

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2017

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH

and

THE HON'BLE MR. JUSTICE M.S. RAMESH

C.M.A. No.237 of 2017 & C.M.P. No.1557 of 2017

R. Ayyapparaj

Appellant/Respondent

vs.

Naveena

Respondent/Petitioner

Civil Miscellaneous Appeal preferred under Section 19 of the Family Courts Act, 1984, seeking to set aside the decretal order dated 07.01.2017 in I.A. No.1987 of 2015 in H.M.O.P.No.3917 of 2014 on the file of the III Additional Family Court, Chennai.

For appellant Mr. M. Babu Muthu Meeran
for Mr. J. Subbiah

For respondent Mr. N. Rajan

JUDGMENT

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

This Civil Miscellaneous Appeal has been preferred challenging the order dated 07.01.2017 passed in I.A. No.1987 of 2015 in H.M.O.P.No.3917 of 2014 on the file of the III Additional Family Court, Chennai (for brevity "the Family Court").

2 For the sake of brevity, the parties are referred to as per their rank in this Civil Miscellaneous Appeal.

3 The facts in brief, leading to the filing of this Civil Miscellaneous Appeal are as under:

3.1 The appellant filed a petition in F.C.O.P. No.226 of 2014 against the respondent under Section 13(1)(ia) of the Hindu Marriage Act before the Family Court, Salem, seeking divorce, which was subsequently transferred to the file of the III

Additional Family Court, Chennai and numbered as H.M.O.P. No.3917 of 2014.

3.2 In the said H.M.O.P., the respondent filed I.A. No.1987 of 2015 seeking a direction to the appellant to pay her a sum of Rs.1,25,000/- per month towards monthly maintenance of herself and her daughter from the date of the petition and also litigation expenses of Rs.6,00,000/-, pending disposal of H.M.O.P.

3.3 The Family Court, vide order dated 07.01.2017, allowed the interlocutory application by directing the appellant to pay a sum of Rs.75,000/- per month as interim maintenance to the respondent and her daughter from the date of the petition, viz., 12.10.2015, before 5th of every English calendar month and a sum of Rs.50,000/- towards litigation expenses to the respondent.

3.4 Impugning the said order, the husband, who is the petitioner in the H.M.O.P. and the respondent in the Interlocutory Application, has preferred this Civil Miscellaneous Appeal.

4 When this Civil Miscellaneous Appeal was taken up for hearing today, a Memorandum of Compromise dated 03.04.2017, duly signed by the appellant and respondent, was filed. The terms of the Memorandum of Compromise dated 03.04.2017 are as under:

"1 The party of the second part has undertaken to deposit a sum of Rs.1,15,00,000/- (Rupees one crore and fifteen lakhs only) as full and final settlement in favour of the party of the first part and her daughter, viz., Kavinya, now aged about 8 years in a nationalised bank at a branch in Chennai. The party of the second part undertakes that out of this Rs.1,15,00,000/- agreed amount, an amount of Rs.50,00,000/- (Rupees fifty lakhs only) shall be deposited in fixed deposit, in the name of daughter minor Kavinya, which shall be drawn by the minor daughter Kavinya after attaining her majority. The party of the first part is entitled to draw the monthly interest, accrued on the sum of Rs.50,00,000/- (Rupees fifty lakhs only) thus deposited for the maintenance of her daughter Kavinya. This shall be the full and final settlement for the child Kavinya. The remaining amount of Rs.65,00,000/- (Rupees sixty five lakhs only) shall be deposited in the name of the party of the first part as full and final settlement.

2 As agreed by both the parties that out of the said amount of Rs.1,15,00,000/- (Rupees one crore and fifteen lakhs only) at present, an amount of

Rs.20,00,000/- (Rupees twenty lakhs only) was deposited on 24.03.2017 by the party of the second part in the name of Naveena, Rs.10,00,000/- as Fixed Deposit in F.D. No.CDRB/14-279926 in Lakshmi Vilas Bank, Madipakkam Branch, Chennai and in the name of minor daughter Kavinya, Rs.10,00,000/- as Fixed Deposit in F.D. No.CDRB/14-279927 in Lakshmi Vilas Bank, Madipakkam Branch, Chennai, by the party of the first part as advance/part amount for giving effect to the Memorandum of Compromise.

3 The party of the second part had already filed petition to dissolve the marriage, which is pending on the file of III Addl. Family Court, Chennai in H.M.O.P. No.3917 of 2014. Based on this Memorandum of Compromise, now both the parties of first and second part had agreed to dissolve their marriage by mutual consent. Hence, the remaining amount of Rs.95,00,000/- will be paid by the party of the second part to the party of the first part at the time of dissolution of the marriage in the Family Court by way of Fixed Deposit of Rs.40,00,000/- (Rupees forty lakhs only) in the name of minor daughter Kavinya and Rs.55,00,000/- (Rupees fifty five lakhs only) in the name of the party of the first part Naveena. These facts will be embodied in the mutual consent divorce petition to be filed under Section 13-B of the Hindu Marriage Act, 1955, before the Hon'ble III Additional Family Court, Chennai in H.M.O.P. No.3917 of 2014.

4 The party of the first part have agreed that the above said Rs.1,15,00,000/- (Rupees one crore and fifteen lakhs only) in total, as permanent alimony for herself and her daughter Kavinya and she further states that she will not seek any maintenance, alimony or compensation from the party of the second part in present or in future. As such, no further claim of any nature between them at present and will not have any claim in future.

5 As such, both the parties shall not hereafter initiate any legal proceedings or take any other steps whatsoever arising out of this matrimony and agree for enforcing the terms of this Deed.

6 Further, both the parties submit that they have exchanged all their articles including gold jewels and they declare that they will not make any claim or file any petition regarding articles against each other in future.

7 The party of the first part already received all her gold ornaments of her own and including those given by the party of the second part during and after their marriage life and articles and personal belongings and the party of the first part do hereby agree that she and her daughter have no claim in respect of any valuables or movables or immovables or immovable property whatsoever from the party of the second party. Further, party of the first and second part do not have any claim or right or charge over the properties if any acquired by either of them in the past as well as in future.

8 As such, either of the parties hereto shall have no rights, interests or claims over the properties of the other, owned or earned by either of them, during the past, present and future, at any point of time hereinafter.

9 The party of the second part shall destroy all the evidences, with regard to the party of the first part recorded in the computer, pen drive, CDs and any other electronic devices.

10 Both the parties shall scrupulously comply with the terms and conditions of this final compromise memorandum of understanding and this deed of memorandum of understanding for effecting compromise is made in duplicate and one each is given to both the parties hereto."

5 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, today, a sum of Rs.20 lakhs was paid by the appellant by way of two demand drafts for Rs.10 lakhs each, as undertaken in clause 2 of the Memorandum of Compromise (supra). That apart, as per the Memorandum of Compromise, the appellant has agreed to pay the remaining amount of Rs.95 lakhs to the respondent and her daughter by way of fixed deposits for a value of Rs.40 lakhs in the name of minor daughter Kavinya and Rs.55 lakhs in the name of the respondent at the time of dissolution of their marriage before the Family Court.

6 Recording the above said Memorandum of Compromise, this Court issues the following directions:

- ✓ In the event of a petition being filed by the appellant 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 shall consider the same and pass orders therein without waiting for the cooling period of six months to get over.
- ✓ It is made clear that 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 respondent.

With the above observations, this Civil Miscellaneous Appeal stands disposed of. No costs. Connected C.M.P. is closed.

Xeorx copy of memorandum of compromise attached

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

The III Additional Principal Judge,
Family Court,
Chennai.

+1cc to Mr.J.Subbiah, Advocate SR.No.20135
+1cc to Mr.N.Rajan, Advocate SR.No.19907

C.M.A. No.237 of 2017

RJ (CO)
GN (10/04/2017)