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C.R.P.No.4501 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4501 of 2023
and C.M.P.No.27037 of 2023

Shilpa

... Petitioner

Vs

Shantilal Kothari

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the order dated 27.03.2023, dismissing E.P.No.53 of 2018 on the file of the VI Additional Principal Family Court, Chennai.

For Petitioner : Mr.Sandeep Shah
for M/s.Shah and Shah
For Respondent : Mr.Vikram U. Jain

ORDER

This Civil Revision Petition has been filed against the order passed by the VI Additional Principal Family Court, Chennai, in E.P.No.53 of 2018 on 27.03.2023.



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2. The brief facts of the case is as follows :-

2.1. The petitioner is the wife of the respondent. The respondent had filed a petition in O.P.No.2241 of 2016 against his wife under Section 13(1)(ia) of Hindu Marriage Act, before the Family Court, Chennai.

2.2. In the said original petition, the petitioner herein had chosen to file an application in I.A.No.2654 of 2016 seeking maintenance. The learned VI Additional Principal Judge, vide order dated 30.11.2017, had allowed the application directing the petitioner to pay a sum of Rs.25,000/- per month from September 2016 as maintenance and a sum of Rs.10,000/- towards legal assistance and further, directed to pay a sum of Rs.1lakh towards monthly maintenance for the period from May 2016 to August 2016.

2.3. Since, the respondent/husband failed to comply with the order, the original petition filed by him came to be dismissed on 21.12.2017 for non payment of interim maintenance. In the application filed by the respondent seeking to condone the delay in filing the restoration petition, the trial Court has passed a conditional order and since the same was also not complied with by the respondent, the restoration petition also came to be dismissed.



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2.4. Meanwhile, the petitioner herein had filed an execution petition in E.P.No.53 of 2018 and the trial Court had closed the same vide order dated 27.03.2023 observing that there is no executable order under Section 24 of the Hindu Marriage Act after the disposal of the main original petition. Challenging the same, the present Civil Revision Petition has been filed.

3. This Court, finding that the matter arises out of the matrimonial dispute, has suggested the learned counsel appearing for both sides to work out for a settlement. Pursuant to the same, both the counsels having discussed with their respective parties, have arrived at a settlement. Pursuant to the same, both the parties have entered into a Memorandum of Understanding dated 23.10.2024.

4. Both the parties are present before this Court today. They have submitted that their marriage was solemnized on 30.05.2003 and since their marriage has been irretrievably broke down, there is no possibility of reunion and thereby, they have filed an application for divorce by mutual consent in O.P.SR.No.6225 of 2024 before the Principal Family Court, Chennai on 24.10.2024. Both of them submitted that there is no further claim against each other.



5. The respondent/husband submitted that pursuant to the settlement, he has drawn a Demand Draft for a sum of Rs.19 lakhs in favour of the petitioner/wife.

He further submitted that it has been mutually agreed between them and they have filed a petition for divorce on mutual consent and it is pending in O.P.SR stage and it has been agreed that the respondent would hand over the Demand Draft to the petitioner before passing the decree of divorce on mutual consent. The petitioner/wife has also undertaken to have over the keys of the flat to the respondent before passing of the decree of divorce on mutual consent

6. Learned counsels appearing for both sides submitted that since the matter has been settled between the parties, the civil revision petition may be disposed based on the Memorandum of Understanding. Further, they have prayed that a direction may be issued to the Family Court to waive the period of six months under the Act, since the marriage was solemnized in the year 2003 and they have been living separately from the year of 2016.

7. Heard the learned counsel appearing for both the petitioner and the respondent and perused the materials available on record. The Memorandum of Understanding entered into between the parties has been extracted hereunder :-



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22/10/24
Shilpa, Shantilal Kothari

DH 197393
C. Balasubramanian
C. BALASUBRAMANIAN
S.V. Lic. No: 3006/42/95
PERIAMEI, CHENNAI-600 093.
Cell: 9840847510, 7871981980

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ENTERED INTO AT CHENNAI ON THIS 23RD DAY OF OCTOBER 2024 BETWEEN:-

MRS.SHILPA, wife of Shantilal Kothari, aged about 48 years, residing at 69/19, 3rd Floor, Nattu Pillaiyar Koil, Sowcarpet, Chennai-600 079, hereinafter called the **PARTY OF THE FIRST PART.**

AND

MR.SHANTILAL KOTHARI, son of late Bhurmalji Kothari, aged about 67 years, No.69/19, Nattu Pillar Koil Street, Chennai-600001 and presently residing at Flat O-202, 2nd Floor, Vidyasagar Oswal Garden, 106-107 (New Number: 110-112), Cochrane Basin Road, Chennai-600 021, hereinafter called the **PARTY OF THE SECOND PART.**

Shilpa

Shantilal Kothari



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- A. Whereas the party of the First Part and party of the Second Part got married on 30.05.2003 at 56/2 Mint Street, Sowcarpet, Chennai, as per Hindu rites and rituals and the marriage was also registered under the Tamil Nadu Hindu Marriage Registration Rules.
- B. Whereas before marriage, the party of the First Part was married to Mr.Rajkumar Jain and through Mr.Rajkumar Jain, the party of the First Part gave birth to a son by the name Yash. However, marriage with Rajkumar Jain culminated in divorce on 04.04.2003.
- C. Whereas before marriage, the party of the Second Part was married to Sushila and through Sushila, the party of the Second Part had a son named Mahipal. Mrs. Sushila expired on 06.02.2003.
- D. Whereas at the time of marriage, child Yash was aged about 3 years and child Mahipal was aged about 14 Years.
- E. Whereas immediately after marriage, all of them started residing together at the above-mentioned address viz.,69/19, 3rd Floor, Nattu Pillaiyar Koil, Sowcarpet, Chennai-600079, where the party of the First Part is currently residing.
- F. Whereas both the parties have been residing separately ever since April 2016.
- G. Whereas the party of the Second Part initiated a divorce proceeding in June 2016 against the party of the First Part before VI Additional Family Court in Chennai numbered O.P. 2241 of 2016.
- H. Whereas the party of the First Part filed an interim maintenance application numbered I.A. 2654 of 2016 which was allowed on a contested basis on 30.11.2017.
- I. Whereas O.P. 2241 of 2016 was dismissed on 21.12.2017 for non-compliance with the maintenance order and thereafter the party of the First Part filed E.P. 53 of 2018 and the said E.P. was dismissed

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Shantilal Kothari



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on 27.03.2023 against which party of the First Part filed C.R.P. 4501 of 2023 now pending before the Hon'ble High Court of Madras.

- J. Whereas the party of the First Part has also filed M.C. 89 of 2023 now pending on the file of II Additional Family Court of Chennai.
- K. Whereas son Mahipal has filed an eviction suit against the party of the First Part seeking vacant possession of the property being residential flat bearing Municipal Door No.69/19, 3rd Floor, Nattu Pillaiyar Koil, Sowcarpet, Chennai - 600 079, where the party of the First Part is currently residing and also sought a relief of damages towards use and occupation of the property and the said suit is numbered as O.S. 6951 of 2022 now pending on the file of VI Additional Court of Chennai.
- L. Whereas with the intervention of the well-wishers in the society and with the intervention of advocates of both the parties and taking advantage of the Lok Adalat hearing dated 08.06.2024, both the parties herein have unanimously decided to resolve all their disputes amicably on the following terms.
1. The Party of the Second Part has agreed to pay a permanent alimony in the sum of Rs.19,00,000/- to the Party of the First Part and the Party of the First Part has also agreed and accepted the same.
 2. Rs.19,00,000/- (Rupees Nineteen Lakhs only) will be paid by the party of the second part after the filing of the consent petition, but before passing an order by the competent court granting divorce on mutual consent, by way of DD drawn in favour of the party of the first part. Copy of DD is furnished before the Hon'ble High Court in pending CRP.
 3. Given the above understanding, the Party of the First Part will vacate the property being residential flat bearing Municipal Door No.69/19, 3rd Floor, Nattu Pillaiyar Koil, Sowcarpet, Chennai - 600 079 and give

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Shantibel Kothari



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an inspection of the same 10 days before the hearing date of passing divorce on mutual consent. Vacant possession will be handed over to Mr Mahipal. Handing over vacant possession and receipt of Rs.19,00,000/- will be a simultaneous process.

4. The Party of the Second Part assures the Party of the First Part that as per the agreed terms, if the Party of the First Part hands over vacant possession, then in that case, Son Mahipal will withdraw O.S. and give up all the claims made under the said suit. Mahipal has given a separate letter to that effect appended along with this MOU.
5. The Party of the first part also agrees that if both the parties fulfil their obligations under this MOU then C.R.P. 4501 of 2023 as well as M.C. 89 of 2023 will be dismissed as settled in terms of the above MOU. Alternatively, CRP may be disposed of an earlier recording of this MOU.
6. The Party of the Second Part also confirm that the above payment of Rs.19,00,000/- will be in addition to what has been paid so far according to the interim order
7. If for any reason, the above MOU is not fulfilled by either of the parties then in that case, both parties will revert to their original position as existing before signing this MOU.
8. Both parties agree that both of them will cooperate in toto in fulfilling the agreed terms of this MOU and for that purpose any further proceeding has to be initiated before the court, both of them will sign the necessary papers.
9. This MOU is executed on Rs.100 NJ stamp paper of two sets and in the hands of each party, it will be termed as original and it will be filed as one of the documents in consent O P for divorce by mutual consent.

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Shantil Kothari



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10. Both parties agree that wherever and whenever it is necessary in any of the proceedings, this MOU will be made use of.
11. Both parties put it on record that on fulfilment of all the agreed terms in this MOU and on granting divorce on mutual consent either party will have no claim against each other on any account.

IN THE WITNESS WHEREOF THE PARTIES HAVE PUT THEIR RESPECTIVE HANDS ON THE DAY, MONTH AND YEAR FIRST ABOVE NOTED IN PRESENCE OF FOLLOWING WITNESSES.

WITNESSES:

1.  (HARISH KUMAR)

L 12/12/24

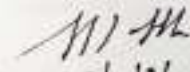
PARTY OF THE FIRST PART

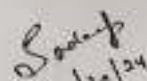
2.  (Mahipal (Carnar))

Shantilal Kothari

PARTY OF THE SECOND PART

The Content of this Mou was explained in hindi language to Shilpa (wife) of Party of the first but by her brother Mr. Harish who is one of the witness to this Mou and also by the Counsel Mr. Sandeep Shah Partner of Shah and Shah. After understanding the same, She have Signed this Mou.


23/10/24
Cdn for petition
in CRP


23/10/24
Counsel for Respondent in CRP



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From,
Mr. Mahipal S. Kothari
Chennai
To,

22/10/2024

Mrs. Shilpa
Chennai

Respected Mom,

1. I am aware that Father Shantilal Kothari and you have entered into an MOU about the marital disputes. I am also aware that Father has assured you that if you vacate and hand over vacant possession of my flat where you are residing now before passing a decree of divorce on mutual consent then in that case, I will have to give up my claim of damages against you for which I have filed civil suit against you numbered as O.S.No.6951 of 2022 pending on the file of VI Additional City Civil Court at Chennai.
2. I reiterate and confirm that on your handing over vacant possession of the flat as agreed to in the MOU, I will not make any claim against you on any account. Based on this letter you can sign the MOU. I will abide by my promise and commitment.

Thanking you

Yours Obediently



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8. Taking into consideration the Memorandum of Understanding dated 23.10.2024 filed by both the parties and recording the submissions made by the learned counsel on both sides, this Civil Revision Petition stands disposed of. Further, the Family Court is directed to waive the period of six months, take up the petition filed by both the parties under Section 13B of the Hindu Marriage Act which is pending in O.P.SR.No.6225 of 2024 by numbering the same and dispose of the same, within a period of two weeks from the date of receipt of copy of this order.

9. The Memorandum of Understanding filed by the petitioner shall form part of the Court records. Consequently, the connected miscellaneous petition is closed. No costs.

25.10.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1. The VI Additional Principal Family Court, Chennai.



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A.D.JAGADISH CHANDIRA, J.
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and C.M.P.No.27037 of 2023**

25.10.2024