



THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 29.07.2026

Order pronounced on : 07.08.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.3355 of 2026

M.N.Varsha

.. Petitioner

Vs.

K.V.Prashanth

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 15.04.2026 passed by the V Additional Judge, Family Court, Chennai, in O.P.No.3186 of 2025 and allow O.P.No.3186 of 2025 filed under Section 13(B) of the Hindu Marriage Act, 1955.

For Petitioner : Mr.M.K.Kabir
Senior Counsel for Mr.Jayaraman

For Respondents : No appearance



ORDER

The petitioner/wife, in matrimonial proceedings, is the revision petitioner, challenging the order dated 15.04.2026 passed by the V Additional Family Court, Chennai, in O.P.No.3186 of 2025.

2.I have heard Mr.M.K.Kabir, learned Senior Counsel for Mr.Jayaraman, learned counsel for the revision petitioner. Despite service of notice on the respondent and the name of the respondent also being printed in the cause list dated 29.07.2026, there has been no appearance on the side of the respondent.

3.Mr.M.K.Kabir, learned Senior Counsel for the petitioner would state that pending original petitions filed in HMOP.No.4147 of 2024 and HMOP.No.4640 of 2024 and maintenance claim in M.C.No.683 of 2024, the husband and wife were referred to mediation. In the presence of the Mediator, a settlement agreement was reached and also executed on 09.07.2025, in and by which, the parties had agreed to withdraw their respective HMOPs and the petitioner also undertook to withdraw her maintenance case in M.C.No.683 of 2024. It was agreed that a mutual consent divorce petition will be filed under Section 13(B) of the Hindu Marriage Act. It was also agreed that the petitioner would bring the minor child of the petitioner and the respondent, to see the

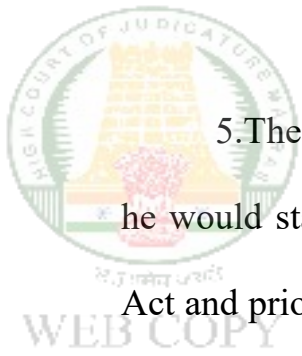


paternal grandfather on the birthday of the child between 10.00 a.m and 12.00 p.m. The

husband gave up his right of seeking custody of the minor child.

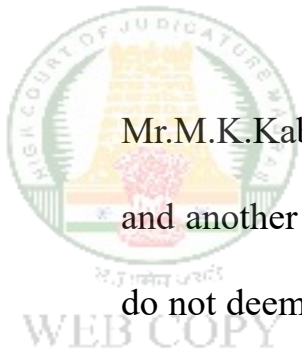
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4.The learned Senior Counsel would further state that the terms of settlement were also acted upon and all the cases were also withdrawn by the parties, two by the petitioner and one by the respondent and thereafter, a mutual consent divorce petition also came to be filed in H.M.O.P.No.3186 of 2025. However, the learned Senior Counsel would state that when the HMOP was posted for appearance of the parties, the respondent/husband failed to appear and the learned Principal District Court has proceeded to dismiss the Section 13(B) petition, giving liberty to the petitioner to restore her two cases, namely HMOP.Nos.4147 of 2024, as well as M.C.No.683 of 2024. He further contends that the Family Court has further relied on a memo filed by the petitioner, revoking the consent for passing a mutual consent divorce petition, without noticing that the said memo seeking revocation of consent was withdrawn by the petitioner. The learned Senior Counsel would also state that the wife was represented by a Senior Advocate and that the Court permitted the Senior Advocate to represent the petitioner, without even a formal application being filed under Section 13 of the Hindu Marriage Act, 1955.



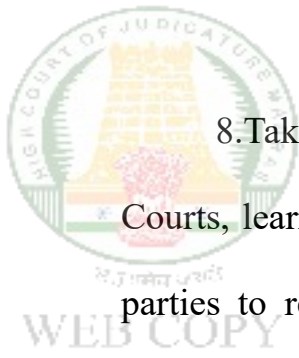
5. The submissions of Mr.M.K.Kabir, learned Senior Counsel are two fold. Firstly, he would state that an application being filed under Section 13 of the Hindu Marriage Act and prior permission of the Family Court being sought for has become redundant, in view of Section 30 of the Advocates Act, 1961, being notified on 09.06.2011. Section 30 confers a right on advocates to practice in all Courts, including the Hon'ble Supreme Court, as well as before any Tribunal or even person legally authorised to take evidence. In this regard, Mr.M.K.Kabir, has relied on the judgment of the Kerala High Court in *K.P.Saji Vs. State of Kerala*, reported in 2011 SCC Online Ker 4241 and the decision of the Division Bench of the Kerala High Court in *Adv. K.G. Suresh v. Union of India*, reported in AIR 2021 Ker 152, where the Division Bench of the Kerala High Court also upheld the view of the learned Single Judge in *K.P.Saji's case*.

6. In fact, Mr.M.K.Kabir, would fairly bring to my notice that this Court had appointed him as *amicus curae* in *Nanda Kishore Kolluru Vs. Madhulika Maddipudi*, reported in 2025 (2) CTC 113, where this Court had specifically referred to the effect of Section 30 of the Advocates Act on Section 13 of the Family Courts Act and held that Section 30, despite being notified, would not override Section 13 of the Family Courts Act and Rule 41 of the Family Court Rules. In fact, this Court culled out five reasons for the same. In the present case, the issue is not with regard to whether an Advocate is permitted to appear and represent either of the spouses before the Family Court. Though



Mr.M.K.Kabir has relied on the decision of the Division Bench of the Kerala High Court and another judgment of the Kerala High Court (Single Judge) taking a different view, I do not deem it necessary to delve upon the issue in the present case, as the said question does not fall for consideration in the present revision petition, especially since the Family Court has not refused permission to the counsel to represent the petitioner/wife. This issue is answered accordingly.

7.The second submission of Mr.M.K.Kabir, learned Senior Counsel is that once the parties have clinched a settlement before the Mediation Centre, the Family Court ought to have taken cognizance of the settlement reduced to writing and acted upon the same by granting a mutual consent divorce, even in the absence of one of the parties appearing in person on the date assigned for appearance of the petitioner, as well as the respondent. In this regard, the learned Senior Counsel has relied on the decision of the Division Bench of the Bombay High Court in *Prakash Alumal Kalandari Vs. Jahnvi Prakash Kalandari*, reported in *AIR 2011 Bombay 119*; the decision of the Kerala High Court in *Jinu Joy Vs. Bony Baiju*, reported in *AIR Online 2024 KER 124*; the decisions of the Hon'ble Supreme Court in *Trisha Singh Vs. Anurag Kumar*, reported in *AIR 2024 Supreme Court 2939* and *Dhananjay Rathi Vs. Ruchika Rathi*, reported in *2026 INSC 360*.



8. Taking me through the above decisions and the ratio rendered by the respective Courts, learned Senior Counsel would state that when it is not even open to one of the parties to resile from the settlement reached at the Mediation, mere absence of the husband before the Family Court was of no consequence and the Family Court should have proceeded to act upon the settlement agreement reached between the parties, thereby granting a mutual consent divorce, as prayed for in the HMOP. He would also state that based on the settlement agreement, the parties have also altered their stands, which would also therefore cause serious prejudice and if the petitioner is now driven to the necessity of reopening her HMOP.No.4147 of 2024 and the maintenance claim in MC.No.683 of 2024, the very purpose of the parties being referred to mediation, in order to give a quietus to long drawn litigation would be defeated. The learned Senior Counsel would therefore pray for the order of the Family Court being set aside and the HMOP.No.3186 of 2025 being ordered, granting a mutual consent divorce.

9. I have carefully considered the submissions advanced by the learned Senior Counsel for the revision petitioner.

10. Coming to the second issue with regard to whether the Family Court was right in dismissing the consent divorce petition, giving liberty to reopen her HMOP, as well as maintenance claim, I have carefully considered the submissions advanced by

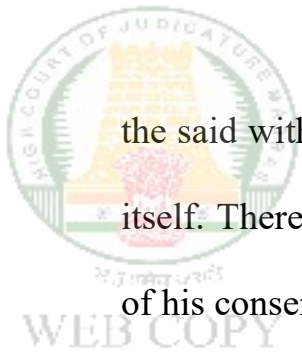


Mr.M.K.Kabir, learned Senior Counsel and I have also gone through the relevant decisions that have been relied on by the learned Senior Counsel in this regard.

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11.Firstly, it is to be noted that this is not a case where the parties straight away approached the Family Court and filed petitions seeking mutual consent divorce. Pending their respective HMOPs, the parties were referred to mediation and before the Mediator, admittedly a neutral person, the parties have amicably resolved all their differences and disputes and reduced the terms of settlement to writing. Acting upon the said terms, the Section 13(B) petition has also been filed by the petitioner, as well as the respondent jointly. Further, as agreed upon under the terms of compromise, the petitioner withdrew the cases filed by her and the respondent also withdrew the case filed by him. Therefore, there is a clear indication and willingness on the part of the petitioner, as well as the respondent, to give full effect to the terms of compromise.

12.Secondly, it is not a case where there is a withdrawal of consent by the respondent, which would have certainly raised eye brows and necessitated the Family Court to conduct a roving enquiry and thereafter decide the matter. In fact, at this juncture, it would be relevant to even record the fact that it was the petitioner, who withdrew her consent because of the non appearance of the respondent to give evidence in the mutual consent divorce petition. However, admittedly, the petitioner has revoked



the said withdrawal of consent, which has also been duly recorded by the Family Court, itself. Therefore, as far as the respondent/husband is concerned, there is no withdrawal of his consent.

13. In view of the above, I am now proceeding to examine the legal position in this regard.

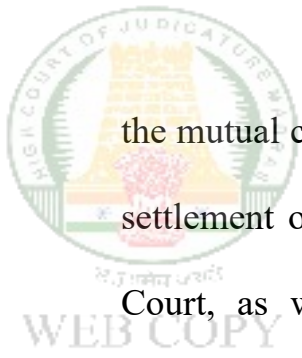
14. The Bombay High Court in *Prakash Alumal Kalandari's case*, in a case where the husband and wife had sought for divorce by mutual consent noticed withdrawal of consent by one of the parties before passing of the decree, held that when the consent terms had been executed and signed by both the parties and the wife had acted to her detriment, by withdrawing criminal complaints, as well as civil proceedings filed against the husband, besides also waiving the maintenance claim, as well as claims of Shreedhana, the husband cannot be permitted to withdraw his consent unilaterally. The Division Bench of the Bombay High Court further held that the Court is duty bound to dissolve the marriage, based on the consent terms already filed on record. A similar view was taken by the Kerala High Court in *Jinu Joy's case* as well, where the ratio laid down by the Bombay High Court in *Prakash Alumal Kalandari's case* was followed with approval.



15. The Hon'ble Supreme Court as well, in *Trisha Singh's case*, held that which the parties had executed a settlement before the Mediator and terms of settlement were also partly acted upon, it would not be open to the wife to thereafter resile from the settlement, without any justification.

16. In *Dhananjay Rathi's case*, the Hon'ble Supreme Court, taking note of the settlement agreement reached during mediation, held that such settlement was binding on both parties, unless it was a result of fraud, force or undue influence. The Hon'ble Supreme Court held the proceedings initiated under the Protection of Women from Domestic Violence Act, 2005, after reaching a settlement to be an abuse of judicial process.

17. In the present case, the petitioner, in fact, in my considered opinion, stands on a better footing, for the simple reason that after the compromise being recorded by the Mediator and terms also reduced to writing and signed by the petitioner/wife and the respondent/husband, the terms of the settlement were also given effect to, by withdrawal of the respective HMOPs filed by the petitioner and the respondent. Further, a reassurance of the terms of settlement can be seen from the fact that a consent divorce petition was also filed jointly by the petitioner and the respondent. Thereafter, the respondent/husband has abstained from appearing before the Family Court to dispose of



the mutual consent divorce petition. There is no express act of resiling from the settlement or withdrawal of his consent, unlike the cases before the Hon'ble Supreme Court, as well as the Bombay High Court and the Kerala High Court. In such circumstances, the Family Court clearly fell in error in dismissing the consent petition, giving liberty to the petitioner to reopen the HMOP and also the maintenance claim filed by her.

18.As held by the Division Bench of the Bombay High Court in *Prakash Alumal Kalandari's case*, the Court is duty bound to dissolve the marriage, based on the consent terms already filed and brought on record. In such view of the matter, I am inclined to set aside the order passed by the learned V Additional Judge, Family Court, Chennai.

19.In fine, the Civil Revision Petition is allowed and the order dated 15.04.2026 passed by the learned V Additional Judge, Family Court, Chennai, in O.P.No.3186 of 2025 is set aside and consequently O.P.No.3186 of 2025 is allowed. The marriage between the petitioner and the respondent solemnized on 05.09.2022 and subsequently registered on 12.09.2022 before the Sub Registrar of Marriage, Kodambakkam, vide Sl.No.246 of 2022, stands dissolved. No costs.

07.08.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The V Additional Judge, Family Court, Chennai.

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P.B.BALAJI.J,

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Pre-delivery order made in
CRP.No.3355 of 2026

07.08.2026