

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS.4031-4032 OF 2019**
(Arising out of SLP (C) Nos.32868-32869 of 2018)**GANESH****Appellant****VERSUS****SUDHIRKUMAR SHRIVASTAVA & ORS.****Respondents****O R D E R**

Leave granted.

Heard Mr. Santosh Paul, learned senior counsel who assisted this Court as Amicus Curiae on behalf of the appellant-husband and Ms. Rukmini Bobde, learned counsel who assisted this Court as Amicus Curiae on behalf of the respondent-wife.

In the present matter, the parties had entered into consent terms. The Principal Judge, Family Court, Aurangabad took the Consent Terms on record in Petition No.A-192/2017 and passed Order dated 08.11.2017 in terms thereof. The text of the Order passed by the Principal Judge, Family Court, Aurangabad reads as under:

“Petition was filed by the applicant no.1 for divorce, according to Section 13(1)(ia)(ib) in the Hindu Marriage Act, 1955, against the applicant no.2 in the Court. While the case was pending, the two parties were sent to the counselor. According to the Counsellor’s Report, Exh. No.11, both the parties decided to take divorce themselves and the counselor after independence and with mutual consent after the efforts of the Counsellor failed.

Marriage of applicants 1 and 2 on 09.12.2019 Radhakrishna Mangal Karya, CIDCO, Aurangabad was conducted as per Hindu Dharma and Customary. From this marriage, the girl namely Vedika was born on 01.04.2014. The girl is currently under the custody of applicant no.1.

Applicants 1 and 2 are separated from date 01.06.2014 due to mutual differences of opinion and nature. After the efforts of the Counsellor failed, they have voluntarily converted the original petition in accordance with Section 13-B of the Hindu Marriage Act.

After the marriage Counsellor attempts, there is no possibility of co-habitation but the applicant is ready to take divorce according to the terms and condition made in Exh. No.12 of 1 and 2.

Judgment

1. Amendment application is approved.
2. Marriage completed on date 09.12.2012 of applicants no.1 and 2 is dismissed by Decree in accordance with Section 13-B of the Hindu Marriage Act, 1955.
3. Under the terms and conditions of the Exh. No.12, the terms and conditions of this judgment should be considered as part of this judgment.
4. The parties from both sides should spend their money.
5. From this make the Decree.

CONSENT SHEET EXH. NO.12

- 1) The marriage of the applicant and the non-applicant has been deone on the basis of Hindu theology in Aurangabad on 09.12.2012.
- 2) The applicant and the non-taxman are separated from each other on 01.06.2004.
- 3) The applicant and the non-applicant have a daughter Vedika (birth date 01.04.2014) from this marriage for 3 years 3 months.
- 4) Currently the girl Vedika is in the custody with applicant i.e. the mother and will remain in the future with applicant, it is accepted to non-applicant.

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- 5) The applicant has released the right of, monthly maintenance, permanent alimony and stridhan on non-applicant.
- 6) The applicant has released the right of monthly maintenance to the daughter with the non-applicant. The applicant has fully accepted responsibility for the child's livelihood, education and health.
- 7) Both of them have agreed that the non-applicant will not meet his daughter which is in the custody of the applicant in the future, and will not make any civil or criminal claim in any court to get custody and visitation right of the daughter.
- 8) The applicant shall not show any right in any property or movable property, will never claim in any civil or criminal nature in any court, to get home from the non-applicant in future.
- 9) Both of them will no longer have to pay for each other in the form of money or things in the future.
- 10) The applicant has lodged a complaint against the non-applicant and his two relatives at Taluka Pathri Dist. Parbhani. She will take the complaint back.
- 11) The non-applicant had filed the Registered Darkhast bearing no.06/2017 in this Hon'ble Court. The said petition he is withdrawing herewith.
- 12) As mentioned above there is no matter pending in any Hon'ble Court between the parties.
- 13) Both of them will not claim and will not file any petition in the cause due to past events. Abovementioned consent is agreed to applicant and non-applicant and hence this consent terms is converted as per Section 13(b) of Hindu Marriage Act, 1955 for divorce."

The appellant-husband thereafter filed Contempt Petition No.304 of 2018 submitting *inter alia* that respondent nos.1 to 4 had not followed certain directions issued by this Court in *Arnesh Kumar v. State of Bihar*, [2014 Cr1. L.J. (SC) 3707 : 2014 AIR SCW 3930) and that the respondent-wife despite having given an undertaking in terms of para 10 of the consent terms, had not withdrawn the proceedings.

The contempt petition having been dismissed, the appeal preferred therefrom was also dismissed by the High Court.

Without going into the question whether the appeal was maintainable or not, in our view, appropriate course to be adopted in the matter is to effectuate the understanding as culled out in para no.10 of the Consent Terms. If the parties had arrived at a settlement and decided to withdraw the cases filed by each of the parties against the other, the compromise ought to be effectuated in complete sense.

The law on the point is well-settled by the decision of this Court in *Gian Singh v. State of Punjab & Another*, (2012) 10 SCC 303. Leaving aside the technicalities, we therefore deem it appropriate to quash the proceedings which were initiated at the instance of the respondent-wife i.e. FIR No.148 of 2015 dated 04.09.2015 registered with Police Station Pathri District Parbhani. Further proceedings in said FIR now stand quashed.

Before we part with, we must also express our reservation insofar as Term No.6 is concerned, which was incorporated in the order on 08.11.2017 by the Principal Judge, Family Court, Aurangabad. It was certainly open to the wife to give up any claim so far as maintenance or permanent alimony or stridhan but she could not have given up the rights which vest in the daughter insofar as maintenance and other issues are concerned.

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We, therefore, exercising our powers under Article 142 of the Constitution of India, set-aside Clause (6) of the Consent Terms. Rest of the order stands unaltered and ought to be given effect to.

With the aforesaid view, the appeals stand allowed to the aforesaid extent.

We express our sincere gratitude to Mr. Santosh Paul, Senior Advocate and Ms. Rukmini Bobde, Advocate for their able assistance as Amicus Curiae in the matter.

.....J.
[UDAY UMESH LALIT]

.....J.
[INDU MALHOTRA]

NEW DELHI;
APRIL 22, 2019

ITEM NO.46

COURT NO.8

SECTION IX

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (C) No(s).32868-32869/2018

(Arising out of impugned final judgment and order dated 03-07-2018 in CP No.304/2018, 14-08-2018 in CA No.10458/2018 passed by the High Court Of Judicature At Bombay At Aurangabad)

GANESH

Petitioner

VERSUS

SUDHIRKUMAR SHRIVASTAVA & ORS.

Respondents

Date : 22-04-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MS. JUSTICE INDU MALHOTRA

**For Petitioner(s) Mr. Santosh Paul, Sr. Adv. (Amicus Curiae)
Mr. Subhranshu Dash, Adv.
Ms. Shreya Mahalwar, Adv.**

For Respondent(s) Ms. Rukmini Bobde, AOR (Amicus Curiae)

**UPON hearing the counsel the Court made the following
O R D E R**

Leave granted.

The appeals stand allowed, in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

**(MUKESH NASA)
COURT MASTER**

**(RAJINDER KAUR)
BRANCH OFFICER**

(Signed Order is placed on the File)