

A.Nos.2210 & 2211 of 2021 in
O.P.No.543 of 2020

V.PARTHIBAN,J.

The above Original Petition has been filed by the petitioner/husband for appointing him as a guardian of the person of the minor child Aadhya Sriram, born on 21.11.2018 and grant permanent custody of the minor child to the petitioner.

2. The brief facts which gave rise to filing of this Original Petition are stated hereunder:

(i) The petitioner filed H.M.O.P.No.2617 of 2020 before the First Additional Family Court, Chennai, seeking divorce and dissolution of marriage with the respondent herein on the ground of cruelty. Simultaneously, the above original petition in O.P.No.543 of 2020, has been filed for appointment of guardian and grant permanent custody. During the pendency of both Original petitions, it appeared that at the initiative of the respondent's paternal uncle and others, a settlement talk was initiated for amicable compromise between the petitioner/husband and the respondent/wife.

(ii) It also transpired that in pursuance of the above initiative, a compromise memo dated 14.12.2020, appeared to have been filed before this Court. On the basis of which, H.M.O.P.No.2617 of 2020, which was pending before the First Additional Family Court, Chennai was transferred to this Court and an order was passed in terms of the compromise memo *vide* decree and judgment dated 22.12.2020, in O.P.No.543 of 2020.

(iii) While matter stood thus, the respondent/wife has now filed the present applications in A.Nos.2210 & 2211 of 2021, seeking stay of the proceedings in pursuant to compromise decree dated 22.12.2020 passed in O.P.No.543 of 2020 and to set aside the judgment and decree dated 22.12.2020, passed in the above said original petition. According to the respondent, she was not fully aware of the contents of the compromise memo and the compromise decree passed by this Court is to be recalled. According to her, the compromise memo would result in grave injustice to her right to be with her husband as she is interested for the reunion, whereas, the compromise memo envisaged the dissolution of marriage and as *quid pro quo*, the petitioner has given up his right in the above said original petition for his appointment of guardian and for permanent custody.

3. When these applications are taken up for hearing, the learned counsel for the petitioner/husband in the above said original petition, raised serious objections as to the contents of the affidavit originally filed in support of the applications in A.Nos.2210 & 2211 of 2021, stating that there are personal allegations against the parties who involved in the settlement talk, ended in compromise decree passed by this Court on 22.12.2020. These allegations were totally false and untrue.

4. At this, the learned counsel for the respondent/wife in the said original petition would submit that the respondent may be permitted to withdraw the affidavit and file a fresh affidavit, withdrawing all the allegations unconditionally. On the basis of the undertaking, the original affidavit containing allegations was withdrawn and today when the matter is taken up for hearing, a fresh affidavit has been filed on behalf of the applicant/wife herein and the respondent in the original petition, simply seeking to set aside the judgment and decree dated 22.12.2020 passed in the above original petition.

5. This Court has taken the affidavit filed on behalf of the

respondent/wife on record sans personal allegations against persons involved in the process of compromise.

6. The learned counsel for the petitioner/husband in the original petition would submit that she has no objection in allowing the applications and to set aside the compromise decree dated 22.12.2020 and has further no objection for the *status-quo ante* to be restored in the matter.

7. The learned counsel for the respondent would also submit that the rights and claims of the parties to be left open to be agitated in the respective cases pending before this Court as well as before the Family Court.

8. In consideration of the above factual narration and submissions of the learned counsel for the rival parties, the compromise decree and judgment dated 22.12.2020 passed in O.P.No.543 of 2020 and in A.Nos.641 and 2863 of 2020, is hereby set aside by the consent of the parties.

9. Hence, H.M.O.P.No.2617 of 2020, is directed to be restored on the file of the First Additional Family Court, Chennai. The parties may be directed to workout their rights and claims in the said H.M.O.P. and

O.P.No.543 of 2020 is also directed to be restored on the file of this Court.

10. It is to be noted that both the petitioner/husband and the respondent/wife are present before this Court today. In view of the passage of considerable time, a request was made for direction to the Family Court to complete the proceedings expeditiously.

11. The Family Court is therefore, directed to expedite the hearing of H.M.O.P.No.2617 of 2020 and complete the proceedings within a period of one year from today.

12. The Original Petition being restored to the file of this Court, post the same for hearing on 09.08.2021.

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28.07.2021

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