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C.R.P.No.1800 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1800 of 2024

Aishwarya Sridhar,
Wife of Harihara Venkatraman Balasubramaniyan,
8 Colonial Square, Middletown NJ-07748, USA,
Rep by her mother as her Power of Attorney holder,
S.Bhuvaneswari,
21/9, Shanthiniketan Apartment,
Eshwardoss Street,
Triplicane, Chennai 600 005.

... Petitioner

Vs.

Mr.Harihara Venkataraman Balasubramanian,
Son of N.Balasubramanian,
1249, NE 96th CT, Hillsboro,
OR-97 124 USA,
Rep by His father as his Power of Attorney Holder,
N.Balasubramanian,
No.103, Balaji Illam,
Srinivasa Nagar,
1st East Street,
Palayamkottai, Tiruvelveli-627 011.

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to issue a direction to the Principal Family Court at Chennai to number the H.M.O.P.SR.No.217 of 2024 and proceed in the matter for grant of divorce by mutual consent, dispensing with the waiting period of 6 months or in the alternative this may be pleased to withdraw the H.M.O.P.SR.No.217 of 2024 on the file of the Principal Family Court,



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Chennai to the file of this Court and pass a decree in terms of the memorandum of compromise entered into by the parties hereby on 13.12.2022.

For Petitioner : Mr.V.Prakash, Senior Counsel for
Mr.M.Karthikeyani
For Respondent : Mr.S.Mohammed Uduman

ORDER

The order passed by this Court on 23.04.2024 is extracted as follows:

“The learned Senior counsel appearing for the petitioner submitted that this is the third occasion they are approaching this Court for the case of divorce by mutual consent. Earlier, the wife filed a petition for restitution of conjugal rights in the year 2018, but not taken on file and numbered for the reason, she could not appear in person. Thereafter, she filed CRP.No.2553 of 2022 and this Court directed the Family Court, Chennai to take the petition on file and dispose the same within the time stipulated. Pursuant to the direction of this Court, HMOP.No.5026 of 2022 assigned. The divorce petition filed by the husband on the ground of cruelty in O.P.No.152 of 2019 was kept pending. In the meanwhile, at the intervention of the family members and common friends, the issue between them got resolved and it was agreed that the divorce by mutual consent to be



obtained, in the meanwhile, exchange of articles presented during the marriage as gift and the cost incurred for the marriage to be paid, they also agreed to withdraw both HMOP No.152 of 2019 and HMOP No.5026 of 2022 filed by the petitioner.

2. Thereafter, 13(b) petition for divorce by mutual consent filed before the Family Court, Chennai, not entertained. Again the petitioner approached this Court in CRP.No.2130 of 2023 and this Court by order dated 17.10.2023, directed the Family Court to receive the divorce petition filed by them and to hear the parties through video conferencing as per the Rules in Madras High Court Video-Conferencing in Courts Rules 2020 and the compromise entered into the parties on 13.12.2022 also recorded, more particularly, the consent of the parties to be recorded virtually. Thereafter, though the mutual consent divorce petition was received, but not numbered and technical objection raised as though one of the address not confirmed with the address found in the Aadhar card, but mutual consent divorce petition not returned. Hence, the present Civil Revision Petition filed.

3. In support of his contention, the learned Senior



*counsel referring to the judgment in the case of **K.Ponnamal & Ors. vs. V.Thayanban & Ors., reported in 2012 (1) MWN (Civil) 701**, submitted that this Court under Article 227 of the Constitution is not only confined to judicial superintendence but also administrative superintendence over subordinate Courts and Tribunals and hence, the petition maintainable under Article 227 of the Constitution of India to be numbered and seeks appropriate orders.*

4.In view of the above, this petition to be entertained. Accordingly the Registry is directed to number the petition and list the matter on 24.04.2024.”

2.In continuation and conjunction to the above order, this Court is passing the following order.

3.Today, Harihara Venkataraman Balasubramanian/husband appeared before this Court through virtual mode.

4.The learned counsel appearing for the petitioner and the respondent in unison submitted that Aishwarya Sridhar/wife represented by her



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mother/Power of Attorney viz., S.Bhuvaneswari and Harihara Venkataraman Balasubramanian/husband represented by his father/power of attorney viz., N.Balasubramanian arrived at amicable settlement which is reduce in writing by way of Memorandum of Understanding, dated 13.12.2022. The scanned reproduction of the Memorandum of Understanding, dated 13.12.2022 is as follows:



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MEMORANDUM OF UNDERSTANDING

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This Memorandum Of Understanding is executed on this day 13th day of December 2022 at Chennai between the following parties:

R.Harihara Venkatraman, S/o.N.Balasubramanian, aged about 36 years, residing at Plot No.18, Ramana Nivas, Vivekanandan Street, V.M.Chatram, Palayamkottai, Maharanagar, Thirunelveli - 627 011 (Hereinafter referred to as the First Party) on the
ONE PART

AND

Mrs.Aishwarya, D/o. Sridhar, aged about 29 years, presently residing at No.8 Colonial Square, Middletown NJ- 07748, Permanently residing at 12A Block, M.K.Ammann Koil Street, Mylapore, Chennai - 600 004 Represented by her Mother namely Mrs. Bhuvaneshwari W/o Sridhar as Power of Attorney (Hereinafter referred to as the Second Party) on the
OTHER PART

Whereas both the parties hereto were married on 10.07.2016 at M.G.Swamy kalyana mandapam, at virugambakkam, chennai - 600 092 by following Hindu rites and ceremonies;

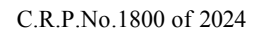
And Whereas after the marriage owing to the temperamental difference, difference of habits, and increasing incompatibility, the relationship between the parties deteriorated, finally, to avoid further deterioration in relationship the parties had started living separately since 2018;

And Whereas the parties after mediation have now mutually agreed that this marriage should be resolved by decree of Divorce by mutual consent on the following terms and conditions;

B. K.
13/12/22



S. S. Srinivasan
13/12/22



5/12/22

Sh. Wansari
13/12/22



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7. It is agreed between the parties, that both the parties shall not file any suit, petition or complaint etc. either in India or in USA against each other and against the family members of each other in future and shall withdraw all the complaints, proceedings if filed anywhere before any authority in this regard.
8. That both the parties hereby agree that this Memorandum Of Understanding is irrevocable and unquestionable and undertake that this Memorandum Of Understanding would *inter alia* be legal, valid, binding and enforceable and executable in all manner and none of the parties shall be at liberty to take advantage of any technical language or lacuna if any, if the same are not explained hereinbefore.

And whereas this Memorandum Of Understanding has been executed between the parties with their mutual consent and free will without any pressure, force, coercion or undue influence from any side.

Exchange of Articles from 1st party to 2nd party:-Schedule-A

Aishwarya Gold Jewels

1. Nellore Necklace with back chain(13,78gm)-1.72 sovereigns
2. Kerala chain, Samy dollar, Valayam(24.15gm)-2.78 sovereigns
3. Pattai Valaiya(4 Nos)-5.88 sovereigns
4. Gerty Stone Stud-3.04 gm
5. Jiruikki-5.36 gm
6. C.B.E drops-2.25gm
7. Nose Pin-0.34gm
8. Ring(பிள்ளை ஆத்துல போட்டது)-1/2 sovereign
9. Bombay Chain-3 sovereigns
10. Green stone nose stud

Mappilsiku Potadhy

1. Dubai chain-2.25gm
2. Ring-8gm
3. நரத்தனார் தாலி முடிஞ்சது -4gm



Aishwarya Silver Vessel

B. H.
13/12/22

13/12/22



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1. Kuthu Vilaku-2
2. Round Plate-1
3. Oval Plate-1
4. Panja Paathiram-1
5. Udhirini-1
6. Dabara-1
7. Tumbler-1
8. Paal Sombu-1
9. Moodi-1
10. Sandana Kumba-1
11. Kumkuma Soppu-2
12. Oonajal Paalum Pazhamum

Aishwarya Bronze Vessel

1. அரிக்கன் சட்டி -1
2. தாம்பாளம்-2 (large)
3. தாம்பாளம்-1(Small)
4. காமாட்சி விளக்கு-1 (large)
5. குடம்-1
6. செம்பு-1
7. அகல் விளக்கு-12
8. யானை விளக்கு (1 pair)-2 (large)

21 Items

9. From ஐசி one காமாட்சி விளக்கு large
10. small பித்தளை தட்டு ஐசி ஐசி

Aishwarya Karthikeyan and Pongal Seer -02.12.2017

1. வெள்ளி விளக்கு ஜோடி (104+103) grams
2. பாலை விளக்கு ஜோடி
3. அகல் (பித்தளை)-4
4. ஜோதி ஜோடி -1(5 மூக்கு)
5. காமரை பூ விளக்கு ஜோடி -1
6. மஹாரு விளக்கு ஜோடி-1
7. துத்து-2
8. வெங்கல் பாலை-2



R.V.
13/12/22

Aishwarya
13/12/22



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9. தட்டு -1

10. கரண்டி -1

11. புடவை, வேஷ்டி

12. பட்டு - புடவைகள்

02.12.2017-Aishwarya Mananar சஷ்டி யப்த பூர்த்திக்கு புடவை, வேஷ்டிக் கூடு

Aishwarya Personal belongings

1. Laptop
2. Laptop charger
3. Indian Driving License
4. Pan Card

Schedule-B Articles handover to Harihara venkatraman

1. Mangalyam-1 Pound
2. Ear ring-1 Pair
3. Diamond nose ring-1

In WITNESS WHEREOF, both the parties have signed the present Memorandum Of Understanding in the presence of following witnesses:

FIRST PART

COUNSEL FOR FIRST PART

WITNESSES:

1. N. Balasubramanian, 9952806292.

N. Balasubramanian
S/o Nambi Thevar, plot no 18,
Ramanivas, Vivekananda Street,
Vim Clabam, palayam kottai

R. Tirumethi - 627011.

2. E. Prateep 9342246824
No.1, Chelliamma kottai road street
Tamil Nagar, Chennai-62.



SECOND PART

COUNSEL FOR SECOND PART

P. KARUPPTIAH, M.A., B.L.
ADVOCATE & NOTARY PUBLIC
GOVT. OF INDIA
10, ANNAPUR NAGAR, CHENNAI-50



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5.This Court considered the rival submissions and perused the materials available on record.

6.It is admitted that both the petitioner and the respondent are presently residing in USA and the petitioner/wife is represented by her mother/power of attorney and the respondent/husband is represented by his father/power of attorney.

7.It is seen that the Principal Family Court at Chennai raised doubt and clarification with regard to change in address of the petitioner in the petition and Aadhar card and returned the petition filed under Section 13-B of the Hindu Marriage Act, 1955 which was filed seeking divorce dissolving the marriage between the petitioner and the respondent. In clarification of the same, the petitioner filed affidavit before this Court, which is as follows:



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IN THE HIGHCOURT OF JUDICATURE AT MADRAS

(Civil Revision Jurisdiction)

CRP.No. 1800 of 2024

Aishwarya Sridhar

Wife of Harihara Venkataraman Balasubramanian

8 colonial square, Middletown NJ-07748, USA,

Rep by her mother as her power of attorney holder,

S. Bhuvaneshwari

... Petitioner

Vs

Mr.Harihara Venkataraman Balasubramanian

Son of N.Balasubramanian

1249, NE 69th CT, Hillsboro

OR-97 124 USA,

Rep by His father as his Power of Attorney holder

N.Balasubramanian,

... Respondent

AFFIDAVIT FILED ON BEHALF OF THE PETITIONER

1. Bhuvaneshwari W/o Shridhar, Hindu, aged about 57 years, residing at 21/9, Shanthiniketan Apartment, Eshwardoss street, Triplicane, Chennai 600 005do hereby solemnly affirm and sincerely state as follows:

1. I am the mother of the Petitioner herein and the duly constituted power of attorney of the Petitioner. I am accordingly authorized to depose to this affidavit. I am well acquainted with the facts and circumstances of the case.
2. I respectfully submit that when the petitioner applied for Aadhar card, she was residing at No. 21/9, Shanthiniketan Apartment, Eshwardoss street, Triplicane, Chennai 600 005, which is her grandmother's residence.

Bhuvaneshwari



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3. When the application for the restitution of conjugal rights was filed by the petitioner in the year 2018, she was residing with her grandmother at No. 21/9, Shanthiniketan Apartment, Eshwardoss street, Triplicane, Chennai 600 005.
4. It is submitted that the petitioner counsel had entered the same address in the application for divorce by mutual consent and that became a matter of discrepancy.
5. This is to state that the petitioner's permanent address is the address in the Aadhar card, viz., No. 12 A Block, M K Amman Koil Street, Mylapore, Chennai- 600 004. The same may be recorded and treated as correct the address of the petitioner.

Solemnly affirmed the contents of this affidavit at Chennai on this the 29th day of April 2024 and signed her name in my presence.

[Signature]
Before me * (N. MANI)
N. MANI
MSNO-5259/23
Advocate: Chennai
1/160 Thampuchetty
Street, Row 2.

8.As per the Memorandum of Understanding, the respondent agreed to pay a sum of Rs.22,00,000/- as One Time Settlement to the petitioner. In obedience to the same, the respondent transferred the amount of Rs.22,00,000/- to his father's bank account on 25.04.2024. The bank details with regard to transfer of Rs.22,00,000/- from US by the respondent in



favour of his father N.Balasubramanian produced to confirm the transaction.

Due to procedural aspects on the side of the bank, it could not be given immediate effect. Within three days, the amount would be credited to the account of the respondent's father. Thereafter, the demand draft for Rs.22,00,000/- will be taken and the same can be handed over to the petitioner as per Memorandum of Understanding.

9.Today, the learned counsel appearing on both sides sought permission of this Court for appearance of the petitioner and the respondent through virtual mode before the Principal Family Court at Chennai. They also sought permission for, the petitioner to be represented by her mother/power of attorney and the respondent to be represented by his father/power of attorney.

10.Taking note of the separation of the petitioner and the respondent from the year 2018 and earlier proceedings in O.P.No.152 of 2019 and H.M.O.P.No.5026 of 2022, exemption for six months waiting period is granted.



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11. In view of the above, this Court finds that the Memorandum of Understanding would be completed in full and in all aspects if the petition for divorce by mutual consent is entertained without raising technical objections. The reason given by the petitioner for change of address is accepted. Now it is for the Principal Family Court at Chennai to take divorce petition in H.M.O.P.SR.No.217 of 2024 on file and pass orders. Accordingly, this Court issues following directions:

(i) The power of attorneys to appear before the Principal Family Court at Chennai on 15.05.2024 representing returned H.M.O.P.SR.No.217 of 2024. The reason given for change of address is accepted.

(ii) The respondent's power of attorney to produce the demand draft for a sum of Rs.22,00,000/- on 15.05.2024 and handover the same to the petitioner's power of attorney who can receive the same in presence of Principal Family Court at Chennai.

(iii) The Principal Family Court at Chennai on 15.05.2024 to take note of the affidavit filed by the petitioner and number the divorce petition in H.M.O.P.SR.No.217 of 2024 without raising any objection in change of



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address and thereafter pass appropriate order in the divorce petition filed under Section 13-B of the Hindu Marriage Act, 1955.

(iv)The respondent and the petitioner are permitted to be represented by their power of attorneys and also permitted to appear before the Principal Family Court at Chennai through virtual mode to record their concurrence of mutual consent for divorce.

(v)In the event of non availability of Principal Family Judge at Chennai, the In-charge Family Judge to entertain the petition and pass orders.

12.With the above directions, this civil revision petition stands disposed of. No costs.

30.04.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

The Principal Family Court at Chennai.

Note: Issue Order Copy on 03.05.2024.



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M.NIRMAL KUMAR, J.

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