

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

FAMILY COURT APPEAL NO.62 OF 2018

Smt. Chetana W/o Tushar Nikhade
@ Chetana D/o Arvind Raut (maiden name)
Aged about 29 years,
R/o. C/o. Arvind Raut, Shivaji Ward,
Near Savaldas Oil Mill,
Hinganghat, District Wardha

...APPELLANT

VERSUS

Tushar s/o Vasantryao Nikhade
Aged about 33 years,
Occupation – Service,
R/o. Flat No.54, Preston Wood Society,
Vishal Nagar, Pimple Nilakh,
Near Bajaj Service Center,
Pune - 27

...RESPONDENT

Shri M.R. Joharapurkar, Advocate for the appellant.
Ms Swati Potey, Advocate for the respondent.

CORAM : AVINASH G. GHAROTE & URMILA JOSHI-PHALKE, JJ.
DATE : NOVEMBER 16, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. This appeal has been filed by the appellant-wife against the judgment and order dated 12/09/2017 passed by the Family Court

No.3, Nagpur in Petition No.A-566/2014 by which the marriage between the parties was solemnized on 05/05/2013 is dissolved by decree of divorce from 12/09/2017.

3. The marriage of the appellant and the respondent was solemnized on 05/05/2013 at Nagpur. After the marriage, dispute arose between the husband and wife, therefore, the respondent-husband had filed petition for divorce on the ground of cruelty. Said judgment and order is challenged before this Court by filing this appeal. During the pendency of the appeal considering there is an element of settlement by order dated 24/07/2019, the matter was referred for mediation. The parties have settled their dispute before the Mediator and agreed to dissolve their marriage by obtaining decree of divorce by mutual consent. The settlement agreement is filed on record. The consent terms are reproduced for the reference :

“a. The party No.2 is ready to give permanent alimony of Rs.17,00,000/- (Rupees Seventeen Lakhs Only) to the Party No.1 which includes past, present & future maintenance and all monetary claims. The party No.2 shall pay the above mentioned amount on or before 17th October, 2022. After accepting this amount the party no.1 shall not claim any kind of maintenance against the party no.2. The party no.1 will accept this amount towards full and final settlement. The Party No.2 shall deposit the above mentioned amount by way of Demand Drafts/Cheques in the registry of High Court, at Nagpur. The party No.1 will have liberty to withdraw above mentioned amount after withdrawal of the cases which she has filed under the Domestic violence Act i.e. Misc. Cri.

Application No.600063/2014 pending before learned Junior Division and J.M.F.C. Hinganghat & after setting aside/quashing of the Criminal Case under section 498(A) of I.P.C. bearing number R.C.C. No.304073/2015 pending before the Chief Judicial Magistrate, Nagpur.

b. The Party No.1 shall co-operate in setting aside/quashing the R.C.C. No.304073/2015 which is registered against the Party No.2 along with other three relatives upon party No.2 filing petition under section 482 of Cri. Procedure Code before Hon'ble High Court, Nagpur at the earliest.

c. There is no issue regarding Stree Dhan & others articles between party No.1 & party No.2.

d. That both the Parties shall not interfere in each others life in future.

e. The party No.1 shall withdraw the Writ Petition No. 403/2016 which is pending before the Hon'ble High Court, Nagpur. Like wise both parties agree to withdraw whatever cases pending against each other unconditionally as agreed herein.

f. That both the Party No.1 and 2 shall withdraw the allegations levelled against each other and they will not make any allegations against each other in future.

g. That both the Parties agree not to file any proceedings or level any allegations against each other and against their family members in future. Both the parties shall never interfere in each other's personal, professional or public life, in any form, including any access to or interference in each other's social networking through internet/What's app, instagram, facebook, etc.

h. There is no force, fraud misrepresentation of facts or coercion in agreeing these consent terms. Both Parties have agreed to these consent terms on their own free will."

4. In view of consent terms, the appellant and the respondent appeared before this Court on 11/11/2022. We personally interacted with them. They agreed to terms and conditions of the settlement.

5. The Hon'ble Supreme Court in the case of *Alok Mishra Vs. Garima Mishra AIR 2009 SC (Supp) 2719*, during the pendency of transfer petition, allowed divorce by way of mutual consent by virtue of settlement between the parties.

6. In the present appeal, in view of settlement between the parties we are of the considered view that the terms and conditions of the settlement agreement are to be accepted and the parties be allowed to terminate their matrimonial cord forever by mutual consent, since they are separated for more than 8 years.

7. In view of settlement reached between the parties we set aside the impugned judgment and order dated 12/09/2017 passed by the Family Court No.3, Nagpur in Petition No.A-566/2014 and disposed of this appeal in terms of settlement.

8. In view of order dated 19/10/2022, the respondent-husband directed to deposit Rs.17,00,000/- (Rs. Seventeen lacs) in the Registry of this Court, which shall be appropriated by the wife, subject to finalization of the compromise, and further order/s of the Courts. As per the said order, respondent-husband had deposited the amount of Rs.17,00,000/- (Rs. Seventeen lacs) in the Registry of this Court. In

view of the settlement, the wife is entitled to withdraw the said amount on compliance of all the terms and conditions of the settlement agreement without further reference to the Court.

9. In such circumstances, we pass the following order :

- (a) The judgment and decree dated 12/09/2017 passed by the Family Court No.3, Nagpur in Petition No.A-566/2014 is quashed and set aside.
- (b) The appeal is allowed in terms of compromise by passing decree of divorce by mutual consent.
- (c) The marriage between the parties stands dissolved.
- (d) The respondent-wife is at liberty to withdraw the amount of Rs.17,00,000/- (Rs. Seventeen lacs) on compliance of all the terms and conditions of the settlement agreement without further reference to the Court.
- (e) Decree be drawn accordingly.

10. Rule is made absolute in the aforesaid terms.

(URMILA JOSHI-PHALKE, J.)

(AVINASH G. GHAROTE, J.)