

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.2970 of 2017
and
C.M.P.Nos.17401 and 17402 of 2017

Jayalakshmi .. Appellant
Vs

Sankaranarayanan ... Respondent

Civil Miscellaneous Appeal preferred against the judgment and decree dated 07.06.2017 made in M.O.P.No.223 of 2014, on the file of the Family Court at Puducherry.

For Appellant : Mr.R.Thiagarajan
For Respondent : No appearance

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal has been directed against the order dated 07.06.2017, passed in M.O.P.No.223 of 2014, by the Family Court at Puducherry.

2.The respondent herein, as petitioner has filed M.O.P.No.223 of 2014 on the file of the trial Court under Section 13[1][i-a] of the Hindu Marriage Act, 1955, praying to dissolve the marriage solemnized between him and respondent therein on 08.12.2006.

3.The trial Court, on the basis of the relief sought in the petition and also after considering the counter filed there on, has allowed the petition and thereby, granted a decree of divorce by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

4.Even though the respondent has been served with summons, appearance has not been made.

5.The learned counsel appearing for the appellant/ respondent has contended to the effect that during pendency of

M.O.P.No.223 of 2014, a compromise has been entered into between the parties and to that effect, a compromise memo has been filed. The trial Court, without looking into the terms of compromise, has erroneously passed the impugned order of divorce and thereby, thrown mudsling and also stigma on the appellant/respondent. Under the said circumstances, the impugned order passed by the trial Court is liable to be set aside.

6.It is seen from the records that on 02.06.2017, a compromise memo has been filed by both parties, wherein, certain terms are also mentioned.

7.Considering the fact that during pendency of M.O.P.No.223 of 2014, both parties have filed a compromise memo, wherein, certain terms are mentioned, the trial Court ought to have passed the order on the basis of terms of compromise. But, as rightly pointed out on the side of the appellant/respondent, the trial Court without looking into the terms of compromise, has allowed the petition on the ground of cruelty.

8.Considering the fact that the trial Court without considering the terms of compromise has allowed the petition on the ground of cruelty, it is needless to say that the order passed by the trial Court is totally against the terms of compromise and the same is liable to be set aside and the matter is remitted to the file of the trial Court.

In fine, this Civil Miscellaneous Appeal is allowed with out costs. The order dated 07.06.2017, passed in M.O.P.No.223 of 2014, is set aside and M.O.P.No.223 of 2014 is remitted to the file of the trial Court. The trial Court is directed to give notice to both parties and also directed to pass suitable order in consonance with the terms mentioned in the compromise memo dated 02.06.2017 within a period of two months from the date of appearance of both parties. Connected Miscellaneous Petitions are closed.

Registry is directed to send the records to the trial Court forthwith.

s/d-
Assistant Registrar(CS IX)

True Copy

Sub-Assistant Registrar

gya

To

1. The Judge
Family Court
Puducherry.

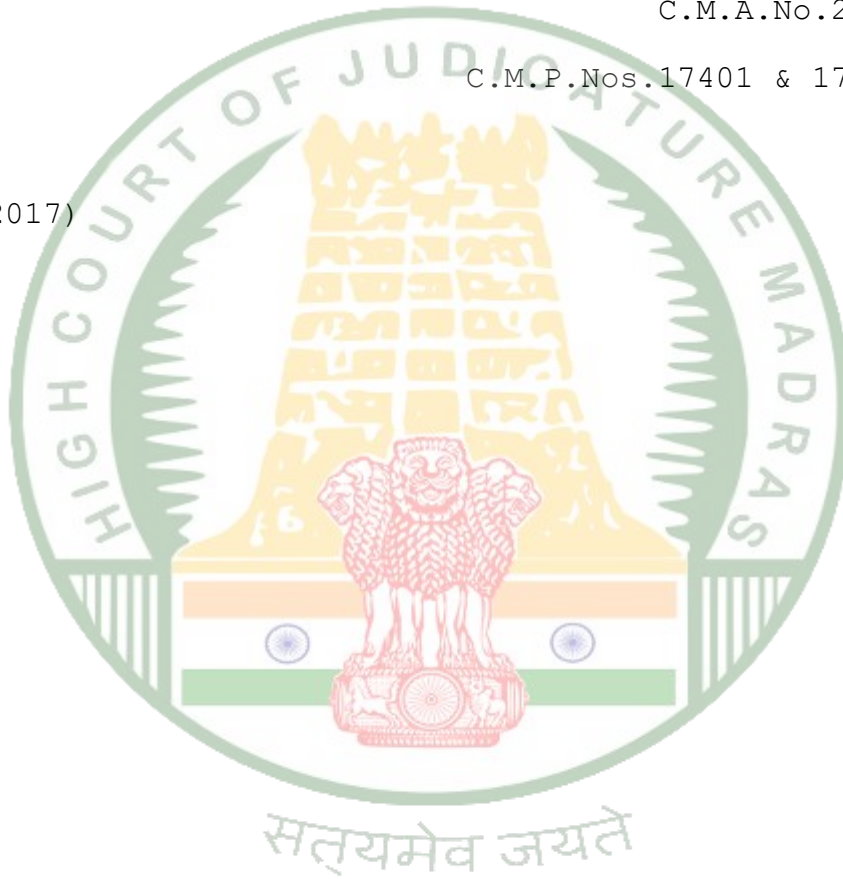
2. The Section officer
VR Section, High Court, Madras.

C.M.A.No.2970 of 2017

and

C.M.P.Nos.17401 & 17402 of 2017

SV(CO)
SP(19/12/2017)



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