

IN THE HIGH COURT OF JUDICATE AT MADRAS

DATE : 24.04.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH

and

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

C.M.A.No.3223 of 2017

M.Sathish

Vs.

... Appellant/Petitioner

1.S.Divya

2.Shaji

3.Ramesh

... Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 19 r/w Section 28 of the Family Courts Act against the fair and decreetal order passed by the Principal Family Court at Coimbatore in H.M.O.P.No.783 of 2015, dated 12.09.2017.

For Appellant : Mr.P.Valliappan

For Respondents: Mr.Vikram Ramakrishnan

JUDGMENT

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

The appellant/husband has come forward with this appeal aggrieved by the order dated 12.09.2017 in H.M.O.P.No.783 of 2015 passed by the Family Court at Coimbatore, wherein and whereby the petition filed by the appellant under Section 13(1) (i) & 13(1)(i-a) of Hindu Marriage Act for dissolution of marriage between him and the respondent/wife on the ground of cruelty was dismissed.

2.The marriage between the appellant/husband and the 1st respondent/wife was solemnized on 08.12.2002 at J.M.Mahal, Manali Road, Palakkad, Kerala as per the Hindu Rites and Customs. After the marriage, both the appellant and the 1st respondent commenced their matrimonial life at the residence of the appellant at D.No.30, Mohammed Ali Street, Rathinapuri, Coimbatore. Subsequently, there was a matrimonial dispute

between the appellant and the 1st respondent. Hence, the appellant had filed petition in H.M.O.P.No.783 of 2015 on the file of the Family Court at Coimbatore, for dissolution of marriage solemnized on 08.12.2002. In the said HMOP, the 1st respondent/wife filed a counter statement and resisted the case projected by the appellant/husband.

3.Before the Court below, on the side of the appellant/husband, he examined himself as P.W.1, besides examining two other witnesses as P.W.2 & P.W.3 and marked sixteen documents as Ex.P.1 to Ex.P.16. On the side of the 1st respondent/wife, she examined herself as R.W.1 and marked two documents as Ex.R.1 & Ex.R.2.

4.The Court below, after analysing the entire evidence, has come to the conclusion that the appellant/husband has failed to establish his case as projected by him and thus, dismissed the HMOP. Aggrieved over the same, the present appeal has been filed by the appellant/husband.

5.Today, when the matter is taken up, both the parties appeared in person before this Court along with their respective counsel. This Court enquired the parties. They represented that they have arrived at an amicable settlement and they have filed a joint Memo of Compromise dated 24.04.2018. The terms of the Memo of Compromise read as follows:-

"a)Both parties withdraw their respective allegations made against each other in the petition and counter affidavit in H.M.O.P.No.783 of 2015

b)The appellant agrees that the 1st respondent shall have visitation right with regard to their minor daughter Niranjana every fortnight in a common place at Coimbatore (i.e., Temple, Park, Hotel, Mall, Residence of common friends or relatives) with prior intimation.

c)In so far as the case in O.P.No.865 of 2015 before the Family Court at Palakad, the parties agree that the instant memo of compromise shall have no bearing on the same and that the same shall be considered independently on merits by the concerned Court.

d)The parties pray that their marriage dated 08.12.2002 may be dissolved by a decree of divorce by mutual consent by the Court."

It is evident from the factual aspects of this case that the appellant and the 1st respondent are residing separately for a long time, which satisfies the ingredients for granting a decree of divorce in their favour. Hence, the joint memorandum of

compromise filed by the parties is recorded.

6.In the light of the above compromise entered into between the parties, the appeal is allowed in terms of the memorandum of compromise. The impugned order dated 12.09.2017 in H.M.O.P.No.783 of 2015 on the file of the Family Court at Coimbatore is hereby set aside and a decree of divorce by mutual consent is granted dissolving the marriage solemnized on 08.12.2002 between the appellant and the 1st respondent. The memorandum of compromise shall form part of the order. No costs.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

ssv

To,

1.The Principal Family Court Judge,
Coimbatore.

+2cc to Mr.P.Valliappan, Advocate SR.No.30542

C.M.A.No.3223 of 2017

RSK (CO)
GN (23/05/2018)

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