



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 17 of 2025

**[On note for speaking to minutes of order dated 16/12/2025 in
R/FA/17/2025]**

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[REDACTED]

[REDACTED]

Versus

[REDACTED]

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Appearance:

EVOLVE LEGAL(17686) for the Appellant(s) No. 1

MR MB GOHIL(2702) for the Defendant(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 13/01/2026

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

1. The captioned note for Speaking to Minutes has been filed, *inter alia*, pointing out that, direction contained in the last 4th line of the paragraph 42 of the oral judgment dated 16.12.2025 passed by this Court, needs to be revised and the appellant-husband, be permitted to invest the SIP of Rs.15,00,000/- spread over 30 months, i.e. Rs.50,000/- per month instead of 20 months (i.e. Rs.75,000/- per month).
2. Mr M. B. Gohil, learned advocate for the respondent has no objection to the said request.
3. Request of the appellant-husband is acceded to.
4. The captioned note for Speaking to Minutes stands allowed. In the oral judgment dated 16.12.2025, the direction in last 4th line of paragraph 42 of the judgment, instead of "SIP of another Rs.15,00,000/- spread over 20 months, i.e. Rs.75,000/- per month



shall be invested in her name”, the same shall be read and replaced as “SIP of another Rs.15,00,000/- spread over 30 months, i.e. Rs.50,000/- per month shall be invested in the name of daughter “””.

5. Fresh writ be issued after carrying out necessary incorporation. Rest of the directions in the oral judgment shall remain as it is.

6. The note for Speaking to Minutes stands disposed of.

(SANGEETA K. VISHEN,J)

(NISHA M. THAKORE,J)

RAVI P. PATEL



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 17 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
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Versus



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Appearance:

MS TANAYA SHAH for EVOLVE LEGAL(17686) for the Appellant(s) No. 1
MR MB GOHIL(2702) for the Defendant(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 16/12/2025

ORAL JUDGMENT

(PER : **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**)

1. Captioned appeal is preferred against the common order dated 19.10.2023 below Exhs. 1 and 19 (hereinafter referred to as "the impugned order") in Execution Petition No.23 of 2021 passed by the Family Court, Ahmedabad. By virtue of the impugned order, the application of the appellant is rejected on the ground that the respondent cannot be directed to execute the deed of relinquishment/surrender with regard



to the property namely, Flat No. 401-155, Dwelling Plot No. 165, Sunrise Park Society, near Sandesh Press, Bodakdev, Ahmedabad (hereinafter referred to as “the property”).

2. Being aggrieved, the appellant has preferred the captioned appeal. For the sake of convenience, the parties herein are referred to as per their status in the H.M.P. no.346 of 2019 (hereinafter referred to as “the petition”) .

3. Briefly stated are the facts.

3.1 The petitioner-husband and the respondent-wife got married on 08.08.2008 and have one child namely “”, who was born on 06.11.2015. Due to irreconcilable differences, they started living separately from 03.05.2017. On 15.02.2019, both, the petitioner and the respondent jointly filed the petition under the provision of Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act of 1955”) seeking divorce by mutual consent; containing various terms and conditions. Besides, the petitioner and the respondent have filed their evidence-in-chief, Exhs.10 and 11 respectively both, dated 16.07.2019, reiterating the terms and conditions contained in the petition. As per one of the conditions in the petition, the respondent had agreed to relinquish and surrender her right in the property in favour of the petitioner unconditionally and without any consideration. It was further agreed that the respondent shall execute a release deed and transfer her right in favour of the petitioner before the office of the Sub-Registrar. The respondent also agreed that she shall extend full cooperation in taking steps,



by reaching the advocate and the office of the Sub-Registrar for the purpose of signing and executing the documents. The petition was allowed by judgment dated 25.07.2019 in terms of the said settlement and the decree dated 25.07.2019 was drawn accordingly.

3.2 In furtherance of the said condition, on 21.03.2021, e-mail was addressed by the petitioner to the respondent, *inter alia*, informing her that as the home loan is being transferred to another bank, he is facing problem in view of the respondent being co-applicant. Request was made to make herself available at the office of the Sub-Registrar so as to take necessary steps for the requisite change. The said e-mail was responded to by the respondent raising a concern about adding the name of daughter in the property and removal of her name. The petitioner responded it by stating that at present, only the name of the respondent would be removed as per the decree. Since the removal was not agreeable without adding the name of the daughter, the respondent did not make herself available and hence, notices were issued by both the parties through their advocates. As the issue could not be resolved, the execution petition was filed, *inter alia*, for executing the deed. By passing of the impugned order dated 19.10.2023 below Exhs. 1 and 19, request of the petitioner is refused.

3.3 Initially, the petitioner had filed Special Civil Application no. 4223 of 2024 which, was then converted to captioned First Appeal vide order dated 20.12.2024. Together with the First Appeal, Civil Application is filed, *inter alia*, praying for



direction to the respondent to execute a deed releasing and transferring her right in the property in favour of the petitioner. Request was also made to allow the respondent to visit the minor daughter once in a month. Further prayer was for seeking direction restraining the respondent from selling or transferring or dealing with the property in any manner and/or entering or disturbing possession of petitioner. This Court, on 23.06.2025 has passed the following order:-

“ORDER IN CIVIL APPLICATION;

1. The present Civil Application is filed for following reliefs:-

"(A) that pending the hearing and final disposal of this petition, the Hon'ble Court be pleased to direct the Respondent to forthwith execute a deed releasing and transferring her rights in 401-165, Dwelling, Plot No165, Sunrise Park Society, Nr. Sandesh Press, Bodakdev, Ahmedabad - 380054 in favour of the Petitioner;

(B) that pending the hearing and final disposal of this petition, the Hon'ble Court be pleased to direct the Respondent to allow Petitioner visitation rights of minor daughter [REDACTED] on the fourth Saturday of every month, from 12 p.m. to 6 p.m;

(C) that pending the hearing and final disposal of this petition, the Hon'ble Court be pleased to restrain the Respondent from selling, leasing, mortgaging, transferring or dealing with in any manner or creating encumbrances in any manner over her rights in 401-165, Dwelling, Plot No.165, Sunrise Park Society, Nr. Sandesh Press, Bodakdev, Ahmedabad-380054 and be pleased to restrain the Respondent from entering and disturbing possession of the Petitioner in any manner."

2. Considering the submissions made by both the sides, learned advocate for the applicant for the time does not press for the interim relief as prayed in Clause-B and insofar as interim relief as prayed for in Clause-C is concerned, learned advocate for the respondent-wife makes a statement that the respondent-wife shall refrain from selling, leasing, mortgaging, transferring or dealing in any manner or creating any encumbrance in any manner with regard to her rights in a dwelling unit 401-165, Plot No.165, Sunrise Park Society, Nr.Sandesh Press, Bodakdev, Ahmedabad-380054, till final disposal of the appeal.

3. The Civil Application stands ***disposed of.***

ORDER IN FIRST APPLICATION:

With the consent of both the sides and considering the nature of lease (sic lis) involved, the Court deems it fit to set the final hearing of the appeal on **21.07.2025**.

It is open for both the sides to submit the common paper book.”

3.4 Prayer clause 7B was not pressed. For relief as prayed for in clause 7C, statement was made by the respondent that she shall not sell, lease or transfer or deal with the property in any manner. This Court, with consent of both the sides, has slated the captioned Appeal for final hearing.

4. Ms Tanaya Shah, learned advocate contended that the issue involved in the captioned appeal is refusal by the executing Court to direct the respondent to execute the document as agreed. It is further submitted that petition was filed by the petitioner and the respondent agreeing on certain terms and conditions, followed by evidence-in-chief, both dated 16.07.2021. All the conditions were incorporated in the petition under Section 13B of the Act of 1955, which culminated into passing of the judgment dated 25.07.2019. Clearly, what was agreed by the parties was forming part of the consent decree and hence, the learned Judge ought to have executed the decree in terms of the consent terms.

4.1 It is submitted that as per condition no.(e), it was clearly agreed by both the parties that the respondent-wife shall release her right in favour of the petitioner, moreover, she would also extend full cooperation for releasing her right from the property and would facilitate the execution of the release deed in favour of the petitioner. Having agreed to relinquish the rights and having further agreed to facilitate the

execution of release deed in favour of the petitioner, the respondent ought to have acted accordingly; however, insisted for 50% right in the property for the daughter. It is submitted that what was agreed has been reduced in writing in the form of the petition read with the evidence-in-chief and hence, it was impermissible for the respondent to turn around and avoid the execution of release deed. It is submitted that in the application preferred before the Court below seeking execution, the respondent has raised frivolous and baseless allegations, only with a view to getting out of the execution of the release deed in favour of the petitioner.

4.2 It is next submitted that the petitioner was not allowed to meet his daughter until November, 2021 at the instance of the respondent. It was only with the help of the police, the meeting could be arranged. Unfortunately, the daughter was tutored in such a manner that she refused to meet the father. Only with a view to preventing the meeting, the respondent has made various reckless and scurrilous allegations.

4.3 It is further submitted that the Court below has refused to execute the decree on the ground that what was allowed was in terms of the reliefs prayed for and not beyond it. The learned Judge was also of the opinion that as there were no terms agreed between the parties regarding the execution of the release deed, it cannot be allowed. If the petitioner is desirous of getting the release deed executed, he may do so by seeking specific performance of the agreement as per the provisions of the Specific Relief Act, 1963 (hereinafter referred to as "the Act of 1963").



4.4 It is submitted that there lies a fallacy in the observation by the learned Judge that since the execution of the deed was not prayed for in the petition or was not forming part of the consent terms, it cannot be executed. Inasmuch as, Section 18 of the Family Court's Act, 1984(hereinafter referred to as "the Act of 1984"), provides for the execution of decrees and orders and they shall have the same force and effect as a decree or order of the Civil Court to be executed in the same manner as prescribed by the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code"). Furthermore, section 28A of the Act of 1955 states that all the decrees and orders made by the Court in any proceedings under the Act shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction. Thus, the Family Court is vested with wide powers in the matter of execution of the decrees and orders as provided in the Code.

4.5 It is further submitted that the judgment dated 25.07.2019 passed by the Family Court granting divorce by mutual consent is in the nature of the consent decree as envisaged under Order XXIII Rule 3 of the Code and it ought to have been executed in terms of Order XXI Rule 34. It is further submitted that it is by now well settled that the Court must execute a decree as it is and the executing Court shall not travel behind the decree and has no jurisdiction to modify it. Requiring the petitioner to file a suit for specific performance would amount, the Family Court going behind the decree and modifying it.



4.6 It is further submitted that the jurisdiction of the Family Court is clearly provided under the Act of 1984. Clause (c) of the explanation to sub-section (1) of section 7 provides that the Family Court, shall have the powers to consider a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. Moreover, section 8 of the Act of 1984 is a provision that excludes the jurisdiction of the District Court and any subordinate Civil Court in matters over which the Family Court has jurisdiction once the Family Court is established.

4.7 It is therefore, submitted that there is nothing illegal or impermissible in the Family Court passing the judgment and decree dated 25.07.2019 in the Family Suit in accordance with the consent terms mutually agreed between the parties. In view of the settled principles of law relating to the execution of the consent decree, nothing further remains and the executing court ought to have executed the decree as it is. It is therefore submitted that the judgment is erroneous in holding that no right, interest or entitlement in any property has been adjudicated by the Court as no issue was framed in this regard. The Court below has failed to appreciate that the decree of divorce incorporates the agreement which forms the basis for the divorce and was passed with the consent of the parties and hence, there was no occasion for framing an issue in this regard. The Family Court by passing the divorce decree has accorded its stamp of approval to the consent terms of mutual divorce agreed by the parties which, would be binding on them. The Court below was also not right in directing the

petitioner to take recourse by filing a separate suit seeking specific performance under the governing law. The said finding is absolutely contrary to section 47 of the Code which states that all questions arising between the parties to the suit in which the decree was passed shall be determined by the Court executing the decree and not by a separate suit.

4.8 Reliance is placed on the judgment of the Karnataka High Court in the case of *C. Vikram vs. B. K. Sowmya* reported in (2024) SCC OnLine Kar 8653. It is submitted that the facts are almost identical. The order was passed by the Family Court followed by the filing of the execution petition. Objection was raised regarding the maintainability on the ground that there is no provision under the Act of 1955 which enables issuance of direction. It is submitted that the petition was dismissed on the ground that merits of the judgment can be looked into only when the appeal is preferred and not in the proceedings under section 47 of the Code.

4.9 Reliance is also placed on the judgment in the case of *Gyan Devi vs. Leela Devi @ Narayani & Ors.* reported in 2007 (96) DRJ 426 (DB) for the proposition that if the parties settle the matter on terms and conditions specifically recorded in the settlement deed; on passing of the compromise decree, the terms and conditions and the intention of the parties, stand incorporated in the decree passed by the Court. Hence, settlement decree must be executed and should not be interfered with by modifying or going behind it. Reliance is also placed on the judgment in the case of *Deepa Bhargava & Anr. vs. Mahesh Bhargava & ors.* reported in (2009) 2 SCC

294 for the similar proposition that the compromise decree remains valid unless set aside by the executing Court. It is well known that the court cannot go behind the decree as it has no jurisdiction to modify the decree and it must be executed as it is.

4.10 Reliance is also placed on the judgment in the case of *Pawan Kumar Arya & Ors. vs. Ravi Kumar Arya & Ors* reported in (2020) 15 SCC 190 for the proposition that when the parties have entered into consent terms or settlement for complete parting of ways, it is aimed at bringing about quietus to the disputes between the parties. Besides, it has to be acted upon and either of the parties cannot be permitted to say that part of the settlement which is in their favour be executed and not the other terms of the consent decree. It is therefore, submitted that the impugned order passed by the Court below is illegal, contrary to law and deserves to be quashed and set aside and the appeal be allowed.

5. On the other hand, Mr M. B. Gohil, learned advocate appearing for the respondent-wife, while inviting the attention of this Court to the provision of section 13 of the Act of 1955 submitted that it pertains to the divorce. While, section 13B is the provision which governs divorce by mutual consent and is restricted qua three elements only, that is, maintenance, alimony and custody. However, the aspect of property is alien to the provision of section 13B, inasmuch as, the language does not envisage the property in it. It is further submitted that section 7 of the Act of 1984 provides for jurisdiction of the Family Court. Explanation to sub-section (1) envisages



nature of proceedings and clause (c) deals with a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. It is further submitted that section 27 of the Act of 1955, states that in any proceedings under the Act, the court may make such a provision with respect to any property presented at or about the time of marriage which may belong jointly to both the husband and the wife. Therefore, only the properties which have been offered at the time of marriage by way of gift, can be dealt with in the proceedings. So far as the property in question is concerned, it was not offered at the time of the marriage and hence, it would not be the property as contained in section 7 of the Act of 1984 read with provision of section 27 of the Act of 1955.

5.1 While inviting the attention of this Court to the petition, it is submitted that limited prayers were prayed for namely, dissolution of marriage, custody of the daughter and the alimony; however, there was no prayer specifically prayed for in respect of the property and accordingly, the decree was passed as per the prayers in the petition. Hence, the decree, has to be read only in the context of the reliefs prayed for and granted. In the absence of any prayer prayed for the property, it is to be construed that it has been refused and the executing court therefore, has rightly observed that there is no decree passed as regards the property, inasmuch as, there was no specific direction issued by the Court of the first instance. It is therefore submitted that relief not specifically prayed for and not granted, cannot be executed or enforced



by the executing court. Reliance is placed on the judgment in the case of *Trojan and Company vs. R.M. N.N. Nagappa Chettiar* reported in (1953) 1 SCC 456. Specific reference is made to paragraph 38 for the proposition that in the absence of any suggestion made in the plaint or even in the amendment, the court would not be entitled to grant relief not asked for and not prayed for.

5.2 Reliance is placed on the judgment in the case of *Bachhaj Nahar vs. Nilima Mandal & Anr.* reported in (2008) 17 SCC 491 for the proposition that in a civil suit, relief to be granted can be only with reference to the prayer prayed for. Reliance is also placed on the judgment in the case of *Akella Lalitha vs. Konda Hanumantha Rao & Anr.* reported in (2022) SCC OnLine SC 928. It is submitted that it is held and observed that when there is no relief sought for, it should not be granted. For similar proposition, reliance is placed on the judgment in the case of *Kiran Raju Penumacha vs. Tejuswini Chowdhury* reported in (2025) SCC OnLine SC 562. Further reliance is also placed on the judgment in the case of *K.R. Suresh vs. R. Poornima & Ors.* reported in (2025) SCC OnLine SC 1014.

5.3 While distinguishing the judgment in the case of *C. Vikram vs. B. K. Sowmya*(supra), it is submitted that it is of no help as the wife therein was claiming the property given during her marriage. So far as the judgment relied upon in the case of *Gyan Devi vs. Leela Devi @ Narayani & Ors.* (supra) is concerned, the suit itself was for a property which is clear from the factual narration made in paragraph 2. Since the

subject matter was the property offered during the marriage, it was considered, unlike the case on hand.

5.4 While summing up, it is submitted that section 13B of the Act of 1955 is restricted only qua the divorce, custody and maintenance and does not make provision of property. Besides, in the petition, there was no specific prayer prayed for in respect of the property and in the absence of any prayer, the relief is construed to have not been granted. The learned Judge, has rightly refused the enforcement of the decree, requiring the petitioner to file a separate suit seeking specific performance. It is therefore, urged that the appeal does not deserve to be entertained and is required to be dismissed.

6. While responding Ms Tanaya Shah, learned advocate submitted that the contention raised by the respondent that the decree is not executable or enforced is misplaced, inasmuch as, the respondent-wife has never taken any objection under section 47 of the Code and the objection is being raised for the first time in the appeal. It is also submitted that the language contained in section 13B nowhere restricts the jurisdiction of the Family Court. In fact the Family Court has wide jurisdiction to deal with all the aspects namely the divorce, maintenance, custody and the property as well. It is submitted that Order XXIII Rule 3 of the Code, makes provision for compromise of suit. It provides that if it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court is empowered to order and pass a



decree in accordance with the compromise so far as it relates to the parties to the suit and whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. Therefore, the term 'whether or not the subject matter of the agreement is the same' carries a lot of significance. It is submitted that the Family Court certainly has the jurisdiction to issue the direction even with respect to the properties involved in the proceedings.

6.1 Reliance is placed on the judgment in the case of *K.A. Abdul Jaleel vs T.A. Shahida* reported in (2003) 4 SCC 166. It is submitted that the provision of section 7 has been interpreted. While referring to the statement of objects and reasons, it is noted that the jurisdiction of the Family Court extends, *inter alia*, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective of, whether property is claimed during the subsistence of a marriage or otherwise. It is therefore, submitted that restricted meaning cannot be given to the provisions of section 7 of the Act of 1984 in view of the principle laid down by the Apex Court in the said judgment.

6.2 It is also submitted that reliance placed on section 27 of the Act of 1955 is misplaced, inasmuch as, section 27 is an enabling provision and while deciding the issue, it would be open to the Family Court to consider the same; however section 27 has no application to the facts of the present case. Even otherwise, it does not take away the jurisdiction of the

Family Court, but it adds to the jurisdiction. Reliance is placed on the judgment in the case of *Balkrishna Ramchandra Kadam vs. Sangeeta Balkrishna Kadam* reported in (1997) 7 SCC 500 wherein it has been held and observed that the Matrimonial Court trying any proceedings under the Act of 1955, has the jurisdiction to make such provision in the decree as it deems just and proper with respect to any property presented "at or about the time of marriage" which may belong jointly to both the husband and wife. It is held that section 27 provides an alternate remedy to the wife so that she can recover the property which is covered by the section, by including it in the decree in the matrimonial proceedings, without having to take recourse of filing of a separate Civil Suit and avoid further litigation. It is therefore, submitted that to restrict the language contained under section 7 of the Act of 1984 and section 27 of the Act of 1955, would be impermissible.

6.3 While adverting to the contention that the relief since is not prayed for cannot be granted, it is submitted that the decree passed is a consent decree and does not require framing of the issues. Since no issues were formulated, there is no adjudication and hence, the judgments relied upon by the learned counsel appearing for the respondent would not be applicable. It is submitted that the decree which is passed as a result of the compromise remains valid unless it is set aside.

7. Heard the learned advocates appearing for the respective parties. Accorded thoughtful consideration to the documents contained in the paper-books made available on



the record.

8. The facts are already stated in the preceding paragraphs and hence, they are not reiterated except referring to, briefly, some of the relevant facts revolving around the issue.

9. Owing to the irreconcilable differences between the parties, the petitioner and the respondent filed the petition, *inter alia*, praying for (i) dissolution of the marriage solemnized on 08.08.2008; (ii) custody of the minor daughter to the respondent by granting appropriate visitation rights to the petitioner and (iii) declaration that there shall be no order for alimony in favour of the respondent she having waived her right. For the purpose of deciding the present appeal, paragraph nos.5, 7 and 13 are relevant and are reproduced hereinbelow for ready reference:

“5) The parties to the petition respectfully state that Petitioner No 2 for herself and for the minor child- [REDACTED] has waived all her rights of maintenance against Petitioner No 1 u/s 125 of Criminal Procedure Code, 1973 and the Protection of women from Domestic Violence Act, 2006 and Section 24 of Hindu Marriage Act, 1955 and petitioner No 2 is capable of sustaining her livelihood. The Parties submit that Petitioner No 2 will not claim any future maintenance or alimony from No 1 for herself or for minor [REDACTED]. Further the present petitioners herein will not have any right, title or interest in the property of the other party. The parties respectfully state that Petitioner No 1 and 2 have mutually agreed to following conditions for custody and visitations rights of Petitioner No 1 as under :-

a. The parties to the petition state that Minor- [REDACTED] shall be under permanent physical custody of Petitioner No 2 till she attains age of majority i.e 18 years of age and Petitioner No- 1 shall get visitation rights from today, for meeting minor- [REDACTED] only on every Fourth Saturday of the Month from, from 12-00 P.M. to 6-00 P.M. till minor- [REDACTED] attains the age of majority, that is, till she attains age of 18 years.

b. The parties to the petition state that during the time of use of visitation rights for Minor- [REDACTED], Petitioner No 1 shall be fully



responsible for complete physical safety needs of Minor- [REDACTED] and he shall inform Petitioner No 2 immediately regarding any urgent situation or mishap of Minor- [REDACTED] by all means.

c. The parties to the petition state that Petitioner No 2 for herself and for minor- [REDACTED] shall waive her right to claim any amount towards alimony for life.

d. The parties to the petition state that both parties shall be at liberty to change their names in official government and semi-government records or their individual passports and, in the passport or school records of minor- [REDACTED].

e. The parties to the petition state that the immovable property being 401-165, Dwelling, Plot No-165, Sunrise Park Society, Nr Sandesh press, Bodakdev, Ahmedabad-380054 is in joint name of both parties and Petitioner No 2 hereby relinquishes and surrenders her rights in the said property in favour of Petitioner No 1 unconditionally, without any consideration, Petitioner No 2 shall accordingly execute a separate deed of release of Rights to transfer her rights in favour of Petitioner No 1 forthwith before Sub-Registrar of competent jurisdiction and Petitioner No 2 shall extend her full co-operation in this regard by reaching at Advocate's Office and at the office of Sub-Registrar on time and by signing on all pages of aforestated Release of Rights Deed.

7) It is further submitted that after the dispute cropped up between the parties, the parents, relatives and well wishers of the parties to the present petition tried their level best to settle the dispute between the parties to the petition but they could not succeed in the same. To separate, by taking divorce decree by mutual consent, is a well-deliberated decision of the petitioners. The Parties undertake before the Hon'ble court that they will not level any allegations against the each other or members of their family leading to litigation of any nature criminal or civil in future.

13) It is, therefore, prayed that

a) This Hon'ble Court may be pleased to dissolve the marriage of the petitioners Shivang Ashwinbhai Bhatt and Dr. Mahima Shivang Bhatt solemnized on 8/08/2008.

b) This Hon'ble Court may be pleased to pass necessary orders for custody of Minor- [REDACTED] in favour of Petitioner No 2 on appropriate visitation rights as mentioned in this petition to Petitioner No 1.

c) This Hon'ble Court may be pleased to pass necessary orders declaring that there shall be no orders for alimony for parties in view of waiver of rights by Petitioner No 2.



d) Any other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be granted. "

10. In paragraph 5, the parties have agreed to certain terms and conditions. It is mutually agreed by the parties that the permanent physical custody of the daughter shall remain with the respondent till she attains the age of majority. While the petitioner shall have the visitation right of meeting the minor daughter on every fourth Saturday of the month for a stipulated time till the daughter attains the age of majority. The condition further provides that the respondent-wife, for herself and the minor daughter shall waive the right to claim alimony for life. Center to the issue is paragraph (e), which provides that the respondent-wife relinquishes and surrenders, unconditionally, her right in the property in favour of petitioner. It further obligates the respondent to execute a separate deed releasing her right by executing a deed before the Sub-Registrar, by extending full cooperation by reaching the advocate's office, the office of the Sub-Registrar on time. The parties have prayed for dissolution of marriage solemnized on 08.08.2008. Further prayer is for direction for visitation rights of the petitioner and order regarding the alimony.

11. The petitioner and the respondent respectively have filed verbatim evidence-in-chief, both, dated 16.07.2019. In paragraph 5, the terms of the petition, are reiterated. Sub-paragraph (e) is about the respondent relinquishing her right so also extending the cooperation for executing the separate release deed and is quoted hereinbelow:-



“e. The parties to the petition state that the immoveable property being 401-165, Dwelling, Plot No-165, Sunrise Park Society, Nr Sandesh press, Bodakdev, Ahmedabad-380054 is in joint name of both parties and Petitioner No 2 hereby relinquishes and surrenders her rights in the said property in favour of Petitioner No 1 unconditionally, without any consideration, Petitioner No 2 shall accordingly execute a separate deed of release of Rights to transfer her rights in favour of Petitioner No 1 forthwith before Sub-Registrar of competent jurisdiction and Petitioner No 2 shall extend her full co-operation in this regard by reaching at Advocate's Office and at the office of Sub-Registrar on time and by signing on all pages of aforestated Release of Rights Deed.”

12. After being satisfied that the parties have agreed for mutual divorce and the dissolution of their marriage is not obtained by force, fraud or undue influence and the purpose would not be served in telling the parties to continue their relationship as husband and wife, the learned Family Judge, as per the terms and conditions, decreed the petition. The petition was accepted by the learned Judge and in paragraph 2.2 of the judgment dated 25.07.2019, the agreement of the parties is recorded. It is noted that the respondent shall look after and maintain the minor daughter and shall fulfill all the obligations towards the daughter in future. The petitioner - father, is allowed visitation rights to meet the minor daughter on every fourth Saturday of the month from 12:00 pm to 6:00 pm till the daughter attains majority. In paragraph 2.3, the learned Judge has noted that as per the mutual consent, the respondent has waived her right to claim maintenance/permanent alimony from the petitioner for herself and minor daughter for all times to come. Relevant would be the observation made in paragraph 2.4 which, refers that both the parties have waived their rights whatsoever from the properties of each other and shall not claim for the same in future. It further records that the respondent has



relinquished and surrendered her right in the joint property belonging to both the parties. The affidavit filed by the petitioner and the respondent have also been taken note of.

13. The decree dated 25.07.2019 was drawn on the same lines. Paragraphs 4 to 6 of the judgment dated 25.07.2019 read thus:

“4. The petitioners have filed their affidavits. at Exh.10 and Exh. 11, wherein they have reiterated the contents of their consent petition and thereby supported their petition for divorce.

5.This Court has heard the petitioners.

6. This Court is, therefore, satisfied that the marriage of the parties was solemnized and that the averments made in the petition are true and therefore the dissolution of marriage by a decree of divorce is required to be passed. This Court is also satisfied that the present petition is not presented or prosecuted by the petitioners in collusion with each other. It is also established that the consent of each petitioner for the dissolution of their marriage by a decree of divorce has not been obtained by force, fraud or undue influence. In the opinion of this court the wedlock has become deadlock, and therefore, there is no sense in telling them to continue their relationship as husband and wife. It would be in their interest to reside separately and to live their own life according to their choice after the dissolution marriage. Under these circumstances, following order is passed.

ORDER

- The petition is decreed as per the terms and conditions stated in the petition by the petitioners.
- The marriage of the petitioners to this petition is hereby declared to be dissolved with effect from the date of the decree under Section 13(B) of the Hindu Marriage Act, 1955.
- The parties to bear their own costs.
- The decree shall follow accordingly. ”

14. Thereafter, the parties appear to have acted as per the



judgment and decree. The issue triggered when the petitioner requested the respondent to attend the office of the Sub-Registrar for the purpose of some change. As per the e-mail, it appears that the petitioner was desirous of transferring the home loan to another bank which, were creating some issues as the name of the respondent was running in the record as co-applicant. The respondent has expressed her reservation, by raising concern that after the removal of her name whether the property would be transferred in the name of the daughter and as to whether any documents would be required. The response offered by the petitioner was in the negative, suggesting that only his name would remain and her name would be removed as per the decree. After the brief exchange of emails, notices were issued by the advocates of the respective parties and ultimately, Execution Application no.23 of 2021 was preferred, *inter alia*, praying that though agreed, the respondent is not extending support for executing the release deed for the property in question and enforcing the visitation right as agreed.

15. The Family Court since was not convinced with the request of the petitioner, rejected the execution petition observing that, the Executing Court cannot go beyond the decree sought to be executed as there was no decree passed for executing any document in favour of the petitioner and hence, the respondent cannot be directed to execute any document. Paragraphs 6 to 9 of the impugned order are reproduced hereinbelow for ready reference:

“6. It is the admitted position on record that the applicant and



respondent had approached this Court by way of above said Family Suit for decree of divorce by way of mutual consent under Section 13(B) of the Hindu Marriage Act. The relief claimed in the family said suit was for dissolving the marriage of the applicant and respondent on the basis of mutual consent. No right/interest or entitlement in any property has been adjudicated by the Court in the said Family Suit. Rather the rights or title of any property was neither in issue before the Court. Though in para No.2.4 of the judgment, there are observation of facts by the Court that both the parties had waived their rights whatsoever from the properties of each other and same would not claim in the future. It has also been observed in the judgment that petitioner No.2 had relinquished/surrendered her right in the joint property of both i.e. Flat No.401-155, Dwelling Plot No.165 Sun Rise Park Society N. Sandesh press, Bodakdev, Ahmedabad-380054. From the observation made in para No.2.4 by this court, both the parties had admitted certain facts and conditions, but, no adjudication has been made directing any of the Party to execute any document. The decree dated 25.07.2019 is not for execution of document, rather it is only for dissolving the marriage of the parties on the basis of mutual consent. No relief has been claimed by either party for execution of any document and there is also no agreement for execution of any deed of relinquishment/surrender in future by any party. While passing the judgment and decree of dissolution of marriage under Section 13(B) of the Act, the Court has just recorded the terms and conditions agreed by parties at the time of filing of divorce, but, there is no direction to either party to execute any specific document in favour of any party.

7. As far as Order 21 Rule 34 is concerned, it pertains to execution, where a decree of execution of document has been passed. The applicant is heavily relied upon Order 21 Rule 34(6), which is reproduced as under:

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court or such officer of the court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, may make such order as it as to the expenses of registration.

8. As demonstrated above, Rule 34 of Order 21 can be employed where a decree for execution of document has been passed against judgment debtor. The reliance on Order 21 Rule 36(6) of CPC by



the applicant in the present case is misconceived as there is no decree of execution any document in favour of the applicant in regard to the above said property. It is also settled law that execution cannot go beyond the decree sought to be executed. Until and unless there is a decree of execution of any document in favour of the applicant, the respondent cannot be directed to execute any document. The applicant and respondent in this case had agreed upon certain terms on the basis of which, they have filed a divorce petition by mutual consent under Section 13(B) of the Hindu Marriage Act. The non-fulfillment of any of the term and condition as agreed between the parties may be made a ground for getting the same enforced by filing any suit for specific performance, but, the party cannot directly approached in execution proceeding, as it is a question of fact required to be proved as to which term of agreement has been violated by either party. Only on the basis of legal and enforceable decree for execution of certain document, the judgment debtor can be enforced to execute such document or the same can be executed under the provision of Order 21 of Rule 34.

9. For the reasons stated above, this court is of considered opinion that the respondent cannot be directed any execution proceeding to execute deed of relinquishment/surrender in regard to the property-in-question in favour of the applicant. Therefore, the present Execution Petition as well application at Exh.19 are hereby dismissed. "

16. Bare perusal of the observations made in the above referred paragraphs suggest that the learned Judge was of the opinion that the terms and conditions agreed between the parties cannot be enforced and if at all the parties are desirous of getting it done, a suit is needed to be filed seeking specific performance of the agreement. The Family Court was of the opinion that the respondent cannot be directed to execute a deed of relinquishment/surrender with respect to the property in favour of the petitioner. It is this order which is subject matter of challenge in the captioned appeal.

17. Before advertng to the submissions, apt would be some of the the provisions of the Act of 1984. Section 7 of the Act of 1984 confers upon the Family Court the jurisdiction with



respect of the suits and proceedings of the nature referred to therein. Explanation to sub-section (1) of section 7, provides for the nature of suit and proceedings. Clause (c), speaks about the nature of suits or proceedings with respect to the property of the parties to a marriage. Section 7 reads thus:

“7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall

also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

18. Section 18 of the Act of 1984, provides for the execution of decree and orders. It reads thus:

"18. Execution of decrees and orders.-

(1) A decree or an order, other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

19. Sub-section (1) of section 18 enumerates that the execution of decree or an order passed by the Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner as prescribed by the Code for the execution of the decrees and order. Therefore, by virtue of section 18, the Family Court is invested with the powers to execute the decree or order in the same manner as prescribed by the Code.

20. Section 28A of the Act of 1955 is also worth referring to which provides for enforcement of decrees and orders, which

reads thus:

“S. 28 A Enforcement of decrees and orders

All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being in forced.”

21. A plain reading of the provision of section 28A suggests that the decrees and orders made by the court in any proceeding under the Act shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction.

22. Contention is also raised with reference to the provision of section 27 of the Act of 1955 to suggest that the property as mentioned in section 27 is the property which may belong jointly to both the husband and wife at or about the time of marriage. Section 27 reads thus:

“27. Disposal of property.-

In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.”

23. Order XXI Rule 34 of the Code makes a provision for execution of document etc. which is reproduced hereinbelow for ready reference:

“34. Decree for execution of document, or endorsement of negotiable instrument-

(1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with

the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

“C. D., Judge of the Court of,

(or as the case may be), for A. B., in a suit by E. F against A. B.”,

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.”

24. Sub-rule (6)(a) provides that where the registration of document is required under any law for the time being in force, the Court or such officer of the Court as may be authorized shall cause the document to be registered in accordance with such law. Emphasis is laid to suggest that



the provisions of the Act vests the Family Court to execute the decree and order in the same manner as prescribed by the Code for the execution of the decree and orders.

25. Section 47 of the Code provides that all the questions arising between the parties to the suit in which the decree was passed shall be determined by the Court executing the decree and not by a separate suit. Section 47 of the Code is reproduced hereinbelow for ready reference:

“Section 47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

* * * * *

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

26. The above-referred provision provides for the nature of the questions arising between the parties to the suit to be determined by the Court executing the decree and filing of the separate suit is not necessitated.

27. Adverting to the provisions, pertinently, section 7 of the

Act of 1984 provides for the jurisdiction of the Family Court which extends to the properties of the parties or either of them. Sub-section (1) of section 7 provides that subject to the provisions of the Act, a Family Court shall have and exercise all the jurisdiction exercisable by any district court or any subordinate Civil Court in respect of suits and proceedings of the nature referred to in the explanation. It further provides that the Family Court shall be deemed, for the purpose of exercising such jurisdiction under such law, to be a District Court or, subordinate Civil Court, as the case may be, for the area to which the jurisdiction of the Family Court extends. Therefore, by virtue of the provision of section 7, the Family Court is deemed to be a District Court or the Subordinate District Court for the area to which the jurisdiction of the Family Court extends.

28. Moreover, from the provision of section 18, it is clear that a decree or an order passed by the Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner as prescribed by the Code for the execution of the decrees and order. Therefore, section 18 confers the powers on the Family Court to execute the decree and the orders. Similarly, section 28A of the Act of 1955, provides for enforcement of decrees and orders. Therefore, there is no dispute that any order passed by the Family Court shall have the same force and effect and is to be executed in terms of section 18 read with the provisions of the Code.

29. At this stage, it is noteworthy that the judgment and



decree both dated 25.07.2019 passed in petition are not challenged by the respondent and has attained finality. Having accepted the judgment and decree, the issue would be whether it would be permissible for the respondent to turn around and raise the grievance against the merits and demerits of deed of divorce and judgment and decree dated 25.07.2019. Also, the Family Court for executing the decree cannot relegate the party to file a separate suit for the issues already agreed and judgment having passed in terms thereof. If such a course is allowed, it would go against the spirit of the Act of 1984 as well as the Act of 1955 as the central theme underlying both the legislations, is to lessen the litigation, providing early resolution to the disputes between the parties.

30. The Apex Court in the case of *K.A. Abdul Jaleel vs T.A. Shahida (supra)* has succinctly set out the scope of the provisions of the Act of 1984. It is noted that the Act of 1984, *inter alia*, seeks to exclusively provide within the jurisdiction of the Family Court matters relating to the property of the spouses or of either of them. While explaining further, it is noted that section 7 of the Act of 1984 provides for the jurisdiction of the Family Court in respect of suits, proceedings as referred to in the explanation appended thereto. Emphasis is laid on clause (c) of explanation to sub-section (1) of section 7 which refers to suit or proceedings between the parties to a marriage with respect to the parties or of either of them. The Apex Court has further explained that the idea behind the Act of 1984 is to envisage that the



jurisdiction of the Family Court extends, *inter alia*, in relation to properties of spouses or of either of them. Paragraphs 10 and 11 are reproduced hereinbelow for ready reference:

“10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. From a perusal of the Statement of Objects and Reasons, it appears that the said Act, *inter alia*, seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the spouses or either of them. Section 7 of the Act provides for the jurisdiction of the Family Court in respect of suits and proceedings as referred to in the Explanation appended thereto. Explanation (c) appended to Section 7 refers to a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

11. The fact of the matter, as noticed hereinbefore, clearly shows that the dispute between the parties to the marriage arose out of the properties claimed by one spouse against the other. The respondent herein made a categorical statement to the effect that the properties were purchased out the amount paid in cash or by way of ornaments and the source of consideration for purchasing the properties described in Schedules 'A' and 'B' of the suit having been borne out of the same, the appellant herein was merely a trustee in relation thereto and could not have claimed any independent interest thereupon. It is also apparent that whereas the agreement marked as Exhibit A1 was executed on 17.09.1994, the appellant pronounced Talaq on 01.11.1995. The wordings 'disputes relating to marriage and family affairs and for matters connected therewith' in the view of this Court must be given a broad construction. The Statement of Objects and Reasons, as referred to hereinbefore, would clearly go to show that the jurisdiction of the Family Court extends, *inter alia*, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise. ”

31. At this stage, relevant would be the judgment of the Apex Court in the case of *Deepa Bhargava & Anr. vs. Mahesh Bhargava & ors.(supra)*. The facts are in proximity to the facts of the present case. It is observed that a decree as is well known remains valid unless set aside. In the case on hand, the



compromise decree is not challenged and the parties have acted upon the consent terms. It is well settled that the executing court cannot go behind the decree, inasmuch as, it has no jurisdiction to modify the decree but must execute the decree as it is. Relevant paragraphs 8 and 9, read thus:-

"8. The parties had claimed their interest in the lands in suit from a common ancestor. They entered into a compromise. A decree was passed thereupon. A decree, as is well known, remains valid unless set aside. The respondents never challenged the validity or otherwise of the said consent decree. It was acted upon. They had disposed of a property pursuant thereto and, thus, took advantage of a part thereof. It was, therefore, impermissible for them to resile therefrom.

9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Contract Act."

32. Relevant would also be the judgment of the Karnataka High Court in the case of *C. Vikram vs. B. K. Sowmya(supra)*. In the said case, the husband's application was rejected he having not challenged the same. Objection on merits was raised in the execution proceedings. In paragraphs 12 and 13, it is observed thus:-

"12. The husband ought to have questioned the said order passed by the court below and for the best reasons known to him has chosen not to question. In the considered opinion of this court, on those grounds an application under Section 47 of CPC is not maintainable. The Hon'ble Apex Court has very well dealt with this issue in the judgment referred to supra in **Pradeep Mehra's Case**. Wherein in the said case, without assailing the order passed by the court, an application is filed under Section 47 of CPC. The court observed that multiple stages in civil suit invariably has to go through before it reaches finality is to ensure any error in law is cured by the higher court. The Appellate Court, second Appellate



Court and Revisional Court do not have the same powers as the executing court which are extremely limited and the court had discussed several judgments of the Hon'ble Apex Court and also observed that the remedy which is provided for preventing injustice is infact is being misused to cause injustice by preventing timely implementation of the orders and execution of the decrees. The court had extracted the portion in the judgment in case of Rahul S. Shah v. Jinendra Kumar Gandhi- where in it is observed that the execution proceedings which are supposed to be a hand made of justice and subserve the cause of justice are in effect which are being easily misused to obstruct justice. Then the court has observed a word of caution to the courts while a dealing with an application under section 47 of the CPC. The court observed that all the judgments are referred to highlight the slow process in the execution of a decree and the concern of the court and its efforts to improve the situation.

13. In the light of above judgment coming to the facts of this case, considering the factual basis that is laid down by the wife in a petition, without even considering Ex.P-1 she has made a mention about all the articles that the father has given to her which are lying with the husband and in an exparte divorce decree granted, the court as well is empowered to pass such an order directing the husband to return the said articles. If the husband is aggrieved he ought to have questioned the same by filing an application to set aside the said judgment and decree. Now particularly this court cannot come to the rescue of a litigant who is playing with the process of the court and having kept quiet for 14 long years without questioning the ex-parte divorce decree comes up before the Court stating that as far as granting divorce is concerned, he is not aggrieved and return of the articles is concerned such an order is bad and decree is a nullity. As observed by this court, in the preceding paragraphs, the grounds that are raised are on the merits of the judgment which can be looked into only when an appeal is filed and not in a proceedings under Section 47 of CPC."

33. It is observed that if at all the husband had any objection, it ought to have questioned the order passed by the Court below; however, having chosen not to question the judgment, it would be impermissible to raise the objection in the proceedings under section 47 of the Code. In the case on hand, it is required to be noted that in the execution petition, the respondent has not even lodged any objection as available under section 47 of the Code. Having not raised any objection,



it would be impermissible for the respondent now to contend before this Court that the compromise decree was not valid or that the consent decree is null and void, it being against the provisions of the Contract Act, 1872.

34. Further relevant would be the reference to the judgment of the Delhi High Court in the case of *Gyan Devi vs. Leela Devi @ Narayani & Ors. (supra)* wherein the conditions were specifically recorded and the decree was passed in terms of the settlement. Relevant excerpts from paragraph 9 are quoted hereinbelow:-

“9.....The parties have settled the matter on terms and conditions specifically recorded in a settlement deed. Compromise decree has been passed on the said terms and conditions. Intention of the parties and the terms and conditions of settlement now stand incorporated in a decree passed by this Court. The settlement decree passed must be executed and should not be interfered with, by modifying the decree or going behind the decree. This Court cannot go behind the decree and pass an order which is not contemplated by the terms and conditions of the settlement arrived at amongst the parties. A decree that has become final and binding cannot be reopened...”

35. It has been held and observed that the parties having settled the matter on terms and conditions specifically recorded in the settlement deed and compromise decree having been passed; the intention of the parties stands incorporated in the decree passed by the Court and the settlement decree must be executed and should not be interfered with by modifying or going behind it. Therefore, the executing Court ought to have executed the decree in terms of the compromise. In fact, the Court proceeded on an erroneous footing that since the issues have not been adjudicated between the parties, it cannot be executed.



36. Apt would also be the reference to the judgment in the case of *Pawan Kumar Arya & Ors. vs. Ravi Kumar Arya & Ors. (supra)* wherein the Apex Court, has noted that the parties having entered into the consent terms/settlement for complete parting of ways and aimed at bringing about an eventual complete quietus to the disputes between the parties, the entire consent terms/ decree is required to be acted upon and/or implemented by both the parties. It has also been noted that it would be impermissible for one of the parties to raise the contention that portion of the settlement favouring them may be executed and complied with and not the portion which is against or not favorable to them. Paragraphs 9 and 10 of the above referred judgment reads thus:

“9. Having heard the learned Senior Advocates for the respective parties and considering the relevant terms of the settlement, reproduced hereinabove, we are of the opinion that further execution of supplemental consent terms/family arrangement is required to be executed between the parties. For whatever reasons, the further supplemental consent terms have not been entered into between the parties. Therefore, as such, considering the fact that the parties entered into the consent terms/settlement for a complete parting of ways between the parties and so aimed at bringing about an eventual complete quietus to the disputes between the parties and even parties entered into the consent terms/settlement to resolve and settle the disputes in relation to the subject matter of AISCO, IMTC, Kash Foods, Orbit Arya Commercial Premises and the disputes in relation to the larger Arya Group of Companies and its constituents, which were beyond the dispute in the civil suit, the entire consent terms/consent decree is required to be acted upon and/or implemented by both the parties. There cannot be any execution of partial consent terms/consent decree. If the submission on behalf of the plaintiffs is accepted and the 8 flats as per list at ‘Annexure A’ are transferred absolutely and without any condition in favour of PA Group without there being any further supplemental consent terms/family arrangement, in that case, the entire object and purpose of entering into the consent terms/settlement to resolve all the disputes between the parties will be frustrated. Both the parties to



the consent terms/consent decree are required to fully comply with the terms of settlement/the consent terms and the consent decree. One party cannot be permitted to say that that portion of the settlement which is in their favour be executed and/or complied with and not the other terms of the settlement/consent terms/consent decree. Under the circumstances, as such, both, the learned Single Judge as well as the Division Bench are justified in holding that the execution of the further supplemental consent terms/family arrangement is must and there cannot be any partial execution of the consent terms/consent decree.

10. Even in the case of Hari Shankar Singhanian (supra), the decision which has been relied upon by the learned senior counsel appearing on behalf of the appellants, this Court has observed that a family settlement is treated differently from any other formal commercial settlement as such settlement in the eye of the law ensures peace and goodwill among the family members. It is further observed that technicalities should not be put at risk of the implementation of a settlement drawn by a family, which is essential for maintaining peace and harmony in a family. It is further observed that it is the duty of the court that such an arrangement and the terms thereof should be given effect to in letter and spirit."

37. Therefore, it would not be correct on the part of the Family Court, to have observed that the compromise decree is not capable of being executed. The Court was also of the opinion that the right or title of any of the property was not an issue before the Court and in the absence of any adjudication thereof by the Family Court, the execution cannot be ordered. The findings are incorrect inasmuch as, petition was filed containing agreed terms and conditions, coupled with the evidence-in-chief - Exhs.10 and 11 which, culminated into passing of the judgment and decree dated 25.07.2019 and the Court has ordered, the suit to be decreed as per the terms and conditions stated in the petition. Clearly, the provision of Order XXIII Rule 3 provides that if it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the Court,



shall proceed to pass the decree in accordance therewith. The judgment and decree have been passed in terms of the mutual consent and the petition was not contested on merits by the parties. Hence, no question arose of adjudicating the right, interest or entitlement of the parties in any properties including the property in question. It is also not in dispute that the judgment and decree both dated 25.07.2019 have attained finality, in the absence of any challenge. In view of the above discussion, the Family Court ought to have directed the respondent to execute the document as agreed and got it registered as per the provision of sub-rule (6)(a) of Rule 34 of Order XXI.

38. Clearly, the factor which weighed with the court below was that since the right or interest in the property is not adjudicated it cannot be granted, would be an error committed by the court below. Another factor which weighed with the Family Court was that since no relief is claimed by the parties for executing document and that while passing the judgment under section 13B of the Act of 1955, no directions are issued and hence, the documents cannot be directed to be executed. The said factor is also misplaced. At the cost of repetition, it is required to be noted that petition was filed under section 13B that contained the terms and conditions. Even the parties have filed their respective evidence-in-chief. The Court, accepting the compromise decree and the evidence-in-chief has passed the judgment and decree in terms of the said compromise. When the judgment was passed in terms of the compromise decree, it is deemed that the



terms and conditions contained in the compromise decree becomes a part and parcel of the judgment and decree. Ultimately, when there is a compromise deed executed between the parties and when the provisions of the Act of 1984 and more particularly, section 18 provides for execution of the decree in terms of the provisions of the Code, the only option left to the Court, was to execute the decree. The prayers are prayed for and issues are formulated when there is an adjudication on the merits and consequential grant of prayers. Clearly, the parties have agreed not to go for any adjudication of any rights and instead, entered into a deed for divorce by mutual consent, accepting to act as per the agreement and get the documents executed.

39. At this stage, relevant would be Order XXI Rule 34 which provides for decree of execution of the document. Sub-rule (6) (a) of Rule 34 provides that where the registration of document is required under any law, the Court or such officer of the court as may be authorized, shall cause the document to be registered in accordance with such law. Thus, the provision ought to have been taken recourse of and the Court ought to have directed the execution of the documents.

40. While advertng to the contention raised by the learned advocate appearing for the respondent regarding section 27 of the Act of 1955, it is to be noted that the issue is no longer *res integra*. In the case of *Balkrishna Ramchandra Kadam vs. Sangeeta Balkrishna Kadam (supra)*, the Apex Court has noted that considering the idea behind the provisions of the Act, section 27 will have to be given a wider interpretation



rather restricting it. While interpreting the term “at or about the time of marriage”, it has been held and observed that section 27, contemplates not only the property given to the wife at the time of marriage only but, it includes the property given to the parties before or after marriage also so long as it is relatable to the marriage. The expression “at or about the time of marriage” has to be properly construed to include such property which is given at the time of the marriage as also the property given before or after the marriage to the parties to become their “joint property” implying thereby that the property can be traced to have a connection with the marriage. Paragraph 11 is quoted below:-

“11. In our opinion, the courts have not gone into the question in its correct perspective. The trial court proceeded to negative the claim of the respondent-wife by holding that the court had no jurisdiction to deal with the property rights of the parties and gave no opportunity to the parties to lead evidence in support of their respective claims. The finding of the trial court clearly overlooked the provisions of Sections 27 of the Hindu Marriage Act which unmistakably vests the jurisdiction in the court to pass an order, at the time of passing a decree in a matrimonial cause. In respect of the property presented, at or about the time of marriage, which may belong jointly to the husband and the wife. The learned single Judge also fell in complete error while concurring with the view of the trial court to say that there was no evidence on the record to show that the property claimed by the wife was presented to her at the time of her marriage. The learned single judge failed to take notice of the deposition of the respondent in that behalf. Moreover, the property which is given to the wife at the time of marriage only. It includes the property given to the parties before of after given to the parties before or after marriage also. So long as it is relatable to the marriage. the expression "at or about the time of marriage" has to be properly construed to includes such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their "their property". Implying thereby that the property can be tracked to have connection with the marriage. All such property is covered by section 27 of the Act.”



41. Considering the nature of the issue involved, the judgments cited by the learned advocate for the respondent, would not apply. Pertinently, in the case of *Bachhaj Nahar vs. Nilima Mandal (supra)*, the suit was determined on merits. There were no pleadings so also the opportunity to the defendant to deny the claim and the reliefs, were granted. The Apex Court, therefore, held that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. The Apex Court further observed that the object of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. It has been further noted that the object of pleadings is also to ensure that both the parties are fully aware about the questions that are likely to be raised and considered so that they have opportunity of placing the relevant evidence appropriate to the issues before the Court for its consideration. So is not the case on hand, being a divorce granted by mutual consent on agreed terms with no adjudication of the issues. Judgment in the case of *Trojan and Company vs. R.M. N.N. Nagappa Chettiar (supra)* would also not apply inasmuch as, the reliefs were granted on the grounds outside the pleadings of the parties. Considering the facts on hand, the judgments in the case of *Akella Lalitha vs. Konda Hanumantha Rao (supra)* as well as *K.R. Suresh vs. R. Poornima (supra)*, would also be of no help.

42. It may be noted that during the course of hearing, the petitioner has declared before this Court that an amount of



Rs.5,000/- per month is regularly being invested in the name of the daughter. Ms Tanaya Shah, learned advocate, upon further instructions from the petitioner has stated that an amount of Rs.15,00,000/- shall be invested upfront with a lock-in period of five years and the daughter "XXXXXX" shall be at liberty to withdraw the same, which will be by joint signatures of both the parents. Also, SIP of another Rs.10,00,000/- shall be invested over the period of 20 months, i.e. Rs.50,000/- per month. This Court required the petitioner to reconsider the amount and the petitioner, has now agreed for Rs.20,00,000/- to be invested upfront with five years lock-in period and withdrawal reaching the age of 15 years. SIP of another Rs.15,00,000/- spread over 20 months, i.e. Rs.75,000/- per month shall be invested in her name. Needless to clarify that the petitioner shall scrupulously adhere to the said statement.

43. In view of the above discussion, the impugned order passed in the Execution Petition no.23 of 2021, is quashed and set aside. The Executing Court is directed to execute the decree accordingly. First Appeal succeeds and is accordingly, allowed. No order as to costs.

44. Record and proceedings, if any, be sent back forthwith to the concerned court.

(SANGEETA K. VISHEN,J)

(NISHA M. THAKORE,J)

SINDHU NAIR