

IN THE JUDICATE OF MADRAS HIGH COURT

DATE : 19.07.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.M.A.No1314 of 2017

and

C.M.P.No.6774 of 2017

K.Lekraj Pai ... Appellant

Vs.

Mrs.Hemalatha Malliya ... Respondent

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act as against the fair and decreetal order dated 11.01.2017 in I.A.No.1963 of 2016 in O.P.No.3892 of 2013 passed by the learned Principal Judge, Family Court at Chennai.

For Appellant : Mr.P.Sankaranarayanan

For Respondent : Ms.K.Sumathi

* * * * *

JUDGMENT

(Judgment of the Court was delivered by R.SUBBIAH, J.,)

This Civil Miscellaneous Appeal has been filed by the appellant/husband against the order dated 11.01.2017 in I.A.No.1963 of 2016 in O.P.No.3892 of 2013 passed by the learned Principal Judge, Family Court at Chennai, directing the appellant/husband to pay a sum of Rs.20,000/- per month to his child towards interim maintenance from the date of petition ie., from 14.07.2016.

2.The appellant/husband has filed the main OP viz., O.P.No.3892 of 2013 before the Family Court at Chennai, under Section 13(i)(ia) of the Hindu Marriage Act, 1955, seeking for dissolving the marriage held between the appellant and the respondent herein on 21.05.2010, on the ground of cruelty. In the said OP, the respondent/wife filed I.A.No.1963 of 2016 seeking monthly interim maintenance of Rs.25,000/- to her child under Section 24 of the Hindu Marriage Act. The Court, after

considering the evidence, has passed an order dated 11.01.2017 directing the appellant/husband to pay interim maintenance to the child as stated supra.

3.Today, when the matter is taken up for consideration, the learned counsel on either side filed a joint Memo of Compromise dated 19.07.2017, duly signed by both the parties, stating that the appellant and the respondent in the interest and welfare of their only child K.Ganesh Pai, aged 5 years, have decided to amicably settle the matrimonial disputes between them. The terms and conditions mentioned in the joint Memorandum of Compromise are as follows_

a.The appellant agrees to withdraw the H.M.O.P.No.3892 of 2013 filed by him against the respondent, pending on the file of the learned Principal Judge, Family Court, Chennai.

b.The respondent agrees to withdraw the C.M.A.No.1444 of 2017 pending on the file of this Court.

c.The respondent agrees to not to seek any maintenance either past, present or future from the appellant for her;

d.The appellant agrees to pay a sum of Rs.12,00,000/- in full quit of maintenance of his son Master K.Ganesh Pai, minor aged 5 years, and the same shall be invested by way of a Fixed Deposit in a Nationalised Bank and the respondent shall be the guardian of the minor in respect of the same.

e.The above sum paid is in full quit of maintenance of the minor son for the past, present and future and the same shall be held as Fixed Deposit till the minor attains majority or he completes his 12th Standard of schooling, whichever is earlier. The respondent shall be entitled to withdraw the interest accrued towards educational expenses of the child.

f.The appellant shall be entitled for visitation rights of the minor once in a month on the first Sunday of every month from 9.00 am to 5.00 pm. The appellant may pick up the child from the residence of the respondent and drop him back at the same place. In case of any change in residence of either party, the new address must be communicated to the other by way of registered post with acknowledgement due. If for any valid reason either party is not able to honour the visitation on the 1st Sunday of every month, they should mutually agree to allow the visitation on any other Sunday convenient to both.

g.The appellant and the respondent agree to

file an application under Section 13(B) of the Hindu Marriage Act to dissolve the marriage solemnized between them on the next day of filing of Joint Memo of Compromise before this Court.

h.The appellant agrees to pay the maintenance amount agreed as below:

i)A sum of Rs.5,00,000/- shall be paid within 6 weeks from the date of termination of the above appeal;

ii)The balance sum of Rs.7,00,000/- shall be paid at the time of final disposal of the proposed H.M.O.P. to be filed under Section 13(B) of the Hindu Marriage Act.

i)The respondent on receipt of the aforesaid maintenance amount shall be immediately make arrangements to deposit the same in a nationalized bank as Fixed Deposit in the name of the minor;

j.The respondent shall file a petition before the Family Court, Chennai on the date of presentation of the petition for divorce by mutual consent and the appellant shall give his consent by way of an affidavit for appointing the respondent as the Guardian of the person and property of the minor child K.Ganesh Pai born on 04.11.2011. The copies of the divorce petition to be filed under Section 13(B) and the petition to be filed under the Guardians and Wards Act has already been verified and scrutinized by both parties, the copy of which is filed as Typed Set along with this Joint Memo of Compromise and both these petitions shall be filed on the next day after presentation of Joint Memo of Compromise before this Court. The petition under the Guardians and Wards Act shall also be brought for final hearing on the same day fixed for final hearing in the mutual consent petition and the appellant on that date shall present the affidavit consenting to appoint the respondent as guardian of the minor child.

K.The appellant and respondent agree that the application for mutual consent to be filed before the Family Court, Chennai shall be in consonance with this Memo of Compromise and shall not be deviated. "

4. In pursuance of the above compromise arrived at between the appellant and the respondent, they have agreed to dissolve their marriage by mutual consent. Further, pursuant to the compromise, the appellant agreed to pay a sum of Rs.12,00,000/- as maintenance to minor child K.Ganesh Pai towards full and final settlement of maintenance, out of which a sum of Rs.5 lakhs shall be paid within 6 weeks from the disposal of this appeal and the balance amount of Rs.7 lakhs shall be paid at the time of final disposal of the proposed HMOP to be filed under Section 13(B) of the Hindu Marriage Act.

5. Hence, recording the said joint Memorandum of Compromise, this Court issues the following direction

In the event of a petition being filed under Section 13-B of the Hindu Marriage Act before the family Court on the ground of mutual consent for divorce, in view of the peculiar circumstances involved in the case, the Family Court, before passing orders in the petition under Section 13-B of the Hindu Marriage Act, shall ensure that the terms of the Memorandum of Compromise have been duly complied with by both the appellant and the respondent.

With the above observations, the Civil Miscellaneous Appeal stand disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssv
To,

The Principal Judge,
Family Court at Chennai.
+1 cc to M/s.K.Sumathi Advocte sr 50756
+1 cc to M/s.R.Nagalakshmi Advocates sr 51264

C.M.A.No1314 of 2017
and
C.M.P.No.6774 of 2017

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