

Dusane

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

**SECOND APPEAL NO.165 OF 2019
WITH
CIVIL APPLICATION NO. 1622 OF 2018**

Mrs. Sangeeta Chandresh Khandar ...Appellant

V/s.

Mr. Chandresh Nanalal Khandar ...Respondent

Mr. Surin Usgaonkar i/by Mr. Santosh Pandey for
Appellant/Applicant.

Mr. Anil D'Souza for Respondent.

Mrs. Sangeeta C. Khandar, Appellant-present.

Mr. Chandresh Khandar, Respondent-present.

CORAM: MADHAV J. JAMDAR, J.

DATE: 13th JANUARY, 2023

P.C.:

1. Heard Mr. Usgaonkar, learned Counsel appearing for the Appellant and Mr. Anil D'Souza, learned Counsel appearing for the Respondent.

2. Both of them have tendered the Consent Terms entered into between the Appellant and Respondent. The Consent Terms are taken on record and marked "X" for identification.

3. The Appellant and Respondent are present in person. Both of them state that the Consent Terms are arrived at as per the compromise entered into between them. The Appellant, who is present in person states that the Consent Terms are explained to her in Hindi by the learned Advocates appearing for her and the same are acceptable to her.

4. The Respondent is present in person and states that he has gone through the Consent Terms and the Consent Terms are acceptable to him.

5. In view of the Consent Terms, the Marriage Petition No. 12 of 2009 filed by the Respondent-Mr. Chandresh Nanalal Khandar filed for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 against the Appellant-Mrs. Sangeeta Chandresh Khandar is converted into a petition filed under Section 13-B of the Hindu Marriage Act, 1955 seeking divorce by mutual consent.

6. It is admitted position that the Respondent and Appellant are residing separately since 20th October 2008. Therefore, the period of six months as provided in Sub-Section 2 of Section 13-B of the Hindu Marriage Act, 1955 is waived in the facts and circumstances of this case.

7. The Consent Terms reads as under:

CONSENT TERMS

1. The Appellant has filed the above Appeal challenging the Judgment & Decree dated 3rd October 2018 passed by the Learned Additional District Judge-1, Vasai at Vasai in Regular Civil Appeal No. 44 of 2017 which *inter-alia* upheld and confirmed the Order and Judgement of the Civil Judge (SD) Vasai at Vasai dated 11th September 2017 in Marriage Petition No 12 of 2009 resulting in a Decree dated 11th September 2017.

2. That during the hearing and pendency of the above matter and as per the suggestion given in mediation by this Honorable Court, the Appellant and the Respondent have agreed to settle their dispute amicably and take decree of divorce with mutual consent u/s 13-B of Hindu Marriage Act 1955 on the terms and conditions as set out in detail as under:

3. The marriage between the parties hereto was solemnized on 5th February 2007 but there is no issue born out of the said wedlock. The Respondent and Appellant have been residing separately since 20.10.2008.

4. Both the Parties now hereby agree to convert the above stated Marriage Petition No 12 of 2009 into a Petition for Divorce by Mutual Consent U/s 13-B of the Hindu Marriage Act 1955;

5. Appellant has been residing in the residential flat situated at C-Wing , 402, Gokul Heights CHS Ltd, Gokul Township, Agarwal Garden, Bolinj, Virar (west) which is owned by the Respondent (hereinafter referred to as "**the said residential flat**" for brevity and convenience). The Respondent agrees and undertakes to transfer his rights, title and interests in the said residential flat being Flat No 402, C- Wing, Gokul Heights CHS Ltd, Gokul Township, Agarwal Garden, Bolinj, Virar (West) along with his interests in the Shares of the said Gokul Heights Cooperative Housing Society in favour of the Appellant, pursuant to the consent terms herein, by executing all the

relevant and necessary Documents, Deeds or Gift Deed and Register the same in favour of appellant in the office of the Sub-registrar of Assurances District Palghar, Maharashtra, within 8 (Eight) weeks from the date of signing of the Consent Terms herein and filing the same before this Honorable Court.

6. In addition to what is stated in the Paragraph (5) above, the Respondent agrees and undertakes to fully repay the Bank Loan pertaining to the said residential flat, prior to transferring the said residential flat i.e. C- Wing, 402, Gokul Heights, Agarwal Garden, Bolinj, Virar (W) in the name of Appellant. The Respondent further undertakes that he shall obtain "NO DUE CERIFICATE", Bank N.O.C., original Title Deeds and Original Share Certificate/s in respect of the said flat from the Bankers and handover the same to the appellant to transfer the said residential flat in her name of Appellant within 6 (Six) weeks from the signing of Consent Terms and filing of the same before this Honorable court.

7. In addition to what is said in the Paragraphs (5) and (6) above, the Respondent further agrees and undertakes to pay a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) by D.D./RTGS as and by way of one-time lump sum alimony to the Appellant within a period of 8 (Eight) weeks from date of signing of the Consent Terms and filing of the same before this Honorable Court.

8. In addition to what is said in the Paragraphs (5) to (7) above, the Respondent agrees and undertakes to pay to the Housing Society a maximum sum of Rs. 1,00,000/- (Rupees One Lakh only) towards arrears of the Society Maintenance Charges by D.D. within a period of 6 (Six) weeks from the date of signing of the Consent Terms and filing of the same before this Honorable Court. The Respondent, within the above time, undertakes to handover the above said D.D. in the name of the Society to the Appellant for settlement of the dues of the Society. Appellant agrees and undertakes to pay the balance arrears of Society. The Appellant further agrees and undertakes to pay all the Society Charges, Taxes pertaining to the said Residential flat and except for the amount stated above in this Paragraph, the Respondent will not be liable or

responsible for the same.

9. The Respondent undertakes to initiate the process for deletion of the name of Appellant from the "Ration Card" and issue his N.O.C. in her favor to obtain new "Ration Card" at the address of the said residential flat and also execute necessary documents for transfer of Electricity Connection, Gas Connection and all Household Utilities in her name at the address of the said residential flat and also execute documents/forms and deliver the same to the said society enabling the Managing Committee to admit the Appellant as member of the society and delete/remove the name of Respondent from Society's membership register and enable the Society to issue share certificate/s and the maintenance bill/s in the name of the Appellant. The Respondent further undertakes to execute necessary document/s, if any required, for transfer of assessment Tax, House Tax, Property Tax etc., in the name of Appellant within a period of 2 (Two) weeks from date of transfer of the said flat in the name of Appellant.

10. The Appellant agrees and undertakes that she will solely bear all costs and expenses, whatsoever, required for transfer of the said Residential Flat including the stamp duty and registration charges.

11. After compliance of the terms of paragraphs (5) to (9) contained hereinabove by the Respondent, the Appellant agrees and undertakes that she will within a period of 4 (weeks) withdraw the following proceedings filed by her against the Respondent and/or against his family members.

(a) PWDVA Appeal/21/2022 pending before Learned District Judge 3 and Learned Additional Sessions Judge, Vasai.

(b) Criminal Application E., 21/2022. Pending before the Honourable Family Court Mumbai at Bandra (1), Judge 4.

(c) Criminal Misc. Application No/1300097/2008 pending before the Learned 5th Jt. Judge J D and J. M.

F. C. Vasai.

The respondent undertakes to render his full co-operation and consent for the withdrawal of the above said cases.

12. The Respondents and the co-accused shall file a petition before the Honorable High Court at Bombay for quashing the Complaint u/s 498 – A of I.P.C. in R. C. C./ 1300434/2009 pending before Learned 5th Jt. Judge J D and J. M. F. C. Vasai. The Appellant undertakes to render her full cooperation and consent for the same after compliance of terms hereinabove.

13. Both the Parties have also agreed that, save and except the above, they have no claim of any nature over the properties i.e. both moveable and immoveable, of each other under any circumstances, nor shall they be liable in any manner to pay each other's debts, even in their respective parent's property. After transfer of the said residential flat and the other payments mentioned in paragraphs/clauses (5) to (9) above, the Appellant undertakes that she will not make any additional claim against the Respondent, in future. The Appellant further agrees and undertakes that she will not claim for "*Stridhan*" from the Respondent.

14. The parties hereby agree and undertake that they shall not interfere with each other's personal life and shall not, in any manner, resort to defame each other's image in the society.

15. The parties hereby agree and undertake that they shall not initiate and/or continue any legal proceeding against each other either in a Civil or Criminal Courts and all disputes between the parties, till this date, are settled between the parties.

16. The parties hereto agree that they have signed the Consent Terms out of their own free will and without any misrepresentation, force, Coercion, duress, manipulation or fraud and they shall at no stage hereafter raise any dispute or claim and all issues stand settled.

17. That both the parties hereby agree and undertake that the Divorce Decree shall become operational only after the compliance of the Terms and Conditions by the Respondent as stipulated in Paragraphs (5) To (9) herein above.

18. That if the Respondent or Appellant fails to comply with the terms and conditions of the Consent Terms or commits breach of the same in any manner then the captioned Second Appeal along with the Civil Application i.e. Second Appeal No. 165 of 2019 with civil application No. 1622 of 2018 shall stand restored.

19. The contents herein are explained and read over to the parties in "Hindi" Language by their respective advocates and after understanding the contents, the Parties have signed the Consent Terms.

20. In view of the above-mentioned terms and conditions, both the parties have agreed that the above-mentioned terms and conditions are binding upon them and the same will be presented to the Honorable Court for passing Decree of Divorce on the above terms and that they will not withdraw the same in any circumstances."

8. The undertakings in the Consent Terms are accepted.

9. In view of the Consent Terms, the judgment and decree passed by the learned District Judge-I, Vasai in Regular Civil Appeal No. 44 of 2017 and judgment and decree dated 11th September 2017, passed by learned Civil Judge, Senior Division, Vasai in Marriage Petition No. 12 of 2009 is quashed and set aside and Marriage Petition No.12 of 2009 is disposed of in terms of the Consent Terms.

10. The Second Appeal is disposed of in above terms.

- 11.** In view of disposal of the Second Appeal, nothing survives in the Civil Application and the same is also disposed of.
- 12.** Parties are at liberty to apply, in case of difficulty.

BHALCHANDRA
GOPAL DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.01.19
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