

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO.78 OF 2022
WITH
INTERIM APPLICATION NO.18873 OF 2022**

Nutan Tejas Ahire alias

Nutan Suresh Ghode

.. Appellant/Applicant

Versus

Tejas Kalu Ahire

.. Respondent

.....

Mr.Pankaj Pandey a/w. Smit Nagda, Advocate for the
Appellant/Applicant.

Mr.Rohan Mahadik, Ms.Upasana Pandey i/b. M/s.The Juris Partners,
Advocate for the Respondent.

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**CORAM : NITIN JAMDAR AND
SHARMILA U. DESHMUKH, JJ.**

DATED : 06 October 2022.

P.C. :

Heard learned counsel for the parties.

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2 The Appeal is admitted. Since the Appeal arises from a very
limited issue, the same is taken up for disposal forthwith.

Rajeshri Aher

3 The Appellant is the mother of minor girl Unnati. The Respondent is her husband and Unnati's father.

4 Unnati is five years old. The parties entered into Consent Terms dated 27 January 2020, before the Family Court, Thane in Petition No.F – 127 of 2020. The same was taken on record and Application was disposed of by Judgment and order dated 27 January 2020, and decree of divorce under Section 13 B of the Hindu Marriage Act was granted. The Respondent moved an Application for execution of the decree on 26 July 2021, upon which the impugned order is passed on 11 August 2022. By the impugned order, the learned Family Court directed the Petitioner to hand over the custody of daughter Unnati to Respondent within a period of 15 day, and further directions regarding her education were issued.

5 It is grievance of the Appellant is that the order passed in execution goes beyond the decree and permanent custody was never contemplated and also the impugned order suffers from various factual errors. The learned counsel for the Respondent sought to contend that as the Appellant was not honouring the consent decree, the execution application had to be filed.

6 Firstly, what is before us is the Appeal arising out of the consent decree. Secondly, we note that the parties have arrived at a mutual agreement regarding the visitation rights in respect of the child Unnati. It is not been shown to us that there is any directions of handing over of permanent custody. It is settled that what is not provided in the decree cannot be executed through execution proceedings. Therefore, the impugned order where it directs the Appellant to execute the obligation of the Appellant under the consent decree would be the one which is specifically provided in the consent decree.

7 As regards what is stated in the consent decree, the learned counsel for the Appellant states that the Appellant was never averse to comply with that part of the consent decree, which fact is disputed by the Respondents.

8 In view of the fact that since what is provided in the consent decree can be executed, the following order will serve the interest of justice.

9 The Appeal is disposed of clarifying that the impugned

order passed by the Family Court, directing Appellant to execute the decree enforcing obligation of the Appellant would be construed, as those obligations which are specifically provided in the consent decree.

10 As regard other aspects of the matters are concerned, if any need arises, parties have options of approaching the original Court.

11 The Appeal, is accordingly, disposed of on the above terms.

12 Interim Applications stands disposed of.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.