



Cont.P.No.1104/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Bala Palanichamy

... Petitioner

Vs.

Tmt.Muthumalar

... Respondent

Prayer : Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971, to punish the respondent for willfully disobeying the order of the learned Principal Judge, Family Court, Chennai vide order dated 05.03.2022 in OP.No.117/2022.

For Petitioner

: Mr.K.Azhagu Raman



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ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1) The above contempt petition is filed by the petitioner under Section 10 of the Contempt of Courts Act, 1971, to punish the respondent for willfully disobeying the order of the Principal Family Court, Chennai, dated 05.03.2022 in OP.No.117/2022.
- (2) The case of the petitioner is that the marriage between the petitioner and the respondent was solemnised on 05.07.2004 and out of wedlock, a female child was born and she is aged 13 years. It is the further case of the petitioner that due to misunderstanding, the petitioner and the respondent were living separately since 11.06.2020.
- (3) The petitioner filed a petition in OP.No.117/2022 before the Principal Family Court, Chennai, for filing a decree for divorce by mutual consent under Section 13[B] of Hindu Marriage Act. It is also stated that a Joint Memorandum of Compromise was executed between the petitioner and the respondent on 02.12.2021 and signed on 10.01.2022 wherein, the petitioner and the respondent mutually agreed to dissolve the marriage by consent. It is also stated the Joint Compromise Memo was marked as



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Ex.P7 in OP.No.117/2022 before the Principal Family Court, at Chennai.

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- (4) Stating that the decree for divorce by mutual consent was passed by the learned Principal Judge, Family Court, Chennai, by order dated 05.03.2022 on the basis of the Joint Memorandum of Compromise dated 02.12.2021. The petitioner has come forward with the above contempt petition stating that the respondent has refused to act on the basis of the terms and conditions of the Joint Memorandum of Compromise dated 02.12.2021.
- (5) The specific allegation is made that the respondent is making every effort to violate the provisions as stipulated in the Memorandum of Compromise dated 02.12.2021. He referred to the terms and conditions of the Joint Memorandum of Compromise dated 02.12.2021.
- (6) The learned counsel for the petitioner submitted that the respondent is obliged to transfer 50% shares of the property at LB Road, described in the 'B' Schedule to the Memorandum and execute a Settlement Deed in favour of the petitioner's minor daughter, has created a mortgage by encumbering the property at LB Road in Tiruvanmiyur, quite contrary to the terms of Compromise. Stating that the respondent has breached the



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order of the Family Court, by not transferring 50% of share in favour of petitioner's daughter and by mortgaging the property for a sum of Rs.3 Crores,, the above contempt petition is filed by the petitioner who is the ex-husband of the respondent.

(7) Though, a few more allegations are also made in the affidavit, the whole case of the petitioner is that the respondent has disobeyed the order of the Principal Family Court in OP.No.117/2022.

(8) Before going into the merits of the allegations, it is seen from the Joint Memorandum of Compromise dated 02.12.2021 and signed on 10.01.2022, that the petitioner and the respondent have mutually agreed for grant of a decree for divorce apart from several other terms. Though Clause [1][b] of the Joint Memorandum of Compromise indicates that the respondent has agreed to transfer 50% share in the name of her minor daughter and execute a Settlement Deed in favour of her daughter, the order in OP.No.117/2022 is not in terms of the Joint Memorandum of Compromise. From the sequence of events, the Joint Memorandum of Compromise dated 02.12.2021 was signed by the parties on 10.01.2022 in the presence of witnesses. It was after the Compromise Memo, it



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appears that the petition for divorce was filed by the petitioner and the respondent jointly for grant of divorce by mutual consent under Section 13[B] of Hindu Marriage Act. In the petition, the petitioner and the respondent jointly prayed the Family Court to pass a judgment and decree for divorce by mutual consent, dissolving the marriage solemnised between the petitioner and the respondent on 05.07.2004 at PTR Marriage Hall, Thallakulam, Madurai. The Principal Family Court, at Chennai, passed final order in OP.No.117/2022 on 05.03.2022. After extracting the averments made in the petition including the Memorandum of Compromise, the learned Judge, has passed the final order in the following lines:-

"5.This petition was presented in this Court on 11.01.2022 under Section 13-B of Hindu Marriage Act. The petition was adjourned to 11.07.2022 enabling the petitioners to undergo 6 months statutory waiting period as it is required under law. In the meantime, both the petitioners appeared before this Court on 09.02.2022 along with the petition to advance the hearing as well as the waiver petition. The petition to advance the hearing from 11.07.2022



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to 09.02.2022 was allowed on 09.02.2022 and the case was taken up for hearing. Since the petitioners have not undergone counselling or mediation, they were advised to attend mediation. Accordingly, the petitioners attended mediation and appeared before this Court on 22.02.2022. The mediation report revealed that the settlement could not be arrived between the parties in respect of reunion. Hence, following the principles laid down by the Hon'ble Supreme Court of India in **Amar Deep Singh Vs. Harveen Kaur**, this Court was inclined to allow the waiver petition and the rest of the waiting period out of six months was also waived off. The petitioners have consented for divorce and reiterated their stand for divorce.

6. Both petitioners present on 22.02.2022 the date of final hearing and consented for divorce and reiterated their stand for divorce and made their second motion. In support of their second motion, the 1st and 2nd petitioners were examined as PW1 and PW2 respectively and Ex.P1 to Ex.P7 were marked. The petition is for divorce by mutual consent. The parties reiterated their stand for divorce on their own



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volition. The petitioners have mutually settled their issues amicably which is evident from the pleadings and the evidence of the petitioners. There is no meeting of minds between the parties and there is no scope for reunion. Hence, this Court arrives at a conclusion that the grant of divorce by mutual consent would meet the ends of justice and the point is answered accordingly.

7.In the result, this petition is allowed and the marriage between the petitioners which was solemnised on 05.07.2004 at Thallakulam, Madurai is dissolved by mutual consent and the decree of divorce is granted. No costs."

(9) Though the petition refers to a Joint Memorandum of Compromise, only the clause relating to dissolution of marriage by mutual consent is referred to apart from the undertaking given by the petitioner to take care of the educational expenses and marriage expenses of his minor daughter. The other terms of Compromise Memo are not even referred to in the judgment. The order of the learned Principal Judge, Family Court, Chennai, shows that the decree for divorce was granted by mutual consent without reference to any other Agreement that was entered into between



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the parties. Therefore, the contention of the learned counsel for the petitioner that the respondent has violated the order of the learned Principal Judge, Family Court, Chennai, is misleading. Neither the judgment nor the decree in OP.No.117/2022 refers to any condition for grant of divorce. In other words, the dissolution of marriage between the petitioner and the respondent is granted by the Principal Family Court, Chennai, without recording any obligations of the parties. It is in the said circumstances, this Court is unable to find any direction by the learned Principal Judge, Family Court, Chennai, in OP.No.117/2022, so as to allege that the respondent has committed contempt by willfully disobeying the order of the learned Principal Judge, Family Court, Chennai.

(10)Section 19 of the Contempt of Courts Act, 1971, enables this Court punish anyone and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of Contempt of Courts subordinate to it as it has and exercises in respect of contempts of itself.

(11)This Court finds no merit in the affidavit to suggest that the respondent has committed willful disobedience of the order of the learned Principal



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Judge, Family Court, Chennai, in OP.No.117/2022. It may be true that the Joint Memorandum of Compromise indicates that the parties have also agreed to certain terms while agreeing for mutual divorce by consent. However, the decree for divorce or dissolution of marriage was granted independent of Joint Memorandum of Compromise. Even though the petitioner may enforce the terms of Joint Memorandum of Compromise by filing a suit for specific performance or in the manner known to law, there is no scope for entertaining this petition having regard to the admitted facts.

(12)Hence, the contempt petition stands **dismissed for devoid of merits.**

[S.S.S.R., J.] [S.M, J.]
30.10.2023

AP

Internet : Yes
To
The Principal Judge
Family Court, Chennai.



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S.S. SUNDAR, J.,
and
SUNDER MOHAN, J.,

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