

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM:

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

Civil Miscellaneous Appeal No. 1851 of 2014

C. Purushothaman

.. Appellant

Versus

P. Muniyammal

.. Respondent

Appeal filed under Section 19 of the Family Courts Act against the Fair and Decreetal Order dated 14.03.2014 passed in O.P. No. 343 of 2011 on the file of Principal Family Court at Chennai.

For Appellant : Mr. K.N. Nataraaj
For Respondent : Mr. H. Adaikala Arockiaraj

JUDGMENT

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

The husband/appellant has come forward with this appeal aggrieved by the order dated 14.03.2014 passed in O.P. No. 343 of 2011 on the file of Principal Family Court at Chennai, whereby the Petition filed by him under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage solemnised between him and the respondent, on the ground of cruelty, was dismissed.

2. The marriage between the appellant and the respondent was solemnised on 01.05.2006 at Salai Vinayagar Temple, Cheyyar, Thiruvannamalai District. After the marriage, both the appellant and the respondent stayed in the matrimonial home at Chennai. As there was a matrimonial dispute between the appellant and the respondent, the appellant has filed F.C.O.P. No. 343 of 2011 on the file of the Family Court, Chennai for dissolution of the marriage solemnised on 01.05.2006.

3. On notice, the respondent filed a counter statement before the Family Court and resisted the Original Petition filed by the appellant. The respondent/wife has also filed HMOP No. 17 of 2011 on the file of Sub Court, Cheyyar under Section 9 of The

Hindu Marriage Act for restitution of conjugal rights and it is pending.

4. Before the Family Court, Chennai, the appellant examined himself as PW1 and Ex. P1 to P3 were marked. On the side of the respondent, the respondent examined herself as RW1 but no document was marked. The Family Court, on analysing the oral and documentary evidence, concluded that the appellant failed to establish that he was subjected to matrimonial cruelty at the instance of the respondent and thereby dismissed the Original Petition filed by the appellant. Aggrieved by the same, the appellant is before this Court with this appeal.

5. Today, when the appeal is taken up for hearing, it is submitted by the counsel for both sides that the appellant and the respondent have entered into a Joint Memorandum of Compromise dated 15.09.2017 agreeing to settle the matrimonial dispute between them. A copy of the Memorandum of compromise dated 15.09.2017 has been produced for our perusal. The relevant portion of the Memo of Compromise reads as follows:-

"(i). The appellant agreed to pay the respondent a lump sum amount of Rs.20,00,000 (Rupees Twenty Lakhs Only) in full and final settlement towards her past, future and present claim of maintenance and permanent alimony, sridhan articles etc., as one time settlement

(ii). In part fulfilment of clause (i) the appellant handed over to the respondent a demand draft bearing Serial Number 385879 dated 14.09.2017 for Rs.5,00,000/- drawn on Canara Bank, Thambu Chetty Street, Chennai - 600 001, to and in favour of the respondent Viz., P. Muniyammal, as a part payment, which she accepts and acknowledges the same.

(iii) In full and final settlement of the permanent alimony, in clause (i) herein above, the appellant pay the balance sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) by demand draft for a sum of Rs.13,50,000/- and a sum of Rs.1,50,000/- by cash on the date of filing of necessary petitions, incorporating the said details, before the trial court but not later than 27th October 2017.

(iv) We express our mutual consent for getting dissolved the marriage solemnised on 01.05.2006 between us.

(v) We submit that we have no further claims against each other, we withdraw the allegations we made against each other and pray for a consent decree of divorce, on the basis of the Memorandum of Compromise, be passed.

(vi) Since all the claims and disputes between the parties to the proceedings have been fully and finally settled in terms of Memorandum of Compromise, we agree that we shall not pursue further any personal civil or criminal proceedings initiated by us against each other and that if any, the same shall have to be withdrawn. As on date HMOP No. 17 of 2011 on the file of Sub Court, Cheyyar filed by the respondent/wife shall be withdrawn forthwith by her.

(vii) That it is further agreed between both the parties that they would not have any communication or contact with each other, with each other's friends, family members or relatives. They shall not create any situation which may defame or lower the reputation of the parties or their family members in the society. It is further agreed that they shall not enter at each other's work places as well.

(viii) Both the parties have executed this Memorandum of Compromise by mutual consent and without any force, coercion, misrepresentation, pressure from any corner and after going through and understanding the contents of the same."

6. Today, the appellant and the respondent are present before this Court. The appellant handed over a demand draft for Rs.5,00,000/- drawn in favour of the respondent as per clause (ii) of the Joint Memorandum of Compromise mentioned above and the respondent also acknowledges it.

7. 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 order dated 14.03.2014 passed in O.P. No. 343 of 2011 on the file of Principal Family Court at Chennai and to grant a decree of divorce.

8. 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 in the light of the Joint compromise memo entered into between them. 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.

9. Accordingly, we confirm the order dated 14.03.2014 passed in O.P. No. 343 of 2011 on the file of Principal Family Court at Chennai. The Civil Miscellaneous Appeal is dismissed by recording the Memo of Compromise dated 15.09.2017 entered into between the appellant and the respondent. No costs. We make it clear that 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 divorce by 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. It is also made clear that the Family Court, before passing order in the petition under Section 13-B of the Hindu Marriage Act, shall ensure that the terms of the Memorandum of Compromise dated 15.09.2016 have been duly complied with by both the appellant and respondent.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh

To

The Principal Family Court
Chennai

+1 cc to Ms.S.Agalya Advocate sr 67905
+2 ccs to Mr.K.N.Nataraj Advocate sr 67643

CMA No. 1851 of 2014

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