

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.98 OF 2018
WITH
INTERIM APPLICATION NO.3598 OF 2019
WITH
CIVIL APPLICATION NO.8 OF 2019

Dr. Binoj Thomas Manjaly S/o

Dr. Thomas Manjaly

...Appellant

Vs.

Dr. Mary George w/o Dr. Binoj

Thomas D/o. George Joseph

...Respondent

Ms. Parul K. Vedak for the Appellant.

Ms. Shilpa A. Joshi for Respondent.

CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.

DATED : 23 SEPTEMBER 2022.

P. C. :

The Appellant who was the Petitioner in Petition No.A-1597 of 2017 and D-75 of 2017 has filed this Appeal challenging the order passed in these Petitions. The Petitioner has challenged the order passed by the Family Court, Bandra on 8 February 2018 in Petition A-1597 of 2017 to the extent of rejecting the divorce Petition. The

petition came up on board on 14 August 2018. The same was admitted. Ad-interim measures in terms of minutes of the order was arrived at. Thereafter on 24 August 2022, the following order came to be passed:

"1. The respondent-wife is personally present before this Court. It is submitted before this Court that the parties have arrived at settlement and the terms of settlement under caption 'Consent terms for mutual consent divorce' are duly signed by the parties and their respective Counsel. The said document is taken on record and marked 'X' for identification.

2. As these terms refer to the payment part in Clause 9 and 10 and there is certain stipulation of period, the appeal be listed for further direction/orders on 21st September, 2022."

2. Consent Terms were taken on record on that day. The petition came up on board on 21 September 2022 wherein the learned counsel for the parties informed that compliance under the consent terms regarding payment of Rs.70 Lakhs was done and the Demand Draft was also handed over. Thereupon, the aforesaid order came to be passed.

3. Learned counsel for the parties jointly requested that the appeal be disposed of in terms of the Consent Terms stating that all compliance have been done.

4. We have gone through the Consent Terms. We do not find anything unconscionable as not to accept the same. For sake of convenience the Consent Terms are reproduced as follows:

**"CONSENT TERMS FOR MUTUAL CONSENT
DIVORCE"**

The Appellant (husband) and the Respondent (wife)have amicably settled the matrimonial dispute and have arrived at the following consent terms:

The Appellant and Respondent are collectively referred to as 'Parties' and individually referred to as 'Party'.

1. That the marriage between the Parties was solemnized on 18 th day of October, 2010 at Kerala as per customs, rites and ceremonies followed by the Roman Catholic Syrian Christian Community and they are residing/staying separately since 1 st day of April, 2014;

2. That there is one male issue born out of the said wedlock namely, 'RYAN' , born on 07 th day of February, 2013 and now aged about 09 years. The said child is in care and custody of the Respondent (mother);

3. It is hereby agreed between the parties that their marriage solemnized on 18 th October 2010 shall stand dissolved by a decree of divorce by mutual consent under the provision of Section 10A of Indian Divorce Act, 1869, as amended. The consent terms are being filed in the Family Court Appeal and it is agreed that this Hon'ble Court shall pass a Decree of Divorce by mutual consent;

4. Both parties undertake that they will continue their consent for mutual consent divorce and undertake not to withdraw the same as long as the consent terms are executed without any exceptions therein;

5. It is hereby agreed between the parties that they shall withdraw all the allegations that have been made against each other in the various proceedings before Ld. Courts below and before Hon'ble High Court, Bombay. The Parties agree, undertake and declare to unconditionally withdraw all and

whatever allegations made by them against each other in various lawsuit filed by the Parties against each other, pending or disposed off, including in the legal correspondences exchanged hereto before;

6. *It is agreed between the parties that the permanent custody of minor son 'RYAN' shall remain with the Respondent (mother). Further, all the major decision with respect to the minor son shall be taken by the Respondent (mother), given that she is the legal guardian;*

7. *It is hereby agreed between the Appellant and the Respondent that the Appellant shall not file any proceedings in future in regard to the permanent custody of the minor son Ryan by way of independent proceedings or by way an Appeal against the Decree passed by the Family Court in the custody Petition being M J Petition no D- 75 of 2017;*

8. *It is agreed between the parties that the Appellant(father) and his parents shall have physical access/visitation rights of minor son 'RYAN' whenever Appellant and his parents visit Mumbai, Maharashtra, India with prior intimation of one month and with due consideration to the convenience schedule and academic activities of the child. It is agreed between the Parties that neither Party shall persuade or vitiate the mind of minor child against each other through any form of tutoring/brainwashing;*

9. *It is agreed by and between the parties that the Appellant will pay Rs.90,00,000/- (Rupees Ninety Lakhs Only) to the Respondent in full and final one time settlement of Respondent's claim for permanent alimony and maintenance and/or maintenance / residence / claim of whatsoever nature which is including but not limited to arrears in maintenance and/or interim maintenance and/or any nature of Maintenance and/or any nature of compensation passed and/or confirmed by any order/judgement in favour of Respondent and/or minor son,*

“RYAN “by various Ld.Courts and also inclusive of Respondent's and/or minor son, “RYAN’s” claim for past, present and future maintenance of whatsoever nature, i.e., living expenses, education expenses, higher education expenses, medical expenses, etc;

10. It is further agreed between the Parties that the said amount of Rs.90,00,000/- (Rupees Ninety Lakhs Only), being in full and final settlement, as mentioned in clause 9 above, shall be paid to Respondent by the Appellant in the following manner.

11. That after tendering these consent terms before the Hon’ble B’bay High Court, the Appellant will transfer Rs 20,00,000/- (Rupees Twenty Lakhs Only) to the HDFC Bank account number 50100550605840 (Chembur Central Avenue Branch, IFSC Code: HDFC0000013) opened on 04/08/2022 in the name of minor son, “Ryan Binoj Manjaly” as and by way of claim for past, present and future maintenance of whatsoever nature, i.e., living expenses, education expenses, higher education expenses, medical expenses, etc. The Respondent will create a Fixed Deposit of the said amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) of which minor son, “Ryan” will be the sole beneficiary. The said Fixed Deposit shall be for a period of 8 1/2 years, i.e. up to 7th February 2031 and the Respondent shall not prematurely withdraw the Fixed Deposit before the maturity date;

12. However, notwithstanding anything contained in this Consent Terms, if the Respondent, after receiving Rs.20,00,000/- (Rupees Twenty Lakhs Only) as abovementioned, for any reasons and/or under any circumstances withdraws her consent from the Mutual Consent Divorce which has been agreed between the Parties under clause 3 and 4 of these Consent Terms, then, the Respondent shall be liable and/or obligated in any condition and/or circumstances to return to the Appellant

Rs.20,00,000/- (Rupees Twenty Lakhs Only) within a month from the date of her such withdrawal from Mutual Consent Divorce. Further, if the Fixed Deposit Certificate is issued by the concerned bank as above- mentioned in the name of the minor son and, thereafter, the Respondent withdraw her consent from Mutual Consent Divorce, then in such condition, either the Respondent shall be liable to pay Rs.20,00,000/- (Rupees Twenty Lakhs Only) from her pocket to the Appellant or may break the aforesaid Fixed Deposit and bear all the cost of breaking the said Fixed Deposit and, furthermore, if required, add the amount from her pocket to complete the amount of Rs.20,00,000/- (Rupees Twenty Lakhs Only) to pay the said amount to the Appellant within a month from the said withdrawal of her consent;

13. That the Respondent's name will stand as a nominee on the said Fixed Deposit of Rs. 20,00,000/- (Rs. Twenty Lakhs Only) in the name of minor son Ryan Binoj Manjaly and the accrued interest on the said Fixed Deposit maybe used by the Respondent towards the educational, living and medical expenses of the minor son. Further, the Respondent on behalf of herself and minor son 'RYAN' agrees, confirms and undertakes not to claim maintenance of whatsoever nature with respect to herself and minor son 'RYAN' in the future and/or in changed circumstances after payment of the total amount of Rs. 90,00,000/- (Rs Ninety lakhs only) i.e. Rs. 20,00,000 Fixed Deposit in the name of minor son and Rs. 70,00,000/- Demand Draft in the name of Respondent. The copy of the said Fixed Deposit created in favour of minor son, "Ryan" by the Respondent at behest of the Applicant as per the said consent terms will be given to the Appellant;

14. The Appellant will further tender a Demand Draft in the name of the Respondent, i.e., Mary George Mandapathil of Rs. 70,00,000/- (Rs. Seventy Lakhs Only) on the date this

Hon'ble Court is pleased to grant a decree of divorce to the parties. That the Decree of Divorce shall not be granted unless the total amount of Rs 90,00,000/- is paid to the Respondent as agreed in these consent terms. That the said amount will be in full and final one time settlement of Respondent's claim for permanent alimony and maintenance and/or maintenance / residence / claim of whatsoever nature which is including but not limited to arrears in maintenance and/or interim maintenance and/or any nature of Maintenance and/or any nature of compensation passed and/or confirmed by any order/judgement in favour of Respondent and/or minor son, "RYAN" by various Ld. Courts and also inclusive of Respondent's and/or minor son, "RYAN's" claim for past, present and future maintenance of whatsoever nature, i.e., living expenses, education expenses, higher education expenses, medical expenses, etc;

15. It is hereby agreed between the Appellant and the Respondent that on receiving this amount of Rs 90,00,000/- (ninety lakhs only), the Respondent and the minor son shall have no claim of whatsoever nature against the Appellant and thereafter it shall be the sole responsibility of the Respondent to look after and manage the expenses of the son Ryan in every respect including his higher education;

16. It is furthermore agreed between the Parties that on receiving the aforesaid Demand Draft/Fixed Deposit the Respondent shall give her acknowledgement in writing for the same and the said acknowledgement shall be part of the proceedings before this Hon'ble Court;

17. It is hereby agreed between the Appellant and the Respondent that the Respondent shall be at absolute liberty to use the money received by way of lumpsum settlement in the manner which she desires for herself and the minor son for their maintenance and residence and all other purposes. It is hereby agreed between the Appellant and the Respondent that the Respondent on behalf of herself and minor son

'RYAN' agrees, confirms and undertakes not to claim maintenance of whatsoever nature with respect to herself and minor son 'RYAN' in the future and/or in changed circumstances. The Respondent shall be solely responsible for the expenses of the minor son Ryan in regard to his food shelter and clothing and education including higher education

after receiving the amount of Rs 90,00,000/- from the Appellant;

18. It is agreed by and between the parties that pursuant to the receipt of Rs.90,00,000/- (Rupees Ninety Lakhs Only) by Respondent, the Parties hereby waive their rights, if any, to claim maintenance of whatsoever nature from each other and undertake not to claim any amount hereafter even in the future and/or in changed circumstances;

19. The Parties hereby declare that both of them are in possession of their respective belongings, jewellery, ornaments, articles, clothes, properties and things including but not limited to Stridhan. In view thereof, the Parties have unconditionally agreed that, hereinafter no claims shall survive by or against each other in respect of the same of whatsoever nature in present or in future or even in changed circumstances in future;

20. It is hereby agreed between the Parties that the savings bank account in State Bank of India held jointly by the parties at Ernakulam, Kerala shall be closed by them by giving a letter to the bank and the funds in the said bank account being account number 31668143610 shall be transferred to the bank account of the Respondent in Mumbai being Indian Bank Account number 771173306 (Tilak Nagar Mumbai Branch, IFSC Code: IDIB000C060);

21. The Parties further agree and declare that neither the Parties nor their respective family members have any claim, right, title or interest nor shall they claim any, right, title or interest, of whatsoever nature, against each other for any

article or any material thing including but not limited to Stridhan exchanged or given during marriage or thereafter at any time;

22. It is agreed by and between the Parties that they shall hereafter not claim any right, title or interest or seek division, including by metes and bounds, in respect of any movable or immovable property of the other, howsoever acquired, for past, present or future or even under changed circumstances in future after signing these Consent Terms;

23. It is agreed and declared and undertaken by the Respondent that the judgement dated 3rd August 2019 passed by the Ld. Metropolitan Magistrate 18th Court, Girgaon, Mumbai in Case No. 1844/DV/2015 as well as the Judgement dated 21st February 2022 passed by the Ld. City Civil and Sessions Court, Mumbai in PWDV Cri. Appeal No. 698 of 2019 will be infructuous after the grant of Decree of Divorce by mutual consent. Agreed and declared that the Respondent undertakes and agrees not to execute the judgement dated 3rd August 2019 passed by the Ld. Metropolitan Magistrate 18th Court, Girgaon, Mumbai in Case No. 1844/DV/2015 as well as the Judgement dated 21st February 2022 passed by the Ld. City Civil and Sessions Court, Mumbai in PWDV Cri. Appeal No. 698 of 2019 annexed herewith against the Appellant and his parents in any manner whatsoever after grant of the decree of Divorce by mutual consent;

24. It is hereby agreed between the Appellant and the Respondent that the Appellant shall continue to pay the maintenance @ Rs 25,000/- per month for the minor son till such time that entire agreed amount of Rs 90,00,000/- (ninety lakhs only) is paid to the Respondent. The Appellant shall not be liable to any amount as per the Order passed by the Ld Sessions Court dated 21st February 2022 after he pays the lumpsum amount of Rs.90,00,000/- (ninety lakhs). The Appellant shall not be liable to pay the amount of

maintenance @ Rs 25,000/- per month after he pays the lumpsum amount of Rs 90,00,000/- (ninety lakhs) for the Respondent and the minor son;

25. It is hereby agreed between the Appellant and the Respondent that the Appellant shall not claim the maintenance already paid to the Respondent and the minor son. The agreed amount of 90,00,000/- (ninety lakhs) is by way of full and final settlement and does not include previous payments made to the Respondent;

26. Agreed and declared that all cases pending in any Courts, any NCs filed, Police complaints filed, proceedings before a Magistrate, etc by the Appellant and the Respondent will stand withdrawn automatically on decree of mutual consent being granted;

27. The Respondent hereby, in view of the this amicable settlement, agrees and undertakes to withdraw Miscellaneous Case bearing No. 4247 of 2019 in C.C. No. 1844/DV/2015 filed by the Respondent, herein, on 26/09/2019 against the Appellant, herein, before the Ld. Addl. Chief Metropolitan Magistrate's 18th Court at Girgaon, Mumbai and file the certified copy of application for withdrawal of Order before this Court simultaneously on receiving the agreed amount of Rs 90,00,000/- (ninety lakhs only) and before the Divorce is decreed; The Ld MM Court at Girgaon shall be informed of the filing of the consent terms in the Hon'ble High Court by the parties;

28. The Parties agree and undertake that, the said Consent terms are binding on them until Divorce is decreed and after signing these Consent Terms, they shall not initiate any proceedings either civil or criminal against each other and/or the relatives of either Party with regard to their marital disputes, maintenance and custody/visitation rights to minor son, "RYAN". Further, Parties hereto confirm and declare that they shall not initiate any proceedings either civil or criminal against each other and/or against their family members

and/or relatives of each other in respect of their marital disputes, including maintenance, custody/visitation even in changed circumstances in future;

29. The Parties agree and undertake that, from the date of signing of these Consent Terms, they can lead their own life in whichever manner they so desire and that they shall not interfere in each other's personal or professional / business life or create any hindrance to each other's families, friends and relatives and/or disturb each other's life in anyway and shall not, under any circumstance, cause any type of damage whatsoever to each other and that they, their relatives, friends etc. and shall maintain confidentiality at all times;

30. The Parties agree and undertake that, from the date of signing of these Consent Terms, they shall not make any derogatory or defaming remarks about each other, now or in the future or even under changed circumstances in future, and they withdraw unconditionally, all allegations, if any, made against each other;

31. The Parties agree and undertake to co-operate with each other in executing all the necessary documents, forms, writings and applications if any to put an end to their marriage amicably and peacefully. The Parties shall co-operate with each other in carrying out the consent terms;

32. In view of the above one time full and final settlement, the Parties hereby agree, confirm and declare that now there is no claim and/or dues of whatsoever nature against each other in any manner whatsoever at present or in future or even in the changed circumstances in the future;

33. The Parties hereinabove have signed the Consent Terms voluntarily with their own accord and undertakes to abide by the same;

34. That the Appellant has filed the present Appeal through his constituted attorney, i.e. his father, Dr. Thomas Manjaly and he has signed the present consent terms on behalf of the Appellant. The Appellant and/or the Constituted Attorney,

*i.e. Dr. Thomas Manjaly undertakes to be present before this Hon'ble Court via video-conferencing, for the purpose of verification, if deemed necessary by this Hon'ble Court,
35. Decree be drawn in terms of these consent terms."*

5. In the light of what is stated above and that the compliances having been done, the appeal is allowed in above terms and the judgment and order dated 8 February 2018 passed by the Family Court, Bandra in Petition A-1597 of 2017 stands modified as above, and decree be drawn accordingly as Consent decree as per the law.

6. The Appeal is accordingly disposed of. Interim and Civil Applications are also disposed of.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)