BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD)No.109 of 2021

K.Ramesh ... Petitioner/Respondent

Vs.

1.V.Shoba
2.Minor Prathiksha
(Represented by her natural guardian and mother(1st respondent)) ... Respondents/Petitioners

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to pass an order to call for entire records and set aside the order passed in M.C.No.126 of 2015 dated 26.11.2020 on the file of the Family Court, Trichy.

For Petitioner : Mr.T.J.Ebenezer Charles

For Respondent : Mrs.V.Shoba
Party-in-person

* * * * *

ORDER

This Criminal revision case has been filed by the husband, challenging the maintenance award amount granted a sum of Rs.10,000/- to the first respondent and Rs.5,000/- to the second respondent by an impugned order dated 26.11.2020 in M.C.No.126 of 2015 on the file of the Family Court, Trichy.

2. The petitioner has married the first respondent on 06.06.2011. Out of marriage, the second respondent was born on 18.11.2018. There was some matrimonial dispute between them and hence the first respondent lived separately with the second respondent. Thereafter, he filed the maintenance petition in M.C.No.126 of 2015 before the Court below. The petitioner filed a counter denying the various allegations stated in the petition and seeks for dismissal of the same. The trial Judge after considering the evidence of the first respondent and the petitioner and considering the documents adduced on the both sides, granted maintenance of Rs.10,000/- to the first respondent and Rs. 5,000/- to the second respondent.

3. The said order was challenged before this Court. Pending the revision, the matter was referred to Lok Adalat and the same was settled. Hence this Court passed the following order dated 24.06.2024:-

> *"In M.C.No.126 of 2015, on the file of the Family Court, Trichy, the petitioner has been directed to pay the maintenance of Rs.10,000/- to the first respondent and Rs.5,000/- to the second respondent, by the impugned order dated 26.11.2020. Hence, he filed this revision challenging the impugned order.*
>
> *2.Pending the revision petition, both the parties have arrived at a settlement before the Lok Adalat. The order of Lok Adalat dated 09.12.2023, and the terms of the compromise are as follows:*

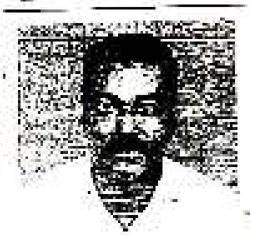
BEFORE THE LOK-ADALAT HELD AT TIRUCHIRAPPALLI.

Organised by the District Legal services Authority, Tiruchirappalli.
(U/S 19 of the Legal Services Authority Act 1987)
(Form Prescribed under National Legal Services Authority (Lok-Adalats) Regulations 2009).

Dated this 9th day of December 2023

Present:- 1. Thiru P. Thangavel B.Sc., LL.B., Judge / Head of Panel
III Addl. District Judge,
Tiruchirappalli
2. Tmt. R. Manimekalai B.A.B.L., I Member
I Addl. District Munsif,
Tiruchirappalli
3. - II Member

C.A. 47/2020
LOK-ADALAT CASE NO. 451/2023
(Case No. Crl.Appeal No. 47/2020 on the file of the Principal District Court Tiruchirappalli.)



Appellant
~~Petitioner(s)~~:-
~~Plaintiff(s)~~ Shoba
W/o. Ramesh
29, J.K. Nagar,
Pirattiyur West, Dindigul Road,
Tiruchirappalli.

Respondent(s):- 1) Ramesh S/o. Late Krishnamoorthy
~~Defendent(s)~~ 2) Vatsala
3) Sujatha
4) Kalidoss
5) Indumathi
All are residing at No.36/A,
Nathamuni Nagar 3rd Street, Koothapakkam,
Cuddalore - 607 002.

Dispute In Brief:- To set aside the order of the Addl. Mahila Court, Trichy passed in M.C 73/2019, dismissing the grant of maintenance amount.

AWARD

The dispute between the parties having been referred for the determination to the Lok-Adalat and the parties having compromised/settled the case/matter, the following award is passed.

..2..

Appellant and 1st respondent present along with their respective Counsels. Joint Compromise memo filed and recorded. In terms of Compromise memo, award passed and Appeal closed. The joint memo shall be form and format of this Award.

V. Sh...

Petitioner(s)/Plaintiff(s)

L.T.I. of V...

Respondent (s)/Defendant (s)

L.T.I. of ...

Advocate for Petitioner(s)/ ~~Plaintiff(s)~~ Appellant

Advocate for Respondent (s)/ ~~Defendant(s)~~. R1 & R2 ...

Judge (Head of Panel) 9/12/2...

I Member

II Member

/True copy/

Senior Administrative Assistant
District Legal Services Authority
Tiruchirappalli

BEFORE THE HON'BLE LOK ADALATH

TRICHIRAPPALLI

Crl.Appeal No: 47/2020
(on the file of Hon'ble PDJ Trichy)
M.C.No: 93/2014
(on the file of the Additional Mahila Court, Trichy)

V.SHOBA ...Appellant / petitioner

vs

K.RAMESH ..Respondent/respondent

JOINT MEMO FILED BY BOTH PARTIES

The parties above named mutually agreed to withdraw the above appeal on the following terms:

1. The respondent agreed to pay Lump sumOne time maintenance of Rs.30,00,000/-(Rupees Thirty Lakhs Only) to the petitioner wife and her minor daughter named Prathiksha (now aged 11 years) apart from the arrears of maintanance already deposited by the respondent with the Hon'ble Family Court, Trichirappalli, ~~Ruppes~~ Rupees seven thousand five hundred per month for the period up

to December 2023. The respondent Ramesh agreed to withdraw his revision petition which is ~~disposed of accordingly~~ pending ~~from the~~ before the Hon'ble Madurai bench of Madras High Court.

2. The appellant Shoba agreed to withdraw her criminal case pending in CC.No: 107/2016 on the file of the Additional Mahila Court Cuddalore and also Crl.M.P.No: 15 of 2023 in Family ~~Mahila~~ Court , Trichy.

3. The appellant and the respondent mutually agreed to get consent divorce by filing petition U/s 13(b) HM Act , before the Hon'ble Family Court, Trichirappalli with in 30 days.

4. When the mutual divorce petition is filed before the said Hon'ble Family ~~Mahila~~ Court, The respondent agreed to pay Rs. 25,00,000/- (Rupees Twenty Five Lakhs) through DD to the petitioner wife and the balance amount of Rs.5,00,000/- (Rupees Five Lakhs) at the time of second motion for passing of divorce degree in the above divorce petition.

5. The appellant and the respondent agreed to not ~~to~~ disturb or intervene in each other's life in future.

6. As all the legal disputes between both the parties are amicably agreed to ~~the~~ be settled, this appellant withdraws the above appeal and prays the same may be dismissed without cost. The 2 to 5 Respondents may please be exonerated from the above appeal as the appellant agreed that she would not claim any relief against them.

K.Ramesh
K.RAMESH

Respondent / Respondent
Husband.

V. Shoba
V. SHOBA

(Petitioner / Appellant)
wife

S. Ba...
Advocate for Petitioner / Appellant
09.12.2023

Advocate for Respondent / Respondent
09.12.2022

3.When the matter was taken up for hearing today, the learned counsel appearing for the petitioner/husband would submit that he is ready with Demand Draft for the value of Rs.31,55,000/- (Rupees Thirty One Lakh and Fifty Five Thousand Only). He would further submit that in spite of the arrival of the compromise, the first respondent/wife has proceeded with the criminal case pending against him in C.C.No.107 of 2016 on the file of the Judicial Magistrate No.1, Cuddalore, in charge of Additional Mahila Court, Cuddalore and also failed to cooperate to file the mutual divorce petition.

4.The first respondent/wife appeared party-in-person before this Court. She would submit that she undertakes to withdraw the case pending against the petitioner/husband in C.C.No.107 of 2016 on the file of the Judicial Magistrate No.1, Cuddalore, in charge of Additional Mahila Court, Cuddalore, and ready to appear before the Family Court and file the mutual divorce petition.

5.Both the counsel expressed their difficulties on the account of the vacancy of the presiding officers in both the Family Court and Judicial Magistrate Court. Hence, they would jointly submit that they are ready to comply the terms of the agreement entered into between them before the Lok Adalat. The petitioner/husband appeared in person and submitted the original Demand Draft for the value of Rs.31,55,000/- (Rupees Thirty One Lakh and Fifty Five

Thousand Only) and requested to hand over the same to the wife/first respondent, after complying the terms of the compromise.

6.Recording the submission made by the learned counsel for the petitioner/husband and the first respondent/wife, who appeared party-in-person, this Court is passing the following directions:

6.1.The first respondent/wife is directed to appear before the learned Judicial Magistrate No.1, Cuddalore, on 28.06.2024 and withdraw the case in C.C.No.107 of 2016 on the file of the Judicial Magistrate No.1, Cuddalore, in charge of Additional Mahila Court, Cuddalore.

6.2.The learned Judicial Magistrate No.1, Cuddalore, is directed to accept the withdrawal memo filed by the first respondent/wife as per the joint compromise memo dated 09.12.2023, without insisting the original demand draft.

6.3.The learned Judicial Magistrate No.1, Cuddalore, is further directed to send the order copy to this Court.

6.4.The parties are directed to appear before the learned Special District Judge No.1, Special District Court No.1, Trichy, in charge of Family Court, Trichy, and present the mutual divorce petition under Section 13(b) of the Hindu Marriage Act, before the same Court on 06.07.2024.

6.5.The learned Special District Judge No.1, Special District Court No.1, Trichy, is directed to examine *the witnesses on the same day, complete all formalities without insisting the cooling period of six months and pass orders and send the order copy to this Court on or before 07.07.2024.*

6.6.The first respondent/wife is directed to obtain original demand draft for the value of Rs.31,55,000/- from the Registry after making proper acknowledgement.

7.Post the matter on 10.07.2024, for reporting compliance."

4.When the matter is taken up for hearing today, the criminal case in C.C.No.107 of 2016 on the file of the Additional Mahila Court, Cuddalore has been withdrawn by the first respondent. Both parties have also appeared before the Family Court, Tiruchirappalli and filed a petition for mutual divorce under Section 13(b) of the Hindu Marriage Act to dissolve the marriage and the same was also allowed.

5.In view of the above, the complaint stated in the Lok Adalat award amount, this Court is handing over the Demand Draft to the value of Rs.31,55,000/-. The wife present in person before this Court. The wife would submit that since the amount of Rs.4,40,000/- deposited before the Family Court, Tiruchirappalli as arrears of the maintenance has not withdrawn by her. Hence, she seeks permission before this Court. Apart from that, she apprehends the deduction of the Income Tax for the amount of Rs.35,95,000/- (Rupees Thirty Five Lakhs Ninety Five Thousand only) at the time of deposit in the bank. Hence she seeks for clarification.

6.This Court considering the above submission of the wife. As per the terms of the agreement, she is entitled to Rs.4,40,000/- (Rupees Four Lakhs Forty Thousand only) deposited before the Family Court, Tiruchirappalli. Hence she is permitted to withdraw the said amount.

7.The apprehension of the wife is that the Income Tax Authority deducted the income of the above said maintenance amount is well founded. There is no income tax for the maintenance amount of Rs.35,95,000/- (Rupees Thirty Five Lakhs Ninety Five Thousand only) settled during the Lok Adalat. Further the parties entered compromise in the Lok Adalat. Hence the Income Tax Authority has no jurisdiction deducting the income. Therefore, this Court discloses the above revision.

8.In view of the compromise entered between the parties and the compromise also complied by both the parties, there is no necessity to set aside the impugned order in this revision.

9.The learned Judge, Family Court, Tiruchirappalli is directed to permit the wife/first respondent to withdraw the amount of Rs.4,40,000/- (Rupees Four Lakhs Forty Thousand only) deposited in the Family Court, Tiruchirappalli.

10.The parties appeared before the Lok Adalat and settled their disputes. As per the settlement, the petitioner has agreed to pay a sum of Rs.35,95,000/- (Rupees Thirty Five Lakhs Ninety Five Thousand only) as permanent alimony on condition to withdraw the case which is pending against him and to obtain divorce on mutual consent. Since the entire amount was paid as permanent alimony, the same is exempted from the Income Tax. The Hon'ble Supreme Court in the Commissioner of Income Tax, Bombay City II, Bombay Vs. Shri. Sitaldas Tirathdas reported in 1961 41 ITR 367: 1960 SCC Online SC 229 has held as follows:

> **"*16.****These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the*

nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable. In our opinion, the present case is one in which the wife and children of the assessee who continued to be members of the family received a portion of the income of the assessee, after the assessee had received the income as his own. The case is one of application of a portion of the income to discharge an obligation and not a case in which by an overriding charge the assessee became only a collector of another's income. The matter in the present case would have been different, if such an overriding charge had existed either upon the property or upon its income, which is not the case. In our opinion, the case falls outside the rule in Bejoy Singh Dudhuria case [(1933) 1 ITR 135] and rather falls within the rule stated by the Judicial Committee in P.C. Mullick case [(1938) 6 ITR 206] ."

Therefore, the Income Tax authority is directed not to claim any Tax on the said amount of Rs.35,95,000/- (Rupees Thirty Five Lakhs Ninety Five Thousand only) from the respondents.

11.Accordingly, in view of the above settlement of Rs.35,95,000/- (Rupees Thirty Five Lakhs Ninety Five Thousand only), this Criminal Revision case is closed with the following directions:

i)the Income Tax Authority is directed not to claim any Tax on the amount of Rs.35,95,000/- (Rupees Thirty Five Lakhs Ninety Five Thousand only) from the respondents and the respondents are not liable to pay any Income Tax on the above said permanent alimony settled as per Lok Adalat award.

10.07.2024

RJR

Note: Issue order copy on 16.07.2024

To

1.The learned Judge, Family Court, Tiruchirappalli.

2.The learned Judicial Magistrate No.1, Cuddalore.

3.The Commissioner,
Income Tax Department, Trichy.

K.K.RAMAKRISHNAN, J.

RJR

Crl.R.C.(MD)No.109 of 2021

10.07.2024