

**Mrs. B. Vs. Mr. V.**

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**SooperKanoon Citation :** [sooperkanoon.com/361041](http://sooperkanoon.com/361041)

**Court :** Mumbai

**Decided On :** Jul-24-1987

**Reported in :** (1987)89BOMLR448

**Judge :** Sharad Manohar, J.

**Appeal No. :** F.A. No. 2644 of 1983

**Appellant :** Mrs. B.

**Respondent :** Mr. V.

**Advocate for Def. :** Mr. Rao

**Judgement :**

**Sharad Manohar, J.**

1. This appeal arises out of a petition for divorce filed by the appellant-wife on the ground of cruelty. The petition has been dismissed by the trial court.

2. The parties are living away from each other for the last about 14 years. The respondent-husband is in fact not living in Bombay. He is staying at Nagpur. The appellant-wife is serving with the Bombay Telephones. Just for a period of one and half month, the husband and wife lived together in Nagpur. The petitioner-wife, thereafter came to Bombay and has been eking out her livelihood all by her own. It is evident that the marriage has gone on the rocks.

3. No doubt the petition for divorce filed by the petitioner on the ground of cruelty was contested by the respondent-husband and it is also true that the trial court was not persuaded to accept the evidence of the petitioner so far as her plea of cruelty practised by her husband upon her was concerned. But the appeal filed by her against that decree is admitted by this Court. Further, subsequent to the filing of the appeal, the respondent-husband has written a letter to his learned advocate Shri M.P. Rao, a xerox copy of which has been in fact produced by Mr. Rao in this Court and it is taken on record. The letter is dated September 17, 1984. In the letter, the respondent-husband has clearly stated that he was not interested in contesting the appeal. He has in fact stated that he was not in fact interested in the case. What he clearly means is that he was not interested in continuing the matrimonial life with the petitioner-wife.

4. Mr. Rao, appearing for the respondent-husband however, stated quite rightly that since the respondent-husband is not interested in coming all the way to Bombay and because he has no interest in the litigation whatsoever, it is not possible to have the decree for divorce by consent strictly in accordance with the provisions of the Hindu Marriage Act. He has also referred to the judgment of this Court in *Sudhakar v. Sulabha* : (1985)87BOMLR496 . [F.A. No. 902/84 decided on April 11, 1985 by Sharad Manohar J.] where it is held that the only impediment in the way of the parties to obtain divorce by consent or by compromise was the provision in the Hindu Marriage Act in injuncting the Court to see to it that there was no collusion between two spouses for getting any of the reliefs under the Act. This provision existed even before the provision for divorce by consent was brought on the statute book. It is held in the above mentioned judgment that this provision has now become wholly meaningless, because a divorce by compromise cannot be now described as a divorce by collusion. A collusion is something which cannot be done directly. When compromise can be arrived directly, there is no meaning saying that it cannot be done indirectly by collusion. In fact the concept of divorce by collusion has been rendered meaningless by virtue of the said provision of divorce by consent. In this view of the matter, it has been held that it is open for the parties even to obtain divorce by resort to the provision of Order 23 Rule 3 of the Civil Procedure Code.

5. In this view of the matter, both the learned advocates have filed an application for divorce by consent. Both of them have signed the said application. In fact even the appellant has put her signature upon the consent terms. A xerox copy of the letter written by the respondent-husband to his learned advocate Shri M.P. Rao is also annexed to the application.

6. In these circumstances, I see no reason why decree for divorce cannot be passed in this case. It is made clear that the decree is passed in favour of both the parties, the wife as well as the husband. However, it is made clear that the decree for divorce shall be effective from this date and hence it is declared that as from this date, the relationship of husband and wife between the parties has come to an end.

7. Decree is passed in terms of the consent terms. However, there shall be no order as to costs.

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