



C.M.A(MD)No.808 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.07.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.808 of 2019
and
C.M.P(MD)No.10469 of 2019

K.Jegan

... Appellant/Respondent

Vs.

N.Baby Salini
(Working as staff nurse,
Government Hospital, Kuwait)

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, 1869, to set aside the fair and decreetal order, dated 04.02.2019 made in D.O.P.No.228 of 2018 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari at Nagercoil.

For Appellant : Mr.C.Kishore

For Respondent : Mr.N.Dilip Kumar



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JUDGMENT

The instant appeal has been filed by the respondent in D.O.P.No. 228 of 2018 on the file of the Additional District and Sessions Court (Fast Track Court), Kanyakumari at Nagercoil, challenging the order of *ex parte* divorce.

2. The respondent herein / wife had filed the above said petition seeking divorce on the ground of mental cruelty and desertion. Though the husband has filed a counter to the said application, later, he could not participate in the proceedings and the Court had proceeded to grant a decree for divorce on 04.02.2019. Challenging the said divorce decree, the present appeal has been filed.

3. Pending appeal, at the instance of the elders, the parties have arrived at a settlement, wherein the husband has agreed to withdraw the appeal, on condition that, the wife withdraws all her allegations made in the divorce application. In turn the wife has also agreed for the same on a condition that, the husband should withdraw the allegations in the counter application.



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4. It is brought to the notice of the Court that, the husband has filed G.W.O.P.No.513 of 2020 before the Additional District and Sessions Court / FTC, Kanyakumari at Nagercoil, seeking the custody of 10 year old son. An *ex parte* order has been passed in favour of the husband on 20.12.2023. The learned Counsel appearing for the wife submits that, they have filed an application seeking to set aside the *ex parte* order in I.A.No.2 of 2024 which is said to be posted on 20.08.2024.

5. At this stage, the parties have arrived at the following compromise and filed affidavits to the said effect:

1) The appellant and the respondent in the appeal have mutually agreed to withdraw their respective allegations in D.O.P.No.228 of 2018 and the counter.

2) The appellant in the appeal has agreed to withdraw this appeal and thereby, confirming the decree of divorce granted by the Trial Court.

3) It is further agreed by the parties that, the custody of the child would remain with the respondent in the appeal / the mother through her parents.

4) It is further agreed by the parties that, the father / appellant herein along with his mother would have visitation rights of the son on



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2nd and 4th Sunday of every month at St. Mary's Church, Kaliyal,
Kanyakumari District between 10.00 a.m and 02.00 p.m.

5) The wife / mother hereby agrees to not press I.A.No.2 of 2024
in G.W.O.P.No.513 of 2020.

6) The parties agree that this arrangement will be placed on record
in G.W.O.P.No.513 of 2020 and the *ex parte* decree passed therein will
not be executed.

7) Either of the parties will be at liberty to approach the
appropriate forum, if there is any violation of the terms of the above
arrangement.

6. On the above said terms, the Civil Miscellaneous Appeal stands
dismissed as withdrawn. There shall be no order as to costs.
Consequently, connected Miscellaneous Petition stands closed.

25.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

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- 1.The Additional District and Sessions Judge
(Fast Track Court), Kanyakumari,
Nagercoil.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.808 of 2019

25.07.2024