

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.8.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Civil Miscellaneous Appeal No.960 of 2014

S.Saranyah

..Appellant /2nd Petitioner

Vs.

E.Manikandan

rep. by Power Agent E.Jayanthi ... Respondent/1st Petitioner
[Amended vide order dated 06.02.2014 made in
MP No.1 of 2014 in CMA SRNo.91665 of 2012]

Appeal under against the order dated 09.11.2012 made in
O.P.No.638 of 2012 on the file of II Additional Family Court,
Chennai.

For Appellant : Mrs.K.Sumathi

For Respondent : Mrs.P.V.Rajeswari

J U D G M E N T
(Delivered by V.Ramasubramanian,J.)

This is an appeal filed by the wife challenging an order of the
II Additional Family Court, Chennai, dissolving the marriage that
took place between the appellant and the respondent by a decree of
divorce.

2. O.P.No.638 of 2012 was filed jointly by the appellant and the
respondent under Section 13(B) of the Hindu Marriage Act, 1956,
seeking dissolution of the marriage that took place between them on
27.01.2008, by mutual consent. When the original petition was taken
up on the appointed day, after expiry of six months, it appears
that the appellant did not want to proceed with the petition. It
appears that the evidence of the respondent was recorded and
thereafter, the O.P. was adjourned. The allegation of the appellant
is that without taking deposition, the Presiding Officer of the
Family Court typed out the contents of the petition and after
recording that the appellant refused to sign it, the Presiding
Officer passed a decree of divorce.

3. Therefore, contending that the consent for divorce did not continue up to the time when the evidence was properly recorded in accordance with law, the wife has come up with the above appeal.

4. The main contention of the appellant is that the Family Court has to put both parties in the witness box, record their deposition and also make them sign. Obviously, the deposition purportedly recorded from the appellant does not contain her signature.

5. After arguments were heard for sometime in the above appeal, the learned counsel appearing on both sides identified the area of conflict and took time to iron out the differences. Now, the only difference on account of which the consent failed, has been ironed out. Both parties do not wish to live in matrimony. At first, the marriage broke and then, the consent broke. Now, the consent has been restored. A joint memo of compromise has been filed by both parties. It reads as follows:

"JOINT MEMO OF COMPROMISE
FILED BY THE PARTIES

The Counsel for Appellant and Respondent submits as follows:

1. The Appellant and Respondent agree that the order dated 9.11.2012 in O.P.No.638 of 2012 on the file of II Additional Family Court, Chennai dissolving the decree of divorce by Mutual Consent the marriage between the Appellant and the Respondent be confirmed.

2. The Appellant agree that she will not claim any maintenance from the respondent present and future.

3. The Appellant and Respondent agree that the Appellant shall be the Guardian of the Minor Child Monesh and shall have the custody of the child.

4. The Appellant agree to take care of the interest of the minor child its education and well being and shall meet the entire expenses and need of the minor child. The Appellant shall have the right to take the child out of the country in the event of her getting employed or settling in a foreign country or pursuing her education.

5. It is agreed between the parties that as and when the Appellant and Respondent happen to be in India at the same time the Respondent shall have a visiting right for about 4 hours on every day during their stay in India.

6. The parties above named have no further claims under any head against each other.

It is prayed that this Hon'ble Court may be pleased to pass a decree of divorce by mutual consent on the basis of the above terms in the above appeal.

Dated at Carlton and Chennai on this ... day of August 2015."

6. Since both parties are living abroad, signature of the appellant has been obtained and it is also attested by a counsel in the country where the appellant resides. Insofar as the respondent is concerned, he is represented by his mother and Power Agent who has signed the memo of compromise. Apart from the Power Agent signing the compromise, the learned counsel for the respondent has also received a mail from the respondent himself confirming to the terms of the joint memo of compromise.

7. For the purpose of proper administration of justice on the file of the Family Court, it is clarified that whenever petitions for divorce by mutual consent are taken up for hearing, it is incumbent upon the Family Court to record the depositions in the proper manner and also obtain the signatures of both the parties.

8. The appeal is disposed of in terms of the compromise memo. The decree passed herein in terms of the memo of compromise in terms of the memo of compromise shall substitute the decree passed by the Family Court. No costs. Consequently, M.P.Nos.1 and 2 of 2014 are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kpl

To
The Judge, II Additional Family Court, Chennai

+1 cc to Mr.K.Sumathi, Advocate, sr.42924

+1 cc to Ms.P.V.Rajeswari, Advocate, sr.42653

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C.M.A.No.960 of 2014.

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