

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2020 & 24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.3731 OF 2019

AND

TR.CMA.No.659 OF 2020

AND

C.M.P.NO.21362 OF 2019

Shalini Priya Ashok Kumar
Rep by her father and
General Power of Attorney
K.Ashok Kumar

... Appellant

vs.

Gautham Venkatakrishnan,
Rep by his father and
Power of Attorney
S.Venkata Krishnan

... Respondent

CMA.No.3731 OF 2019:-

Appeal filed under Order 43 Rule 1 of C.P.C. R/w Section 19 (1) of the Family Courts Act, 1984 against the fair and decreetal order made in I.A.No.6 of 2019 in H.M.O.P.No.4587 of 2018 dated 09.09.2019 on the file of IV Additional Principal Judge, Family Court, Chennai.

TR.CMA.No.659 OF 2020

(HMOP.No.4587 of 2018):-

Petition filed under section 9 of the Hindu Marriage Act, 1955 for Restitution of conjugal rights on the file of IV Additional Family Court, Chennai transferred to the file of this court and renumbered as Tr.CMA.No.659 of 2020.

For Appellant : Mr.T.K.Kulasekaran

For Respondent : Mr.B.Thirunavukarasu
for M/s.S.Manjula

JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

Aggrieved against the order dated 09.09.2019 in I.A.No.6 of 2019 in H.M.O.P.No.4587 of 2018 on the file of IV Additional Principal Judge, Family Court, Chennai, the present appeal has been filed.

2.Pursuant to our meeting with both sides held on 08.01.2020, the matter has been taken up for hearing today. From the submissions made, it is seen that the appellant has filed H.M.O.P.No.4587 of 2018 on the file of the IV Additional Principal Judge, IV Additional Family Court, Chennai for restitution of conjugal rights. The respondent herein filed a petition in No.FL004145-ENB 3166410 for spousal or partner support and attorney fees and costs before the Superior Court of CA, County of Santa Clara.

3.It is further to be seen that for the marriage expenses, the appellant's father by name K.Ashok Kumar has incurred a sum of Rs.10 lakhs.

4.Both the parties are present today before us. In the presence of the learned counsel for both sides, they have agreed for the following terms:

- 1.The appellant is agreeable for consent divorce.
- 2.The appellant has agreed to return the presents made by the family of the respondent in the form of diamond necklace, thali, bracelet and two other rings.
- 3.The respondent has agreed to withdraw and therefore not to proceed with the divorce petition filed before before the Superior Court of CA, County of Santa Clara.
- 4.The respondent is also agreeable to repay the sum of Rs.10 lakhs in favour of the father of the appellant K.Ashok Kumar by depositing the said amount in the bank account of the appellant's father - S.B. A/c. No.30858502728 in State Bank of India, Kalpakkam.

5.An amount of Rs.10 lakhs is agreed to be paid by the respondent within a period of one month from the date of receipt of a copy of this judgment.

6.Both the appellant and the respondent agreed that there shall be a decree for divorce by consent in H.M.O.P.No.4587 of 2018.

7.The appellant shall return the jewels within a period of four weeks from the date of receipt of a copy of this judgment.

8.The respondent apart from not proceeding with divorce petition shall also withdraw all the claims made before the Superior Court of CA, County of Santa Clara which is inclusive of the claim for spousal or partner support and attorney fees.

9.The parties will not have any claim against each other in future in any respect.

10.The respondent is at liberty to take back his clothes and other belongings, if any available in the house of the appellant.

5.Registry is directed to call for the records in HMOP No.4587 of 2018 pending on the file of IV Additional Principal Judge, IV Additional Family Court, Chennai.

6.The Civil Miscellaneous Appeal stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed. There shall be a decree for divorce by consent in HMOP No.4587 of 2018 pending on the file of IV Additional Principal Judge, IV Additional Family Court, Chennai.

7.This consent order is also passed without relegating the parties to the Family Court for appropriate consequential action since the appellant herself has unequivocally agreed before us for divorce. Further, the respondent has already initiated divorce proceedings. Above all, both the parties are working abroad and though the consensus is arrived at in going for mutual divorce, it would be extremely difficult for them to come back to India to attend the hearing before the Family Court for getting appropriate orders. Thus, the consent order is passed while being conscious about the nature of petition filed by the appellant before the Family Court.

8.Before parting with the case, we place on record the valuable assistance of the learned counsel for both sides.

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Being Spoken To

This Matter is listed on Monday, the Twenty Fourth day of February, 2020 under the caption for Being spoken to and in pursuance of the early order dated 09.01.2020 & 30.01.2020 and made herein in the presence of the aforesaid counsels on the eitherside, the court made the following order:-

Pursuant to the order dated 09.01.2020 passed in C.M.A.No.3731 of 2019, this Court passed the following order on 30.01.2020:

This matter is listed today under the caption 'for being spoken to' at the instance of the learned counsel appearing for the appellant.

2.This is for the reason, by inadvertently, the appellant has withdrawn O.P.No.4587 of 2018. Since the O.P. has been withdrawn, there is no need for calling for the records and passing the order. However, the predicament which we are facing now is when the O.P. is withdrawn, we cannot pass an order for granting divorce. Now, both the counsel submitted that this being an oversight, the order can be passed in O.P. itself.

3.In view of the above, by consent of both counsel, the order passed in O.P.No.4587 of 2018 is set aside. The IV Additional Family Court, Chennai is directed to send the papers to this Court within a period of one week from the date of receipt of a copy of this order. On receipt of the same, Registry is directed to renumber O.P.No.4587 of 2018 and do the necessary exercise including conversion and thereafter, draft a decree.

4.Though a mistake has been committed, we place on record the cooperation of both counsel.

2.The case papers have been received from the Court below and renumbered as Tr.C.M.A.No.659 of 2020. Registry is directed to draft a decree as directed by this Court. This Transfer Civil Miscellaneous Appeal is disposed of accordingly. No costs.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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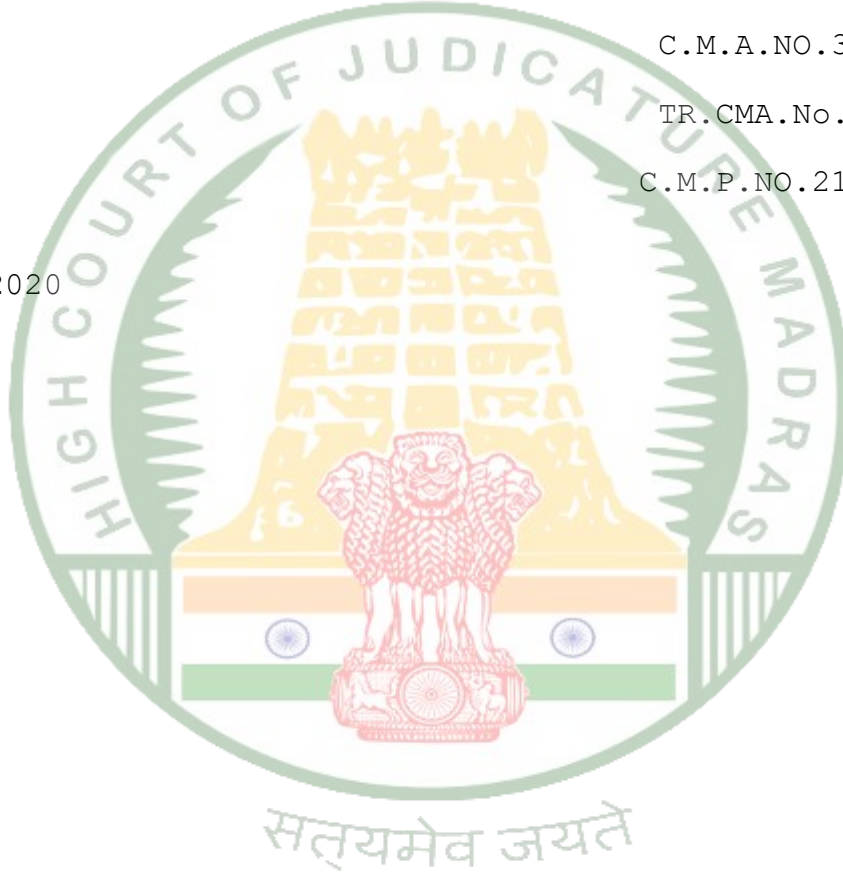
To

1. The IV Additional Principal Judge,
Family Court, Chennai.
2. The Section Officer,
VR Section, High Court,
Madras-104.

+4cc to Mr.T.K.Kulasekaran, Advocate, S.R.No.2314, 15468
+3cc to M/s.S.Manjula, Advocate, S.R.No.2433, 17399

C.M.A.NO.3731 OF 2019
AND
TR.CMA.No.659 OF 2020
AND
C.M.P.NO.21362 OF 2019

RJI (CO)
CS/09/03/2020



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