

SA Pathan

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

WRIT PETITION NO.5249 OF 2022

Sushma Mohan	... Petitioner
V/s.	
Mohan Sundaresan	... Respondent

Mr. Ram Apte, Sr. Advocate a/w Mr. Mandar Limaye,
for petitioner.

Mr. Amol B. Jagtap, for respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 20, 2023

P.C.:

1. By this writ petition, under Article 227 of the Constitution of India, the petitioner/wife is challenging order passed by the Family Court on an application below *Exhibit 75* filed for recall of consent terms entered between the parties.
2. The petitioner had filed Marriage Petition No.925 of 2016 before the Family Court – 5, Pune for divorce under Section 13 (1) (ia) of Hindu Marriage Act, 1955. On 14 November 2019, the petitioner and respondent amicably settled the matter before the Family Court by way of consent terms dated 14 November 2019.
3. On 19 September 2020, the petitioner filed an application below Exhibit 75 for withdrawal of consent terms.

4. The respondent/husband filed an application below Exhibit 77 for issuing direction to petitioner/wife to comply with consent terms below Exhibit 71.

5. The Trial Court by impugned order dated 10 January 2022 rejected wife's application and allowed respondent/husband application below Exhibit 77. The said order is subject matter of challenge in the present writ petition.

6. Learned Senior Advocate on behalf of the petitioner invited my attention to clause (e) and (f) of the consent terms. According to him, the respondent/husband was under obligation to pay Rs.52,50,000/- initially within 90 days which was extended by further period of 90 days. The period of 180 days expired on 14 May 2020. However, the husband deposited the amount only on 28 February 2022 i.e. after the impugned order. Hence, according to him, the consent terms need to be recalled.

7. Per contra, learned Advocate for the respondent submitted that before expiring of 180 days, Covid-19 pandemic set in. He, therefore, could not deposit amount as the Family Court was being taking only extremely urgent matters and was working in rotational basis. According to him, therefore, consent terms are binding on the petitioner. The reasons mentioned in the application is insufficiency of amount paid by the petitioner which does not entitle her for recalling consent terms.

8. I have heard both sides.

9. Considering the documents on record, it appears that on 14 November 2019 parties arrived at consent terms. As per condition

(e) and (f), the respondent/husband was to pay amount of Rs.52,50,000/- till 15 May 2020. The judicial notice of the fact can be taken that the Courts opened for regular hearing from 20 March 2020, the impugned order passed on 10 January 2022, the respondent deposited the amount only on 28 February 2022. There is no material on record produced by either of the parties that the Nazar department of Family Court was not working during Covid-19 pandemic period.

10. On the contrary, the record indicates that during period of Covid-19 parties filed interlocutory applications and replies through their Advocates. The application filed by the wife is dated 19 September 2020. The reply by the husband is dated 10 December 2020. Application below Exhibit 77 dated 27 October 2020 and reply to application below Exhibit 77 filed by wife on 10 December 2020. Therefore, it appears that parties appeared through their Advocates before the Family Court during Covid-19 pandemic period for ventilation of their rights and obligations; therefore, it does not lie in the mouth of respondent that he had not deposited the amount due to absence of existence of Nazar department of the Family Court. Therefore, it was open for the husband to seek permission to deposit the amount through Advocate during Covid-19 period.

11. Language of clause (e) indicates that initial period of deposit was 90 days and thereafter, 90 days was granted as additional period which shows that the amount was to be deposited within 180 days and not thereafter.

12. Despite filing of application by petitioner on 19 September 2020, for recalling of consent terms, the respondent deposited the amount only after passing of impugned order i.e. 28 February 2022; therefore, I am satisfied that the respondent failed to comply with his obligation created under the consent terms. Therefore, the Family Court was not justified in recalling of order. Hence, pass following order:

- a)** *Exhibit 75 filed by the petitioner for recalling the consent terms is allowed. Exhibit 77 filed by the Respondent for honoring the consent terms is rejected.*
- b)** Considering the facts of the case, the Family Court shall decide the petition as expeditiously as possible.
- c)** During pendency of petition, it shall be open for the respondent/husband to grant consent for divorce as prayed by the wife.
- d)** The respondent is permitted to withdraw the deposited amount of Rs.52,50,000/- along with interest, if any, accrued.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 31 October 2023. The corrections in paragraph 1 and clause 12 (a) are shown italicize.