

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal Nos.403 and 1537 of 2015

Viji Raghuveeran Appellant in both Appeals
/Respondent

Versus

Manohar Swaminathan ... Respondent in both Appeals
/Petitioner

C.M.A.No.403 of 2015 : Appeal filed under Section 19 of the Family Courts Act against the order dated 02.12.2014 made in O.P. No. 1784 of 2011 on the file of III Additional Family Court, Chennai

C.M.A.No.1527 of 2015 : Appeal filed under Section 19 of the Family Courts Act against the Judgment and Decree dated 02.12.2014 made in O.P. No. 2917 of 2011 on the file of III Additional Family Court, Chennai

For Appellant : Mr. A. Ganesh
in both the appeals

For Respondent : Mr. B. Rajkumar Ashok Singh
in both the appeals

COMMON JUDGMENT

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

Both these appeals are filed by the wife/appellant against the common order dated 02.12.2014 made in O.P. No. 1784 of 2011 and O.P. No. 2917 of 2011 on the file of III Additional Family Court, Chennai. By the said order dated 02.12.2014, the Family Court, Chennai dismissed the OP No. 1784 of 2011 filed by the wife/appellant under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage and allowed the OP No. 2917 of 2011 filed by the husband/ respondent under Section 9 of The Hindu Marriage Act for restitution of conjugal rights.

2. The marriage between the appellant and the respondent was solemnised on 29.05.2006 as per Hindu rites and customs. Complainant that the appellant deserted his matrimonial company without any justifiable cause and residing in her parents house, within four months of the marriage, the respondent filed

OP No. 2917 of 2011 under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. On notice, the appellant filed a counter affidavit stating that she has already filed OP No. 1784 of 2011 under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage on the ground of cruelty. The Family Court, after appreciating the evidence made available on record passed a common order dated 02.12.2014 dismissing the petition filed by the appellant for divorce and allowed the petition filed by the respondent for restitution of conjugal rights. As against the said order dated 02.12.2014, appellant has come forward with these appeals.

3. Today, when the appeals are taken up for hearing, it is submitted by the counsel for both sides that the wife/appellant is willing to withdraw the allegations she has made against the respondent and the respondent is also willing to give consent for dissolution of the marriage by mutual consent. To that effect, a Memo of compromise dated 13.09.2017 has been entered into between the appellant and the respondent and it was duly signed by the appellant, respondent and their respective counsel. A copy of the memo of compromise dated 13.09.2017 has been produced for our perusal. The relevant portion of the Memo of Compromise reads as follows:-

"Now the appellant is willing to withdraw the allegations made in O.P. No. 1784 of 2011 and expressed her willingness for mutual consent for divorce. Accordingly, the respondent also expressed for consent divorce without admitting any allegation against him.

It is further stated that the appellant and respondent had separated the valuables, gold ornaments and their personal belongings.

And further the appellant herein declare that she will not make any claim of maintenance for the past, present and future, permanent alimony and share over the properties of the respondent.

The appellant has not come forward to live with the respondent, there is no use in waiting for further. Therefore, the respondent also agreed for the consent divorce on mutual grounds without any allegations against each other and considering the separation for more than six years from the date of filing litigations. There is no point in keeping the marriage in existence, the Honourable Court may be pleased to pass a compromise decree and judgment of divorce under mutual consent under Section 13 (B) of The Hindu Marriage Act, 1955 and pass necessary orders deemed fit and proper in accordance to the facts and circumstances."

4. In the light of the above compromise memo entered into between the appellant and the respondent, the counsel for both sides prayed this Court to set aside the common order dated 02.12.2014 made in O.P. No. 1784 of 2011 and O.P. No. 2917 of 2011 on the file of III Additional Family Court, Chennai and to grant a decree of divorce.

5. We are not inclined to accept the said submission of the counsel for the appellant as well as respondent to pass a decree of divorce by setting aside the order passed by the Family Court. However, we are of the view that the compromise memo entered into between the appellant and the respondent can be recorded and liberty shall be given to the appellant and the respondent to file appropriate petition seeking a decree of divorce by mutual consent as contemplated under Section 13 (B) of The Hindu Marriage Act. In the event of a petition being filed by the appellant and the respondent under Section 13-B of the Hindu Marriage Act before the Family Court for dissolution of their marriage on the ground of mutual consent, in view of the peculiar circumstances involved in the case, the Family Court shall consider the same and pass orders therein without waiting for the cooling period of six months to get over.

6. Accordingly, we confirm the common order dated 02.12.2014 made in O.P. No. 1784 of 2011 and O.P. No. 2917 of 2011 on the file of III Additional Family Court, Chennai and consequently, both the appeals are dismissed by recording the Memo of Compromise dated 13.09.2017 entered into between the appellant and the respondent. No costs.

*Xerox Copy of Memo of Compromise dated 13.09.2017 is enclosed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rsh

To

The III Additional Family Court
Chennai.

+1cc to Mr.A.Ganesh, Advocate, S.R.No.66929(18.09.2017)

C.M.A.Nos.403 & 1537 of 2015

RSI (CO)
CA(18/09/2017)