI, JJ.

DATED : 22/01/2021.

JUDGMENT (Per : N. B. SURYAWANSHI, J.)

This appeal filed by the respondent wife takes exception to the judgment passed by the Family Court No.4, Nagpur in Petition No. A-616 of 2005, thereby dissolving the marriage of the appellant and respondent by decree of divorce under Section 10(X) of the Divorce Act, 1869.

2. Appeal came to be admitted and the same is being heard finally.

3. The respondent wife filed the petition for divorce stating therein that the marriage between appellant and respondent took place on 14.02.1996 as per Roman Catholic Religion and Rights. Daughter Mariana and son Kenan were born out of the wedlock. At the time of marriage, the respondent was doing job at Dubai on contract basis. At the time of marriage, the respondent was in service in St. Joseph Convent as primary school teacher. After the marriage, the appellant went back to join his job at Dubai and within few days, he returned back. Thereafter he was neither doing any job nor searching for any job. He started demanding money from the respondent. The appellant used to doubt the character of the respondent. He used to abuse her even during the pregnancy. He used to assault her and beat her mercilessly. Even after the second child was delivered, the ill treatment at the hands of the appellant continued. The respondent was not permitted to attend the social gatherings and functions as well as religious programmes.

On 25th October, 2005, the appellant got terrible pain in his left hand and blood circulation in his left hand stopped, which resulted in gangarine. He was required to be hospitalized. Though the respondent took utmost care of the appellant, the appellant used to give threats to kill her. Even after his discharge from the hospital, the threats of the appellant to kill the respondent continued. Ultimately, the respondent was required to take shelter at the place of her mother and she lodged a complaint against the appellant in Sadar Police Station on 08.11.2005.

4. The appellant contested the petition by submitting his written statement and denied all the allegations made by the respondent against him. However, he also prayed for dissolution of marriage and further prayed that his visiting rights with the children be continued.

5. The Family Court after recording the evidence of the parties was pleased to partly allow the petition and directed dissolution of marriage between the appellant and respondent under Section 10(X) of

the Divorce Act, 1869. The appellant was further directed to pay maintenance at Rs.750/- per month to the daughter Mariana and Rs.600/- per month to the son Kenan from the date of presentation of the petition. The appellant has challenged this judgment by the present appeal.

6. During the pendency of the present appeal, the parties have arrived at a settlement and agreed that the decree of divorce passed by the Family Court may be converted into a decree of divorce by mutual consent. Affidavits to that effect have been filed by the appellant and the respondent. It is averred by the respondent that the appellant has already paid the entire maintenance as per the orders passed by the Court and no arrears of maintenance are remaining. The respondent in her affidavit has withdrawn all the allegations made in the divorce proceedings filed before the Family Court and has given consent for dissolution of marriage by a decree of divorce by mutual consent.

7. Considering the material on record and particularly the affidavits filed by the appellant and respondent, following point arises for determination :

Whether in view of withdrawal of allegations made in the divorce proceedings, the appellant and respondent are entitled for a decree of mutual consent divorce under Section 10-A of the Divorce Act, 1869 ?

8. Heard learned advocates for the parties. Perused the record.

9. Both the learned advocates representing the parties submitted that since the parties have amicably settled the matter and as the respondent has filed an affidavit thereby withdrawing all the allegations made against the appellant, a decree of divorce by mutual consent be granted to the parties.

10. It is clear from record that the parties are residing separately since 2005. The children have grown up. It appears to us that due passage of time and separation of appellant and respondent since last

more than 15 years, they have agreed to settle the matter. We are satisfied that there is no collusion between the appellant and respondent in seeking a decree for divorce by mutual consent. In view of the peculiar facts and circumstances of the present case and taking into consideration the affidavits of the parties and as the respondent has withdrawn all the allegations levelled by her in the divorce proceedings, the appeal deserves to be allowed in terms of settlement by granting divorce by mutual consent to the appellant and the respondent, in terms of Section 10-A of the Divorce Act, 1869. Hence, the following order :

i) The decree passed by the Family Court in Petition No. A-616 of 2005 is partly modified to the effect that the marriage between appellant and respondent is dissolved by mutual consent under Section 10-A of the Divorce Act, 1869.

ii) Parties to bear their own costs.

(N. B. SURYAWANSHI, J.) (A. S. CHANDURKAR, J.)