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C.M.A.No.2204 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

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

C.M.A.No.2204 of 2019

R.Mohan Kumar

..Appellant

Vs.

P.Johnsi Rani

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order and decree passed in F.C.O.P.No.437 of 2017 dated 07.01.2019 by the Family Court, Erode.

For Appellant : Mr.S.B.Viswanathan

For Respondent : Mr.S.Kaithamalai Kumaran

J U D G M E N T

(The Judgment of the Court was made by Mrs.J.Nisha Banu,J.)

This civil miscellaneous petition has been filed by the appellant/husband against the fair and decreetal order dated 07.01.2019 in F.C.O.P.No.437 of 2017, on the file of the Family Court, Erode, filed by the appellant /husband for grant of divorce on the ground of cruelty.



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2. Today, when the matter is taken up for hearing, learned counsel for the appellant and the respondent would state that pending the appeal, the appellant and the respondent settled the issue among themselves and they have also filed a Joint Memo of Compromise dated 15.10.2024 duly signed by the parties and their respective counsel. Learned counsel appearing on either side would also state that the Civil Miscellaneous Appeal may be disposed of in terms of the joint memorandum of compromise and that the marriage dated 19.05.2010 performed between the parties may be dissolved.

3. The Joint Memorandum of Compromise dated 15.10.2024, entered between the parties is extracted hereunder:

"JOINT MEMORANDUM OF COMPROMISE FILED BY
THE APPELLANT AND RESPONDENT

The appellant and the respondent most humbly submit as follows:

1. The marriage between the appellant and respondent was solemnized on 19.05.2010 at M.J.Thirumana Mandapam, Anthiyur, Erode District. The appellant and husband lived together as husband and wife until 23.01.2013 and due to the differences between them, they have been living separately since 24.01.2013.



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2. *After their separation the appellant filed a petition seeking dissolution of marriage in H.M.O.P.No.524 of 2013 in the Family Court, Coimbatore on the ground of cruelty. However, the said petition was transferred to the Family Court, Erode and renumbered as F.C.O.P.No.437 of 2017. The respondent contested the petition for dissolution of marriage by filing a detailed counter, wherein she has prayed for restitution of conjugal rights as a counter claim.*

3. *After a full fledged trial, the Family Court, Erode has passed an order and decree dated 07.01.2019 in F.C.O.P.No.437 of 2017 dismissing the prayer of the appellant for dissolution of marriage and allowing the prayer of the respondent for restitution of conjugal rights between them.*

4. *Aggrieved by the order and decree dated 07.01.2019 passed in F.C.O.P.No.437 of 2017 by the Family Court, Erode, the appellant filed the present appeal in C.M.A.No.2204 of 2019 in this Honourable Court. In the appeal, the respondent made an appearance and contested the case. Now, the appeal is listed for final hearing.*

5. *During the pendency of the present Civil Miscellaneous Appeal, as the appellant has got an*



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employment opportunity in AI Khibar, Saudi Arabia he has been residing and working in AI Khibar, Saudi Arabia for over 8 months.

6. Though the appellant and respondent are seriously contesting the appeal on the one hand, and they have been continuously making efforts to resolve all the disputes between them through their family members and respective counsels on the other hand, and as a result, they have arrived at a compromise settlement.

7. Now the appellant and the respondent have decided to end their marriage by filing a joint memorandum of compromise in the present C.M.A. They have arrived at certain terms and conditions concerning payment of maintenance and other rights, which necessitated them to reduce the terms and conditions in writing by executing a Memorandum of Understanding dated 15.10.2024.

8. The appellant and the respondent jointly file the Memorandum of Understanding dated 15.10.2024 along with this Memorandum of compromise and pray this Honorable Court to treat the same as part and parcel of this Memorandum of Compromise and to dispose of the present Civil Miscellaneous Appeal as per the terms and conditions of the Memorandum of Compromise.



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9. *Since both the appellant and respondent have already executed the Memorandum of Understanding dated 15.10.2024 and acted upon a majority of the terms and conditions recited therein. Under these circumstances, unless this Honorable Court pleases to dissolve the marriage solemnized on 19.05.2010 at M.J.Thirumana Mandapam, Anthiyur, Erode District between the appellant and respondent by allowing the present Civil Miscellaneous appeal, they will be put to irreparable loss and hardship.*

Therefore, the appellant and respondent jointly pray that this Honorable Court may be pleased to record the Memorandum of Understanding dated 15.10.2024, dissolve the marriage solemnized on 19.05.2010 at M.J.Thirumana Mandapam, Anthiyur, Erode District between the appellant and respondent by allowing the present Civil miscellaneous appeal and incorporate the terms and conditions of the Memorandum of Compromise dated 15.10.2024 in the decree and thus render justice."

4. Thus in terms of the Joint Compromise Memo,

(i) there shall be decree for divorce between the appellant and the respondent.

(ii) the order dated 07.01.2019, passed in F.C.O.P.No.437/2017,



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is hereby set aside.

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

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5. The Civil Miscellaneous Appeal is disposed of in terms of the Joint Compromise Memo dated 15.10.2024 and the same shall form part of the decree. No costs.

(J.N.B,J.) (R.K.M., J.)
15.10.2024

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To
The Family Court, Erode.



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