

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CMA NO. 349 of 2016 & CMAMP NO. 515 OF 2017

Date of Order: 15.6.2017

Between:

P. Kamalakar Naidu

...Appellant

And

B. Usha and another

..Respondents

Counsel for appellant : Mrs. K. Jayasree

Counsel for respondent/s : Mr. Suresh Kumar Reddy
Kalava

The Court made the following:-



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CMA NO. 349 OF 2016 & CMAMP NO. 515 OF 2017

ORDER: (Per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

The petitioner in H.M.O.P.No. 134 of 2011 on the file of the Principal Senior Civil Judge, Chittoor has filed the present appeal against the dismissal of the said OP filed for dissolution of marriage between him and the respondent.

The appellant has filed CMAMP No. 515 of 2017 to pass a decree of divorce by mutual consent in terms of compromise. Along with the said application, a memorandum of compromise, signed by both the parties and their counsel, is filed, the terms of which are as follows,

1. "That, the 1st respondent has no objection for grant of decree of divorce by dissolving the marriage dated 1.3.2007, which was held in between the petitioner and 1st respondent herein by allowing the above appeal and setting aside the orders passed in HMOP No. 134 of 2011 on the file of Prl. Senior Civil Judge, Chittoor, dated 14.7.2015.
2. That, the 1st respondent filed DVC No. 4 of 2015 on the file of III Addl. J.M.F.C. Chittoor and the same is pending, the 1st respondent agreed to withdraw the said D.V.C.No. 4 of 2015 on the file of the III Addl. J.M.F.C., Chittoor by not pressing the said D.V.C.No.4/15, which is subject matter in WP

No. 24478/2015 on the file of this Hon'ble Court, and the petitioner agreed to withdraw W.P.No. 24478/2015 pending on the file of this Hon'ble Court.

3. That, the petitioner agreed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) towards permanent alimony which includes past, present and future maintenance for both respondents herein and the respondents agreed and received the same as full and final settlement by way of DD No. 549968, dt. 18.2.2017, drawn on Andhra Bank, Petametla, Pothalapatti Mandal, Chittoor district and further undertook that, the both parties shall not claim anything in future and file any cases in respect of money or maintenance.
4. That, the petitioner and his mother i.e., Kanthamma agreed to withdraw the Criminal Revision CrI.R.C.No. 826/2015 pending on the file of this Hon'ble High Court which was filed against the judgment passed by the Hon'ble District and Sessions Judge, Chittoor in CrI.A.No. 188/13 and acquitted by the District and Sessions Judge, Chittoor in CrI.A.No. 188/2013 in which the 1st respondent was convicted by the Hon'ble Addl. Sessions Judge, Chittoor in SC No. 64 of 2011.
5. That, the 1st respondent herein undertakes to look after the welfare of the 2nd respondent for life long including his education and other expenses and further undertakes to invest a sum of Rs.1,50,000/- in a fixed deposit received from the petitioner by way of DD No. 549969,

dt. 18.2.2017 drawn on Andhra Bank, Petametta, Pothalapattu Mandal, Chittoor district and further undertakes that, she shall not claim any rights in the property of the petitioner and further undertakes on behalf of the 2nd respondent that, she will not claim any property rights of the petitioner, since the said amount of Rs.1,50,000/- has been accepted on behalf of the 2nd respondent.

6. That, both the parties shall not interfere with each other life, liberty and dignity and shall not file any cases, civil or criminal against each other.
7. That, both parties do bear their own costs.”

On 9.6.2017 when the case was heard, it was noticed that the parties have not sought for amendment in the HM OP for grant of decree of divorce by mutual consent. The learned counsel for both parties requested for an adjournment for filing such an application. At the hearing, the respondent informed the Court that while she will file a joint petition along with the appellant for grant of decree of dissolution of marriage by mutual consent, she may not be able to attend the Court on future dates of hearing, that she has received two demand drafts for a sum of Rs.5.00 lakhs as permanent alimony in full and final settlement of her claim from the appellant and that the Court may grant a decree of divorce by mutual consent, in her absence.

Thereafter both the parties have filed a joint memo vide USR No. 3833 of 2017 to permit them to amend the prayer in HMOP by

granting a decree of divorce by mutual consent under Section 13 (b) of the Hindu Marriage Act, 1955 (for short “the Act”).

At the hearing, the appellant is present. Learned counsel representing both the parties requested for dissolving the marriage between the parties by mutual consent.

Having regard to the above facts, CMA MP No. 515 of 2017 is allowed. Joint memo for amendment of the prayer in HM OP No. 134 of 2011 is accepted. Consequently, HM OP No. 134 of 2011 filed under Section 13 (1) (i) (ia) and (ib) of the Act is permitted to be amended as the one filed under Section 13-B of the Act. The order of the lower Court is set aside and the marriage between the parties is dissolved by mutual consent in terms of the memorandum of compromise which shall form part of this order.

The Civil Miscellaneous Appeal is accordingly allowed to the extent indicated above.

As a sequel to disposal of the appeal, CMAMP No. 694 of 2016 shall stand disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

Dt.15.6.2017
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JUSTICE J. UMA DEVI