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OSA No.145 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A.No. 145 of 2019
and
C.M.P. Nos.12663 of 2019, 12664 of 2019 and 14129 of 2020

Keerthika

.. Appellant

Vs

1.S.Sunilkanth @ Vishal

2.The Inspector of Police,
V-6 Kolathur Police Station,
3rd Street, Vasantham Nagar,
Kumaran Nagar, Kolathur,
Chennai – 82.

Respondent

..

Original Side Appeal filed under Order XXXVI Rule 9 of
Original Side Rules r/w Clause 15 of Letters Patent against the
order dated 24.04.2019 made in O.A.No.362 of 2019 in O.P.
No.286 of 2019.

For Appellant : Mr.K.Anandharaja

For Respondents : Mr.D.Ferdinand
of M/s.BFS Legal for R1



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JUDGMENT

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(Judgment of the Court was delivered by **M.Sundar, J.**)

Captioned 'Original Side Appeal' (hereinafter 'OSA' for the sake of brevity) and captioned three 'Civil Miscellaneous Petitions' (hereinafter 'CMPs' for the sake of brevity) thereat are listed today under the cause list caption 'FOR RECORDING COMPROMISE'.

2. Captioned OSA pertains to custody of a minor child S.Voiyomei, now ten years old (date of birth 17.12.2015). To be noted, ideally we would prefer to mask the name of the minor but in the light of appellant mother and respondent father having arrived at a settlement, reduced the terms of settlement to a 'Memorandum of Compromise dated 04.07.2024' (hereinafter 'said MoC' for the sake of convenience and clarity), appellant and respondent who are present in Court requesting for recording of said Moc to give a closure to the captioned matters, considering all exigencies, we refrain from masking the name of minor child for the sake of specificity as regards implementation qua public authorities, if the need arises.

3. Reverting to the hearing today,



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Ms.Keerthika/appellant/mother and Mr.S.Sunilkanth @ Vishal/respondent/father qua aforementioned minor child are present in Court together with their respective counsel. To be noted, Mr.K.Anandharaja, learned counsel on record for appellant and Mr.D.Ferdinand of M/s.BFS Legal (Law Firm) for R1 are before this Court.

4. The said MoC was placed before this Bench today. This Bench had independent interaction with the litigants i.e., appellant/mother and respondent/father. Both litigants submit that said MoC has been signed by them on their own volition i.e., out of free will without any coercion, after understanding all the contents of the said MoC, saying so, both litigants requested for a decree in terms of said MoC. They also confirmed their signatures in said MoC. A scanned reproduction of the said MoC is as follows:



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BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT MADRAS
(Original Appellate Side)
O.S.A. No. 145 of 2019

Mrs. Keerthika,
Daughter of Mr. P. Dural,
No. 3777, Mela Annappanadi,
TNHB, Madurai- 625 009, ...Appellant

-Vs-

Mr. S. Sunilkanth @ Vishal,
Son of Mr. D. Somasundaram,
No.14, Yamuna Nagar,
Kolathur, Chennai - 600 099, ...Respondent

**MEMORANDUM OF COMPROMISE BETWEEN THE APPELLANT AND THE
RESPONDENT**

This Memorandum of Compromise entered into between the Appellant and the Respondent :

The Appellant is Mrs. Keerthika, wife of Mr. S. Sunilkanth @ Vishal and daughter of Mr. P. Dural, Hindu aged about 29 years and having address at No. 3777, Mela Annappanadi, TNHB, Madurai- 625 009, now come down to Chennai and presently residing at H3/35, Lake View Residency, Ambattur, Chennai - 600 053.

The Respondent is Mr. S. Sunilkanth @ Vishal, Son of Mr. D. Somasundaram, Hindu, aged about 30 years and having address at No.14, Yamuna Nagar, Kolathur, Chennai - 600099

BOTH THE APPELLANT AND RESPONDENT WILL BE JOINTLY REFERRED

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M. J. 1. D. H.
D. H.

TO AS PARTIES. The Appellant Mrs. Keerthika will be referred to as Second Party and Mr. Sunilkant Respondent/father will be referred to as First Party.

WHEREAS:
1. The Appellant and the Respondent were lawfully wedded husband and wife and the marriage between both of them was solemnized on 20.02.2013 at K.S. Pennavans Nadar Arangam Hall, 4A, Maariamman Theppakulam West, Madurai- 600 009 as per Hindu rites and customs. Through the wedlock between the Parties were blessed with a girl child Selvi S. Vuyomei born on 17-12-2013 and at present the minor child is under the care and custody of the First Party. The parties submit that the minor child Selvi S. Vuyomei at present studying 6th Grade in KRM Public School, Paramburi, Chennai and the Respondent and his parents are taking care of all the needs of the minor child.

2. The parties submit that within few months after the marriage, differences of opinion arose between the parties and as a result of which, the Second Party left the First party and the minor child Selvi S. Vuyomei from the matrimonial house in Chennai on 23-12-2017 and went to her parents' house in Madurai. Since all efforts taken by the family members of both the parties failed in sorting out the differences between the parties, the First Party initiated H.M.O.P. No. 878 of 2018, on the file of the II Additional Family Court, Chennai as against the Second Party herein for Divorce. Thereafter, the Second Party initiated H.M.O.P.No.2876 of 2018 on the file of District Family Court, Madurai and G.O.P. No.242of 2019 on the file of the Family Court Madurai. Thereafter a Transfer L.M.P.No.420 of 2018 was filed on the file of the Madurai Bench of the Madras High Court, Madras and the said Transfer petition was allowed and accordingly the Disposal proceedings HMDP NO.878 of 2018 initiated by the First Party was directed to be transferred and tried along with H.M.O.P.No.2878 of 2018 and G.O.P. No. 242 of 2019, filed by the Second Party.

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Handwritten signature of Respondent
RESPONDENT

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APPELLANT



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3. During the pendency of the aforesaid proceedings, the parties herein decided to part way as friends and dissolve the marriage and the related issues amicably amongst themselves and in accordingly a MOU dated 17-08-2020 was entered into and on the basis of the said MOU, both the parties have jointly got their marriage dissolved and a Decree and Judgment dated 18-08-2020 was passed by the Hon'ble JJC Additional Family Court, Chennai thereby dissolving the marriage between the parties. However, both the parties agreed to contest the present Appeal as well as SGP 286 of 2019, which is pending on the file of this Hon'ble Court.

4. When the present Appeal was pending, on the advice of well-wishers both the parties herein have decided to give a finality to the issue pertaining to the 'custody' of the minor child Selvi. S. Vajymel and have agreed on the manner in which the custody and the visitation schedule of the minor child would be carried out as per mutually agreed terms & conditions as set out herein.

5. In furtherance of the aforesaid terms and understanding, both the parties have voluntarily come forward and enter into a MoU to settle and reduce into writing the responsibilities arising as regards the custody of the minor child Selvi.S. Vajymel, on the following terms and conditions as set out herein below.

NOW IT IS HEREBY MUTUALLY AGREED AND DECLARED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. CUSTODY & GUARDIANSHIP

1. The Parties hereto agreed that the custody and the Natural guardianship of the minor child Selvi. S. Vajymel, will be with the Respondent- Father.

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2. The Appellant/Mother hereby agree that the Respondent/Father shall have full authority & discretion to take any decisions pertains to the welfare of the minor child Selvi. S. Vojyomei, including but not limited to issues involving her health, education, medical problems extra-curricular and other related issues pertaining to the development of the child without any approval from the Appellant/Mother.

3. The Appellant/Mother expressly agrees and undertakes not to obstruct, interfere with or otherwise disturb either the custody of the minor child with the Respondent/Father after the execution of this Memorandum of Understanding. Further, the Appellant/Mother also agrees not to interfere with any issue or aspect concerning the health, welfare, education and/or extra-curricular issues pertaining to the development of the child as specified in sub-clause (2) above.

4. All the updates and details should be shared in the common mail ID and the below mentioned numbers, In case of change in mobile No. Should be updated.

Common Mail ID - vojyomei.details@gmail.com

Password - vojyomei17

Appellant Mobile No. - +91 8939468343

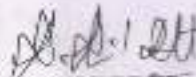
Respondent Mobile No. - +91 7885999097

II. VISITATION RIGHTS OF THE APPELLANT (MOTHER)

A. VISITATION IN USUAL COURSE.

1. It is agreed between the Parties that the Appellant/Mother will have visitation rights of the minor child once a month for with the prior intimation and mutual arrangements with the Respondent/Father about the place and timings, subject to the comfort and willingness of the minor child Selvi S. Vojyomei. The

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time duration can be decided by both the parties taking into consideration the educational and other commitments of the minor child Selvi S. Vajyamei.

2. The Appellant/Mother agrees to personally come and pick up and drop the child at the residence of the Respondent/Father at Chennai and undertakes and agrees that neither the servants nor anyone else would be entrusted with that task of picking up and drop the minor child during any such visits.

3. The Appellant/Mother hereby agrees and undertakes that the minor child Selvi S. Vajyamei shall not be taken out of Chennai at any point of time without the prior consent of the ^{Father} ~~First Party~~. However, if the Appellant/Mother intends to take the minor child out of Chennai then the same shall be done with prior intimation and at a convenient date suitable for the minor child.

[Handwritten signatures: Father and Mother]

4. It is also agreed between Parties that if the minor child Selvi S. Vajyamei expresses her desire to see the Appellant/Mother at any time, the Respondent/Father shall in good faith facilitate for the same and shall intimate the Appellant/Mother well in advance in order to enable her to come and meet the child.

B. VISITATION DURING BIRTHDAYS:

The Parties agree that the Appellant/Mother shall be permitted to only visit the minor child at Respondent/Father place during his birthday every year, falling on the 17th of December, with prior intimation to the Respondent/Father and having made mutual arrangements with the Respondent/Father beforehand, subjected to willingness/interest of the child Selvi S. Vajyamei.

C. INTERIM CUSTODY DURING HOLIDAYS:

1. The Party of the Second Part shall be entitled to take the minor child Selvi S. Vajyamei, for not more than 7 days per year to visit

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RESPONDENT

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APPELLANT



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Appellant/Mother. However, the same is subject to the other schedules of the minor child and her comfort/willingness to go along with the Appellant/Mother.

2. The Appellant/Mother hereby agrees and undertakes that the minor child Selvi. S. Volyomei shall not be taken out of Chennai at any point of time without the prior written consent of the ^{Father} ~~First Party~~. However, if the Appellant/Mother intends to take the minor child out of Chennai then the same shall be done with prior intimation and at a convenient date suitable for the minor child.

[Handwritten signature]
[Handwritten signature]

III. FINANCIAL INVESTMENTS/PROPERTY/RETURN OF ARTICLES:-

1. The Appellant/Mother agrees and understands that she shall not be entitled to question any financial investments made by the Respondent/Father or his family members for the well-being of minor child Selvi S. Volyomei and will also not have any say or claim over the same.
2. Likewise, the Respondent/Father shall also not question or claim any right in respect of any financial investments made by the Appellant/Mother or her family members with respect to the minor child Selvi S. Volyomei and will also not have any say over the same.
3. Both the parties agree and understands that all properties either inherited by or purchased by or standing in the name of the other Party either before and after the marriage & the execution of this Memorandum of Understanding shall be solely & exclusively that of that respective Party and that the other party shall have no say or claim whatsoever over the same.
4. The Parties hereby agree that both of them have exchanged and returned the articles/jewels of each other and neither of them retain any of the articles of the other party without any delay, demur or default and that neither party shall have any say or claim over the

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movables & items belonging to or purchased by the other party.

5. Any Gifts given to Selvi S. Volyomei its upto her to accept it or to reject the same,

IV. EDUCATION AND EXPENSES:

The Respondent/Father shall take care of all schooling expenses and other expenses of the minor child and shall ensure that Minor child Volyomei has the best possible education, health care and all other facilities as required for his overall mental & physical development.

V. NO FURTHER CLAIMS :

The Parties hereto agree that they shall have no further claims against each other in relation to the past, present and future in respect of maintenance, alimony, return of gold ornaments and properties. The Parties hereto mutually release each other from all sums of money, accounts, actions, proceedings, claims and demands whatsoever which either of them at any time had or has till the date against the other for or by reason or in respect of act, cause, matter or thing.

Both the Petitioner and Respondent undertake that they shall not in any manner coerce or emotionally blackmail the minor child Selvi S. Volyomei to submit to their respective demands.

Both the petitioner and Respondent undertake that they should not ask about each of their family details to Selvi S. Volyomei or to threaten or to mislead the Child in order to maintain a healthy personal space.

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Both the Appellant and Respondent undertake to make all efforts to ensure that minor child Selvi S. Veliyomel, provided the best of love, care and parental affection taking into consideration their welfare, future and well-being.

Both the parties do hereby agree and undertake that they shall not trouble or disturb or to involve in any actions against the law, either other or their respective family members in any manner.

The present MOC is signed and recorded in 4 copies, one copy to be retained by both the parties and the other 2 copies will be filed into court.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SIGNED THIS MEMORANDUM OF COMPROMISE ON THIS THE 04th DAY OF JULY, 2024 IN THE PRESENCE OF THE FOLLOWING

WITNESSES:

S. Malathi
Name: S. MALATHI
Wife of: D. SOMASUNDARAN
Age: 60
Address: No: 14, YAMUNA NAGAR, KOLATHUR, CHENNAI
Aadhar Card: 5396 1891 2656 (60099)

[Signature]
RESPONDENT

D. Ferdinand for M/s. BFS Legal
COUNSEL FOR RESPONDENT

Name: B. Vadivelan
Son of: Balu
Age: 42

Address: No: 15/39, MOORTHY ST, PSWATHI KOLL VYASAPETA, CHENNAI
Aadhar Card: 2354 2045 2990 CL-39

[Signature]
ON BEHALF OF
APPELLANT

Mr. Sankara Subbu
COUNSEL FOR APPELLANT

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Coram: (Nil)

[Signature]
RESPONDENT

[Signature]
APPELLANT

5. To be noted, the aforementioned MoC has been signed by both parties and their respective counsel.



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6. Both the litigants i.e., appellant and respondent were married on 20.02.2013 and the marriage was duly dissolved vide another MoU dated 17.08.2020 recorded on 18.08.2020 by III Additional Judge, Family Court, Chennai, thereafter they have remarried and they have off-springs through their present marriages.

7. R2 being jurisdictional police officer, presence and signature of R2 in said MoC is not necessary and this common submission made by both sides is recorded.

8. In the light of the narrative thus far, captioned OSA i.e., O.S.A. No.145 of 2019 is disposed of in terms of said MoC which shall now form part of the decree. Consequently, captioned CMPs thereat are disposed of as closed. There shall be no order as to costs.

9. As the captioned OSA arises out of an interim order in a Original Petition i.e., O.P.No.286 of 2019, both counsel/parties submit that this consent compromise order/decreed shall be filed/placed before GAWA Court (to be noted, 'GAWA' denotes 'The Guardians and Wards Act, 1890') for a suitable closure of



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O.P.No.286 of 2019 and applications thereat. This submission is recorded.

(M.S.J.) (K.G.T.J.)
04.07.2024

Index:Yes/No
Neutral Citation: Yes/No
mmi

To

- 1.The Inspector of Police,
V-6 Kolathur Police Station,
3rd Street, Vasantham Nagar,
Kumaran Nagar, Kolathur,
Chennai – 82.
- 2.The Sub Assistant Registrar,
Original Side, High Court,
Madras.

M.SUNDAR.J.,
and



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mmi

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