

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 818 of 2016

and

C.M.P. No. 6619 of 2016

T. Alexis .. Appellant/Petitioner

Versus

D. Joseph Arokia Selvi .. Respondent/Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Order dated 16.02.2016 made in I.A. No. 2355 of 2013 in O.P. No. 3053 of 2012 on the file of Principal Family Court, Chennai

For Appellant : Mr. K.P. Shanthosh

For Respondent : Mrs. Auxilia Peter

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY R. SUBBIAH, J)

The appellant in this appeal is the husband and the respondent is the wife. The appellant has come forward with this appeal aggrieved by the order dated 16.02.2016 made in I.A. No. 2355 of 2013 in O.P. No. 3053 of 2012 passed by the learned Principal Judge, Principal Family Court, Chennai. In and by the said order dated 16.02.2016, the Family Court directed the appellant herein to pay a sum of Rs.25,000/- per month to the respondent herein and Rs.10,000/- to the minor child born to them, totalling a sum of Rs.35,000/- per month as interim maintenance from the date of the order namely 16.02.2016 apart from Rs.15,000/- towards litigation expenses.

2. The appellant herein has filed O.P. No. 3053 of 2012 on the file of the learned Principal Judge, Principal Family Court, Chennai under Section 10 (1) (x) of The Indian Divorce Act to dissolve the marriage solemnised between the appellant and the respondent on 08.02.2006 on the ground of cruelty. Pending the Original Petition, the respondent has filed I.A. No. 2355 of 2013 in O.P. No. 3053 of 2012 under Section 38 of The Indian Divorce Act praying for grant of interim maintenance at the rate of Rs.50,000/- per month for herself and the minor child apart from Rs.20,000/- towards litigation expenses. The appellant has filed his counter in I.A. No. 2355 of 2013 and opposed the application for interim maintenance on the ground that the respondent is also employed and she is in a position to maintain herself. The court below, after considering the

oral and documentary evidence, has passed the order dated 16.02.2016 directing the appellant to pay a total sum of Rs.35,000/- per month as interim maintenance for the respondent and the minor child from the date of the order namely 16.02.2016 apart from Rs.15,000/- towards litigation expenses.

3. When the appeal was taken up for hearing on 17.03.2017, this Court, finding that the issued involved in this appeal relates to a matrimonial dispute, directed the parties to appear before the Tamil Nadu Mediation and Conciliation Centre attached to this Court to explore the possibility of settling the disputes amicably.

4. When the appeal is taken up for hearing today, it is represented by counsel for both sides that before the Mediation Centre, a settlement has been reached between the parties to settle the disputes amicably and the terms and conditions thereof were also reduced into writing in the form of a Joint Memorandum of Compromise. The Joint Memorandum of Compromise dated 05.07.2017 has been produced for our perusal and we have noticed that it was signed by the appellant, respondent and their respective counsel. The terms and conditions contained in the Joint Memorandum of Compromise is as follows:-

"6. During the mediation the appellant and the respondent desired to part ways amicably and file a petition for mutual consent under Section 10 (A) of Indian Divorce Act, on 05.07.2017 under the terms and conditions as follows:-

(i) The appellant and the respondent jointly purchased a land situated at Nallathambi Nagar, Medavakkam, Chennai. The appellant raised a bank loan of Rs.18,50,000/- (Rupees Eighteen Lakhs and Fifty Thousand Only) towards the construction of the house from Axis Bank dated 17.02.2012 having loan account No. PHRC08200453400 and gave the same to the builder. The respondent shall also commence the construction work of the property and the appellant will have no objection of the same.

(ii) The appellant has closed the said loan by paying the entire outstanding amount on 19.06.2017.

(iii) The appellant and the respondent will jointly receive the original documents relating to the property from Axis Bank Branch, West Tambaram, and the Appellant shall settle his share of 50% of the above said property in favour of their daughter A. Daria, and execute a registered gift settlement deed in respect of the said property in favour of his minor daughter A. Daria represented by mother and natural guardian as one time full and final settlement towards her maintenance on 01.12.2017. The cost of registration of settlement shall be equally borne by the parties.

(iv) The appellant had agreed to produce the loan closure certificate, gift settlement deed and handover all the documents relating to the above said property on or before 20th December 2017, before the Mediators appointed by the Honourable High Court of Judicature at Madras in CMA No. 818 of 2016 so that the respondent and her daughter A. Daria enjoy the above said property as absolute owners without any encumbrance.

(v) The respondent agrees to accept the settlement of 50% of the appellant share in the house property in favour of the daughter as full quit of all the monetary demands of the respondent. She undertakes not to make any other claim of maintenance for herself and for the daughter. The respondent undertakes to cooperate with the petitioner in disposing the mutual consent petition filed today before the Family Court, Chennai under S.R. No. 6640 of 2017 within the stipulated time of six months.

(vi) The appellant further agreed and paid today Rs.3,00,000/- (Rupees Three Lakhs Only) towards maintenance of the daughter by Demand Draft dated 19.06.2017 bearing D.D. No. 050729 drawn on HDFC Bank, Bangalore, in favour of the respondent on 05.07.2017 and the respondent agreed to receive the said sum of Rs.3,00,000/- (Rupees Three Lakhs Only) DD in her favour.

(vii) The appellant agrees that the respondent shall be the guardian of the Minor A. Daria. The parties agreed that permanent custody of the daughter shall be with the respondent mother. She will have all rights to sign any application or documents for the daughter's education or for any other requirements.

(viii) Both the appellant and the respondent are decently employed and earning sufficiently. They agree and undertake to lead their life without disturbing each other. Both the parties have exchanged their articles and other belongings, they have no claims against each other.

(ix) The appellant undertakes to not press the O.P. No. 3053 of 2013 now pending before the III Additional Family Court, Principal Family Court, Chennai and the respondent undertakes to not press the E.P. No. 44 of 2016 now pending before the III Additional Family Court, Chennai and to withdraw the Domestic Violence Act case bearing No. 3313 of 2012 now re-numbered as DVC No. 37 of 2017 pending before the XVIII Metropolitan Magistrate Court, Saidapet.

(x) The appellant shall handover the original birth certificate of the minor A. Daria to the respondent.

(xi) The appellant shall handover the original EB Payment receipt to the respondent.

(xii) The appellant should produce a clearance certificate or any other required documents from the statutory authorities to enable the respondent obtain a ration card for herself and her daughter as early as possible.

Both the parties have agreed for the above terms in letter and spirit. Hence, it is prayed that this Honourable Court may be pleased to record the memo and pass such further or suitable orders and thus render justice.

5. In the light of the settlement arrived at between the parties, which was recorded in the form of a Joint Memorandum of Compromise dated 05.07.2017 before the Tamil Nadu Mediation and Conciliation Centre attached to this Court, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently connected Civil Miscellaneous Petition No. 6619 of 2016 is closed. The Joint Memorandum of Compromise dated 05.07.2017 shall form part of the records.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rsh

To

The Presiding Officer
Family Court, Chennai.

+ 1 cc to Mr. K.P. Shanthosh, Advocate Sr.48873
+ 1 cc to Mr.Auxilia Peter, Advocate SR.48950

CMA No. 818 of 2016

NM(CO)
EU(26/10/2017)

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