

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CMA.No.369/2018 and CMP.No.3560/2018

S.Nithya ... Appellant

-vs-

V.Ashokumar ... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the fair and decreetal order dated 27.06.2016 passed in HMOP.No.1137/2013 by the learned Additional Principal Judge, Additional Principal Family Court, Coimbatore.

For Appellant : Mr.K.Sudhakar

For Respondent : Mr.N.Anbazhagan
for M/s.Sarvabhauman Associates

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 27.06.2016 passed in HMOP.No.1137/2013 by the learned Additional Principal Judge, Additional Principal Family Court, Coimbatore, thereby granting decree for divorce, dissolving the marriage that was solemnized on 02.11.2008 between the appellant-wife and the respondent-husband stating inter alia that cogent evidence was let in by the respondent-husband to prove that he suffered cruelty on the hands of the appellant-wife and there was pleadings to show that the respondent-husband had suffered mental or physical cruelty etc.

2. Considering the age of both the appellant-wife and the respondent-husband, this Court in an effort to patch up them for reunion directed both of them to appear before us on 30.11.2021

at 2.15 p.m. along with their counsels. Accordingly, they appeared before us. After some deliberations, we were able to find that the respondent-husband has been taking treatment in Care and Cure Foundation, Alcohol Drugs, De-Addiction-cum-Rehabilitation Centre, Tirupur as he was habituated to regular drinking habit. It was also brought to our notice by the appellant-wife that the respondent-husband had contracted second marriage and thereafter, she also met with natural death.

3. At this juncture, when we found that the reunion among the parties is not possible, the elder brother of the respondent-husband taking some responsibility came forward to pay permanent alimony to the appellant-wife in favour of his brother-the respondent-husband. Accordingly, Mr.Sathyamoorthy, the elder brother of the respondent stated that by disposing of his family property he would pay a sum of Rs.7,00,000/- within six months and to show his bona fide, he promised to pay Rs.3,00,000/- within ten days and that was also paid. We have also recorded the same in our earlier order dated 30.11.2021.

4. To-day, learned Counsel for the appellant-wife has also agreed that a sum of Rs.3,00,000/- was paid by the elder brother of the respondent-husband and the same was received by the appellant. However, with regard to the payment of the balance amount, since the elder brother of the respondent has to sell away the family property, the learned Counsel for the respondent sought for some more reasonable time.

5. Supporting the said contention, learned Counsel for the appellant agreed to grant reasonable time to the respondent to settle the balance amount and to that effect a Joint Memo of Compromise dated Nil.12.2020 has also been filed signed by both the parties and counsels. The same is extracted here under :

''JOINT MEMO OF COMPROMISE

The appellant and the respondent submit as follows:

1. The respondent/husband filed the above HMOP seeking for divorce on the ground of cruelty and the same was allowed by the Hon'ble Family Court, Coimbatore, by order dated 27.06.2016. Thereafter, respondent/wife filed the above appeal before this Hon'ble Court. Out of the above wedlock one male child was born on 28.10.2009 named as Minor Swasthik, (Special child suffered Autism-diagonised with cerebal palsy with moderate mental retardation) now aged about

12 years and under the custody of Appellant/wife.

2. The appellant/wife and respondent/husband were present before this Hon'ble Court on 30.11.2021. After some discussion, the appellant/wife agrees to get a sum of Rs.7,00,000/- (Rupees Seven Lakhs Only) in full and final settlement from the respondent/husband for herself and for the child.

3. The appellant/wife received a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) on 7.12.2021 and the respondent/husband agrees to pay the balance amount within a period of 4 months.

4. By virtue of the compromise entered into between the parties, the appellant herein agrees to withdraw the above CMA, thereby affirming the decree of divorce granted by the Family Court in HMOP.No.1137 of 2013. There are no other claims between the parties.

5. The appellant/wife agrees to give consent for divorce to the respondent/husband and the appellant will not claim anything in future from the respondent.

6. The Joint Memo of Compromise may form part of the decree in the above CMA.

It is therefore prayed that this Hon'ble Court may be pleased to record the above Joint Memo of Compromise and decree the above CMA in terms of the Joint Memo of Compromise and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.''

6. Recording the above Joint Memo of Compromise, the Civil Miscellaneous Appeal stands disposed of granting four months time to the respondent-husband to settle the balance amount of Rs.4,00,000/- (Rupees Four Lakhs Only) as agreed between the parties. Needless to mention that the Joint Memo of Compromise shall form part of the records. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Additional Principal Judge,
Additional Principal Family Court,
Coimbatore.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.K.Sudhakar, Advocate SR.No.988

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.721

CMA.No.369/2018

SPD(CO)
CB(31/03/2022)