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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.1158 & 1159 of 2020
and
Cross Objection No.33 of 2020
and
C.M.P.No.7301 of 2020

C.M.A.Nos.1158 & 1159 of 2020

E.Alice Juliana
W/o.E.T.B.Samuel Jigme Harrison

... Appellant/
wife in both appeals

Vs.

E.T.B.Samuel Jigme Harrison
represented by Power of Attorney/Father
E.J.Tensigh

...Respondent/
husband in both appeals

Prayer:

C.M.A.No.1158 of 2020

Civil Miscellaneous Appeal filed u/s.19 of the Family Courts Act, 1984, against the decree and order of Family Court, Salem, dated 10.02.2020 passed in I.D.O.P.No.3 of 2017 granting divorce to the respondent in the common order made along with D.O.P.No.476 of 2019.

C.M.A.No.1159 of 2020

Civil Miscellaneous Appeal filed u/s.19 of the Family Courts Act, 1984, against the decree and order of Family Court, Salem, dated 10.02.2020 passed in D.O.P.No.476 of 2019 dismissing the petition for restitution of conjugal rights in the common order made along with I.D.O.P.No.3 of 2017.

For Appellant : Mr.A.Arulmozhi
[in both appeals]

For Respondent : Mrs.Sheila Jayaprakash
[in both appeals]



Cross Objection No.33 of 2020:

E.T.B.Samuel Jigme Harrison

... Cross Objector

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Vs.

E.Alice Juliana

W/o.E.T.B.Samuel Jigme Harrison

... Appellant/Respondent

Prayer:

Cross Objection filed under Order 41 Rule 22 of Civil Procedure Code seeking to clarify the order of maintenance and against the rejection of Ex.P11, a document marked by the husband.

For Cross-objector : Mrs.Sheila Jayaprakash

For Respondent : Mr.A.Arulmozhi

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

This matter is heard through Video Conference.

2. The appeals have been preferred against the common order dated 10.02.2020 passed in I.D.O.P.No.3 of 2017 and D.O.P.No.476 of 2019 on the file of Family Court, Salem. Cross Objection has been filed seeking to clarify the order of maintenance and against the rejection of Ex.P11.

3. Respondent and appellant were husband and wife. The marriage between them was solemnized on 23.08.2012 at Christ Church, Salem, according to Christian rites and customs. Due to the wedlock, a female child was born to them on 07.07.2015. Disputes arose between them. Respondent/husband filed I.D.O.P.No.3 of 2017 on the file of Family Court, Salem, seeking divorce. Appellant/wife filed D.O.P.No.476 of 2019 on the file of Family Court, Salem, seeking restitution of conjugal rights. Court below, under a common order dated 10.02.2020, granted a decree of divorce and dismissed the petition filed by the wife seeking restitution of conjugal rights. Aggrieved over the same, appellant/wife has filed the above appeals. Respondent/husband has filed the cross objection seeking clarification with regard to the order of maintenance as well as against the rejection of Ex.P11, document marked by him.

4. Heard both sides.



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5. Today, when the matter is taken up for hearing, learned counsel on either side submits that parties have arrived at a settlement and a Memorandum of Compromise has been filed in the Registry on 13.10.2020.

6. The Memorandum of Compromise entered into between the parties, signed by both parties and their respective counsel filed in the Registry on 13.10.2020, reads as follows:

'MEMORANDUM OF COMPROMISE

The appellant and respondent above named submit as follows:

1. The marriage of the appellant and the respondent was solemnised on 23.8.2012 at Christ Church, Salem in accordance with Christian rites and customs. They have a minor daughter named Jane Gabriella born on 08/07/2015.
2. The respondent, who is the husband of the appellant, had filed the I.D.O.P.3 of 2017 to dissolve the marriage solemnised between the appellant and him on 23.8.2012 under Christian rites and custom by a decree of divorce on the grounds of cruelty under Sec 10(1)(x) of The Divorce Act. The appellant filed I.D.O.P.476 of 2019 for an order for restitution of conjugal rights. The Hon'ble Family Court at Salem by a decree dated 10.2.2020 allowed the petition for divorce in IDOP 3 of 2017 filed by the respondent herein and dismissed I.D.O.P 476 of 2019 filed by the appellant for restitution of conjugal rights. As against these orders the appellant has filed CMA 1158 of 2020 and CMA 1159 of 2020. The respondent husband filed Cross objection 33 of 2020 to clarify an order of maintenance and against the rejection of P11, a document marked by him.

The appellant and respondent have now arrived at a compromise on the following terms and conditions:

1. The marriage solemnized between the appellant and respondent on 23.8.2012 under Christian rites and custom at Christ Church, Salem shall be dissolved by a decree of divorce as the marriage has irretrievably broken down and CMA 1158/2020 and CMA 1159/2020 and Cross Obj 33/2020 may be decreed in terms of this Memo of Compromise.
2. The appellant mother shall have the custody of the minor daughter Jane Gabriella born on 8.7.2015. The mother will be the sole guardian and custodian of the minor daughter Jane Gabriella. The mother shall



be entitled to apply for a pass port, visa and take the child within the country or abroad without the permission of the respondent. The respondent father has no rights of visitation or access to the child.

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3. The respondent/father is paying a sum of Rs.42.5 lakhs (Rupees Forty Two Lakhs and Fifty Thousand only) by way of a Demand Draft in favour of the appellant for the care, custody and medical support of the child Jane Gabriella who has special needs. The said amount shall be put into a Fixed Deposit in the name of the minor child Jane Gabriella with the appellant as the guardian. The appellant who is working has not claimed any maintenance/alimony for herself. The appellant gives up all claims of maintenance, past, present or future either civil or criminal for herself and the minor child and will not file any petition for maintenance against the respondent or members of his family.
4. The appellant and respondent have exchanged all articles, jewels and other items and will not file any further claim, suit or petition for the recovery of the same.
5. The appellant and respondent will withdraw all complaints/cases before the Police or any other authority which is now pending and will not file any such petitions in future or prosecute any civil or criminal case against each other to enforce any right which arises out of the above said marriage.
6. The appellant and the respondent will have no claims against each other for the properties which now stand in their individual names or which they may acquire or inherit in future. The appellant undertakes that no claims for property, maintenance or other financial obligations will be made by her on behalf of the minor child Jane Gabriella as she has been given legal guardianship and custody of the child.
The appellant and respondent pray that CMA 1158/2020, CMA 1159/2020 and Cross Obj 33 of 2020 be ordered in the terms of this Memo of Compromise which may form part of the order/decreet.'

As the parties have settled the matter and in view of the Memorandum of Compromise filed in the Registry on 13.10.2020, the Civil Miscellaneous Appeals are dismissed. Consequently, the Cross Objection is also dismissed. The Memorandum of Compromise



filed in the Registry on 13.10.2020 shall form part of the records. No costs. Connected miscellaneous petition is closed.

* Xerox copy of Compromise memo filed in the Registry on 13.10.2020 enclosed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

The Family Court,
Salem.

+2ccs to Mr.A.Arulmozhi, Advocate, S.R.No.34983,35104

+1cc to Mr.Sheila Jayaprakash, Advocate, S.R.No.35177

C.M.A.Nos.1158 & 1159 of 2020
and Cross Objection No.33 of 2020

CNR(CO)
PM(27/07/2021)