

JPP

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

FAMILY COURT APPEAL NO. 30 OF 2020

Vishwajeet Gaurishankar Roy

... Appellant

V/s.

Varsha Yadav

... Respondent

Mr. S.S. Sayyed with Hubab Sayyed and Sahil Sayyed i/b. Sayyed Associates for the Appellant

Mr. Mahesh Vishwakarma for the Respondent

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

DATE : 12 OCTOBER 2022

P.C. :-

Heard the learned Counsel for the parties.

2. The Appeal is admitted and is taken up for consideration forthwith in the light of the order that is proposed to be passed.

3. The Appellant – husband had filed the Appeal challenging the judgment and order passed by the Family Court, Bandra dismissing the Petition No. A-640 of 2014 filed by the Appellant under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955.

4. During the pendency of the Appeal, the parties were referred for mediation. Report of the learned Mediator is placed on record where it is stated that the parties are agreed for divorce by mutual consent on terms and conditions settled between them.

5. The report of the Mediator is taken on record and marked 'X'.

6. The learned Counsel for the parties have tendered the consent terms which are taken on record and marked 'X-1'. The consent terms are reproduced herein below for ready reference :-

“The Parties to the present proceedings were referred to mediation by virtue of the Order of this Hon’ble Court dated 11.08.2022 to explore the possibility of an amicable settlement through mediation process. The Hon’ble Bench consisted of the Hon’ble Justice Prasanna B. Varale and the Hon’ble Justice Kishore C. Sant. The Hon’ble Bench was pleased to appoint Advocate Kavita Solunke as the mediator.

Pursuant to the protracted mutual discussions between the parties held in the presence of the Mediator on 01.10.2022, both the parties have agreed to resolve all their disputes and put an end to the matter through decree of divorce as well as consequent litigations between the parties pending before different Courts including the present appeal & case no. RCC/1101552/2012 lodged by Nerul Police Station against the Appellant and his parents and pending before the 12th Jt. CJJD & JMFC, Vashi, Navi Mumbai, on the following terms and conditions;

1. The Appellant Husband will pay a lump sum amount of Rs. 11,00,000/- (Rupees Eleven Lakh Only) as a one-time Permanent Settlement amount towards lifetime alimony to Varsha Yadav & lifetime expenses for his daughter including expenses of her education, maintenance & marriage. The Demand draft drawn in favour of Dr. Varsha Yadav for the aforesaid amount of Rs. 11,00,000/- (Rupees Eleven Lakhs Only) shall be handed over to the Respondent on or before 20/10/2022. In case there is any financial difficulty faced by the daughter in future, the Appellant shall do whatever is possible having regard to his capacity.

2. On receipt of the amount by the Respondent, Dr. Varsha Yadav, she shall cease to have any interest in any proceedings initiated at her instance and this Appeal and it shall be the endeavor/legal obligation of both the parties to see that all the proceedings are disposed of in view of this one-time settlement.

3. It has been agreed between the Appellant and the Respondent and their respective Advocates, that the appellant shall file a Petition U/s. 482 of the CrPC before the Hon'ble High Court, in which the Respondent shall file a consent Affidavit, and both, the Appellant & the Respondent shall see that the Criminal Proceedings Pending as case no. RCC/1101552/2012, before the 12th Jt. CJJD & JMFC, Vashi, Navi Mumbai are quashed by the Hon'ble High Court in its inherent jurisdiction.

4. The Appellant shall cease to be the Husband of the respondent and they shall no more be Husband & Wife. It has been agreed that the permanent custody of the minor daughter will forever remain with the Respondent.

5. It has been empathetically agreed by and between the Appellant & the Respondent in view of the foregoing one-time settlement, there shall remain no dispute or difference whatsoever between the parties and there shall not remain any claim of whatsoever nature by both of them against each other in view of this full and final settlement.

6. Both the parties have arrived at the aforesaid consent terms with their own free will and desire without there being any undue influence, force and/or coercion or pressure of whatsoever nature upon them.

7. This Hon'ble Court is most humbly prayed by both the parties to pass appropriate order declaring divorce by mutual consent between Appellant & the Respondent."

7. The learned Counsel for the parties jointly pray that the Appeal be allowed in terms of the consent terms and a decree of the Family Court be modified accordingly.

8. We have perused the consent terms and the terms agreed before the learned Mediator.

9. The parties have agreed that the Appellant would pay an amount of Rs.11,00,000/- as one time permanent settlement towards the alimony to the Respondent – wife and expenses for the education, maintenance and marriage of the daughter Ashita.

10. The learned Counsel for the Appellant states that the demand draft of Rs.11,00,000/- is handed over to the Respondent – wife in the Court today, which is confirmed by the learned Counsel for the Respondent – wife.

11. We note that there is a difference between the consent terms signed before the learned Mediator and the consent terms tendered before us. The learned Counsel for the parties state that as regard the permanent custody of the daughter Ashita, same will be with the Respondent – wife. However, the clause which they had agreed before the learned Mediator that the Appellant will not try to meet or have any contact with the daughter is not being included in the consent terms filed in this Appeal, as such clause would be unconscionable and does not take care of the wishes of the minor.

12. The learned Counsel for the parties also point out that as regard the terms of the consent terms regarding one time payment of Rs.11,00,000/- which includes long time expenses for the daughter as regard the education, maintenance and marriage does not mean that even if there is a financial hardship is to be fallen on the daughter in future, the Appellant will not financially help the daughter. The Appellant – husband states who is grateful that in case there is any general financial hardship faced by the daughter in future, the Appellant shall try to do whatever is possible within his financial measures.

13. As regard the other terms are concerned, we do not find anything unconscionable in the same and the same are accepted.

14. The Appeal is accordingly disposed of in terms of the consent terms. The decree of the Family Court stands modified accordingly.

15. The marriage between the parties stands dissolved by way of mutual consent under Section 13B of the Hindu Marriage Act.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.