

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

910 FAMILY COURT APPEAL NO.57 OF 2023
WITH CA/8634/2023 IN FCA/57/2023

SACHIN PANDURANG NISARGAN
VERSUS
PUSHPA SACHIN NISARGAN

Mr.N.D.Sonavane, Advocate for the Appellant.

(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.)

DATE : AUGUST 4, 2023

PER COURT :

1. On 25.07.2023, we had passed the following order :-

"1. We have heard the learned Advocate for the Appellant. Prima facie, we are of the view that, there are no grounds raised indicating that any force, coercion or duress was exerted on the Appellant to file a common petition along with his wife for seeking divorce by mutual consent. The proceeding lodged on 21/09/2022, has been allowed by the order dated 17/04/2023 and the mutual consent for seeking divorce has been recorded. The Appellant has not even whispered before the Family Court that, the consent was extended without his free will.

2. In the above facts and circumstances, the Appeal would

not be maintainable under Section 19(2) of the Family Courts Act, 1984.

3. *The learned Advocate for the Appellant seeks time to research, as to what would be the proceedings, that can be initiated by the Appellant.*

4. *Stand over to 04/08/2023 for 'passing orders'."*

2. The learned Advocate for the Appellant relies upon a judgment delivered by the Delhi High Court in the matter of **Anshu Malhotra Versus Mukesh Malhotra (MANU/DE/1157/2020)** (nowhere reported) wherein it is held in paragraph Nos. 22 and 23 as under :-

"22. As would immediately become obvious, the law with respect to consent decree is, that though appeal is not maintainable there against but the remedy for a eventuality of consent having been obtained forcefully or fraudulently or having been obtained by misrepresentation is, by applying to the same court. We do not find any reason why the said principle of law of general application should not follow qua decree of divorce by mutual consent when the grounds of appeal are on the basis of facts, which were not before the court which passed the consent decree. It is only the court which passed the consent decree which is capable of going into the said facts and if finds any prima facie merit therein, make inquiry by recording evidence with respect thereto and to thereafter take a final decision. Against such an order, an appeal may lie. We however do not deem it necessary to give a final opinion in this regard. However when the facts on which setting aside of a decree

for divorce by mutual consent are pleaded in the appeal for the first time, it is not in the domain of the appellate court to enter into the inquiry into the said facts and if the same is done, would also deprive the parties of an important right of appeal, by converting the appellate court into a fact finding court.

23. We therefore do not find the appeal to be maintainable and dismiss the same with liberty to the appellant to take steps in accordance with law, if entitled thereto."

3. In view of the above, the learned Advocate for the Appellant submits that he would withdraw this petition and approach the same Family Court with the grounds that have been set out in this appeal, for seeking recalling of the impugned order.

4. In view of the above statement, **this appeal is disposed off**, as withdrawn on instructions.

5. The **civil application** would not survive and **stands disposed off**.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)