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C.M.A.No.1036 and 1051 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 28.10.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU**  
**and**  
**THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

**C.M.A.No.1036 and 1051 of 2023**  
**and CMP.No.9811 of 2023**

S.Sindhuja ... Appellant  
in both C.M.As.

Vs.

R.Vivek Prabhu ... Respondent  
in both C.M.As.

**Common Prayer:** These Civil Miscellaneous Appeals are filed under Section 19 of Family Courts Act of the Hindu Marriage Act to set aside the order passed in O.P.Nos.3818 and 3941 of 2018 dated 29.08.2022 on the file of the Principal Family Court, Chennai.

For Appellant : Mr.S.Ravi  
in both C.M.As.

For Respondent : Ms.P.V.Rajeswari for Mr.S.Dhasaiya  
in both C.M.As.



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### **COMMON JUDGMENT**

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(Judgment of the Court was delivered by J. Nisha Banu, J )

These Civil Miscellaneous Appeals have been filed by the appellant/wife against the fair and decreetal order dated 29.08.2022 allowing the O.P.No.3818 of 2018, seeking to dissolve the Marriage and dismissed the Restitution of Conjugal rights filed by the appellant wife in O.P.No.3941/2018.

2. Today, when the matters were taken up for hearing, learned counsel for the appellant and the respondent would state that pending these appeals, the appellant and the respondent settled the issue among themselves and decided to live separately. Learned counsel for the appellant and the learned counsel for the respondent filed a Memorandum of Settlement dated 28.10.2024 duly signed by the parties. Learned counsel appearing on either side would state that the Civil Miscellaneous Appeals may be disposed of in terms of the Memorandum of Settlement.

3. The terms of Memorandum of Settlement, dated 28.10.2024 is extracted hereunder:



**WEB COPY "THIS MEMORANDUM OF SETTLEMENT EXECUTED AT**

**CHENNAI ON THIS THE 28<sup>th</sup> DAY OF OCTOBER 2024**

**BY AND BETWEEN**

*Mrs. Sindhuja D/o.Sankaran, aged about 36 years residing at No.101/2, Golden Plots, Mogappair, Chennai- 600 050, hereinafter called as the party of the FIRST PART*

*AND*

*Mr. Vivek Prabhu, S/o Mr. Jebamani John @ S.Raghavan, Christian, aged about 38 years residing at Plot No.20, Sathiya Priya Nagar, 2<sup>nd</sup> Cross Street, Revathipuram, Urapakkam, Kancheepuram – 603 210 hereinafter called as the party of the SECOND PART*

*1. Whereas the marriage of the party of the First Part with the Party of the Second Part was solemnized on 08.09.2014 at Infant Jesus Church, Perungalathur, Chennai. Out of the wedlock a girl child was born to them on 31.12.2015 and named as Olivia.*

*2. Whereas certain differences of opinion and misunderstandings arose between the Party of the First Part and the Party of the Second Part because of which they could not continue their married life peacefully and they are living separately from each other from 17.12.2016. The minor child Olivia is under the care and custody of her mother, the Party of the First Part.*

*3. Whereas the differences that arose between the Parties*



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*led to the initiation of the following legal proceedings against each other.*

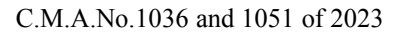
*(i) The party of the second part filed an application in IDOP NO.3818 OF 2018 on the file of the Principal Family Court, Chennai for dissolution of marriage.*

*(ii) The party of the First part filed an application in IDOP NO.3941 OF 2018 on the file of the Principal Family Court, Chennai for restitution of conjugal rights*

*(iii) The party of the First part filed an application in M.C.No.10 of 2017 on the file of the Judicial Magistrate Court, Ambathur for granting maintenance to her and to the child. In the said petition an order was passed on 15.11.2017 awarding a sum of Rs.15,000/- towards monthly maintenance to be paid in total by the party of the Second Part to the party of the First Part and the Child.*

*4. Whereas by a common judgement dated 29-08-2022 made in I.D.O.P No.3818 OF 2018 and I.D.O.P No.3941 OF 2018 by the Principal Family Court, Chennai, the Petition filed by the Party of the Second part for dissolution of marriage was allowed and the petition for Restitution of Conjugal rights filed by the party of the first part was dismissed.*

*5. Whereas the party of the First part filed CMA.No.1036 of 2023 against the Decree in IDOP.No.3818 of 2018 and CMA.No.1051 of 2023 against the decree in IDOP.No.3941 of 2018 and both the*



6. Where as the party of the Second Part filed Criminal R.C.No.63 of 2018 before the Hon'ble High court Madras against the order made in MC.No.10 of 2017 dated 15.11.2017 passed by the Judicial Magistrate Court, Ambattur, and the same was dismissed by the Hon'ble High Court, Madras and the above order made in MC.No.10 2017 dated 15.11.2017 by the Judicial Magistrate Court, Ambattur was confirmed.

7. Where as the party of the First part filed Crl.MP.No.2265 of 2021 before the Judicial Magistrate Court Ambattur for payment of arrears of maintenance and the same is pending.

*8. And Whereas, during the pendency of the above proceedings, in order to give a quietus to all the issues between the parties, the party of the First part and the party of the Second part agreed to arrive a mutual settlement by virtue of which the party of the Second part agrees and undertakes to transfer to the party of the First part the immovable property namely a Residential flat which is more fully described in the Schedule hereunder, towards marriage expenses and permanent alimony, part and future, to the party of the First Part and the minor child Olivia as full and final settlement.*

9. Whereas the Schedule mentioned property is now under



*mortgage with the LIC Housing Finance Limited to secure the housing loan on the same and the party of the second part is still paying EMI to clear the said housing loan. The party of the Second part agrees to clear the mortgage in all probability within a period of six months and thereafter transfer the said property to and in the name of the party of the First Part absolutely.*

*10. Whereas the party of the Second part also agreed to put the Party of the First part in possession of the Schedule mentioned property immediately after the signing of this memorandum of Settlement and handover the key of the Schedule mentioned property to the party of the First part.*

*11. Whereas, on such transfer of the Schedule mentioned property in the name of the Party of the First part by Party of the Second part, the party of the First part, agrees not to prosecute the CMA.No.1036 of 2023 and CMA.No.1051 of 2023 pending on the file of the Hon'ble High Court Madras as well as the Crl.MP.No.2265 of 2021 pending before the Judicial Magistrate Court, Ambattur and the party of the First Part also agrees not to make any further claim of maintenance or claim of any other nature against the party of the Second Part.*

*12. Whereas both the parties to this Memorandum of Settlement agree to act in accordance with this Memorandum, the terms of which are reduced into writing as setout hereunder.*

*13. The terms of This Memorandum of Settlement are as follows:*



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(i) *The party of the Second part agrees and undertakes to transfer the residential flat owned by him and situated at SATHIAPRIYA NAGAR, GUDUVANCHERI which is more Sfully described in the Schedule hereunder to and in favour of the party of the First Part absolutely and forever by necessary registered document towards Marriage Expenses and permanent alimony for the party of the First Part and his minor child Olivia as full and final settlement, after clearing the housing loan obtained by him on the said property in all probability, within a period of six months .*

(ii) *The party of the Second part agrees to put the party of the First part in possession of the Schedule mentioned property on the day of Signing of this Memorandum of Settlement and hand over the key of the said property to the party of the First part immediately after signing this Memorandum of Settlement.*

(iii) *The party of the Second part agrees to clear the housing loan on the Schedule mentioned property, in all probability within six months from the date of signing this Memorandum of Settlement.*

(iv) *The party of the Second part agrees to pay the EMI to be paid on the Schedule mentioned property to the LICHFL until the loan obtained on the Schedule mentioned property is cleared and the original documents are obtained from LICHFL and handed over to the party of the First Part.*



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*(v) The party of the Second part already returned all the Articles belonging to the party of the First Part and the party of the First part does not have any claim whatsoever against the party of the Second part.*

*(vi) The party of the First part agrees to withdraw the CMA.No.1036 of 2023 and CMA.No.1051 of 2023 pending on the file of the Hon'ble High Court Madras as well as the Crl.MP.No.2265 of 2021 pending before the Judicial Magistrate Court Ambattur and further agrees not to make any further claim against the party of the Second Part.*

*(vii) Both the party to this Memorandum of Settlement agrees and do hereby withdraw the allegations made against each other in the proceedings mentioned above.*

*14. In view of the settlement agreed upon and the promises made herein the parties to this Memorandum of Settlement undertake to fulfill their commitments made to each other under this Memorandum of Settlement and for dissolution of their marriage in an amicable manner.*

*15. The parties declare that, there is no threat coercion, undue influence or third party influence in entering into this Memorandum of Settlement.*

*16. Four copies of this Memorandum of Settlement in Original is*



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*prepared out of which One each would be retained by the parties herein.*

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*17. In the event of either party to this Memorandum of Settlement failing to comply with any of the terms agreed under the Memorandum of settlement, the other party will have liberty to initiate appropriate proceedings before the Court for enforcing the terms of this Memorandum of Settlement.*

*18. The parties to this Memorandum of settlement agree and undertake to fulfil their respective part of this Memorandum of Settlement in letter and spirit."*

4. The Civil Miscellaneous Appeals are disposed of in terms of the above Memorandum of Settlement dated 28.10.2024 and the same shall form part of the decree. No costs.

**(J.N.B, J.)      (R.K.M., J.)**  
**28.10.2024**

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To

The Principal Family Court, Chennai.



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**J. NISHA BANU, J.**  
**and**  
**R.KALAIMATHI, J.**

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