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CMA NO. 961 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24-02-2025**

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

CMA NO. 961 of 2024

Rajkumar

S/o.Sathasivam, D.No.1/12, East Road, Akkiyampatti,
Akkiyampatti Post, Senthamangalam Taluk, Namakkal
District.

... Appellant

Vs

P. Subhashini

D/o.Palaniyappan, Thevashtanampudhur Village,
Namagiripettai, Rasipuram Taluk, Namakkal District.

... Respondent

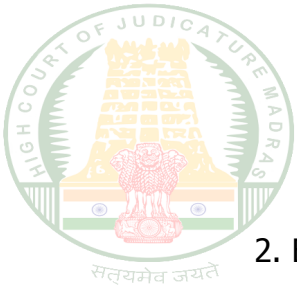
Prayer : Civil Miscellaneous Appeal under Section 19 of the Family Courts Act read with Section 28 of the Hindu Marriage Act to set aside the fair and decreetal order dated 27.02.2024 passed in F.C.O.P.No.335 of 2022 on the file of the Family Court, Namakkal by granting a decree of divorce.

For Appellant : Mr.S. Senthil
For Respondent : K. Dhananjayan

J U D G M E N T

(Judgment of the Court was delivered by **R.Suresh Kumar J.**)

This Civil Miscellaneous Appeal has been directed against the judgment and decree passed by the Family Court at Namakkal dated 27.02.2024 made in F.C.O.P.No.335 of 2022.



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2. By the said F.C.O.P., the appellant / husband had filed a petition before the Family Court under Section 13(1), (i-a) (i-b) of the Hindu Marriage Act, 1944 seeking for divorce. That petition was dismissed by the order impugned, against which this appeal has been made.

3. Today, when the case is taken up for hearing, the learned counsel appearing for the appellant / husband as well as the learned counsel for the respondent / wife stated that, during the pendency of this appeal, there has been a compromise entered into between the parties ie., the appellant / husband and the respondent / wife. The compromise had been reduced into writing and a joint compromise memo to that effect dated 14.02.2025 is also filed before this Court, which reads thus:

MEMORANDUM OF JOINT COMPROMISE FILED UNDER ORDER

XXIII RULE 3 OF THE CODE OF CIVIL PROCEDURE

The Appellant had filed a petition seeking for Divorce on the ground of cruelty and desertion in F.C.O.P.No.335 of 2022 before the Family Court, Namakkal, which was dismissed on 27.02.2024, against the same, the present Civil Miscellaneous Appeal is preferred.

During the pendency of the above Appeal, the parties have decided to enter into the compromise to put a quietus to the issue on the following terms:

- 1. The respondent has no objection in allowing the Civil*



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Miscellaneous Appeal filed by the Appellant (Husband) by granting a decree of divorce of the marriage dated 26.06.2020 solemnized between the appellant and the respondent at Kakaveri Arulmighu Shri Thiripurasundari Thirukovil.

- 2. The Appellant has paid a sum of Rs.10,00,000/- to the respondent by way of Demand Draft in D.D.No.921853 dated 26.11.2024, towards full and final one time settlement towards lifetime maintenance and the respondent hereby acknowledges the receipt of the same.*
- 3. The appellant and the respondent declares that there is no claim against each other in respect of movable or immovable properties, including maintenance.*
- 4. The appellant and the respondent had decided to file this compromise memo out of their free will and there is no coercion between the parties.*
- 5. Therefore, it is humbly prayed that this Hon'ble Court may be pleased to accept the compromise memo filed by both parties and allow the appeal without cost and thus render justice.*

Dated at Chennai on this the 14th day of February 2025.

Sd/-

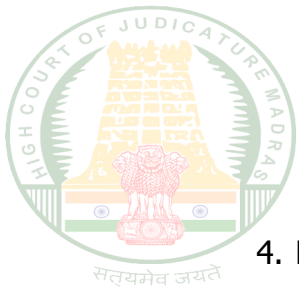
Appellant

Counsel for Appellant

Sd/-

Respondent

Counsel for Respondent"



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4. Relying upon the above joint compromise memo under Order XXIII Rule 3 of CPC, learned counsel for both sides would submit that since the respondent / wife has agreed for giving consent divorce and permanent maintenance for the whole life time has also been fixed at Rs.10,00,000/- which has already been paid by way of a Demand Draft dated 26.11.2024 and receipt of the same has been acknowledged by the respondent / wife in the joint compromise memo, recording the same this Court can show its indulgence by setting aside the judgment which is impugned herein and grant a decree of divorce between the appellant and the respondent.

5. In fact the appellant / husband is physically present before this Court and the respondent / wife is present before this Court through video conference. They also expressed their consent to record the compromise memo dated 14.02.2025.

6. We have considered the said submission made by the learned counsel for both sides and also have taken note of the contents of the joint memo of compromise.

7. Since the Family Court has already decided the case on merits by dismissing the petition filed by the appellant / husband for divorce and that was dismissed through the impugned order, if at all compromise is reached between the husband and wife, base on which they want to invoke Section 13B of the Hindu



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Marriage Act, 1955, that shall be invoked before the District Court with whom the power is vested.

8. When that being so, assuming that this joint memo of compromise is taken on record, the ultimate decree of dissolution of marriage under Section 13B of the Act shall be issued by the trial Court ie., the District Court / Family Court and therefore, we are inclined to dispose of this appeal with the following directions:

- (a) The joint memo of compromise filed by the appellant/husband and the respondent/wife dated 14.02.2025 signed by both parties and their respective counsel is taken on record.
- (b) In view of the compromise recorded in the said compromise memo, since there has been consent for divorce from the respondent/wife, the parties is hereby given liberty to file a formal petition under Section 13B of the Hindu Marriage Act, 1955 seeking consent divorce decree based on this compromise memo, within a period of one month from the date of receipt of a copy of this order.
- (c) On such petition being filed by the parties, the Court below ie., the Family Court at Namakkal shall take such a petition on file and after verifying the parties to be present before



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the Court, the six months statutory period shall be waived off and such a consent divorce shall be granted by the Court below immediately thereafter.

9. With the above directions, by recording the aforesaid joint memo of compromise dated 14.02.2025, the order impugned herein made in F.C.O.P.No.335 of 2022 on the file of the Family Court, Namakkal is set aside and the matter is remitted back to the said Court for the aforesaid compliance. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs.

(R.SURESH KUMAR J.) (Dr.A.D.MARIA CLETE J.)
24-02-2025

Index : Yes/No

NCS : Yes/No

KST

Note : Issue order copy on 27.02.2025

To

The Family Court, Namakkal.



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R.SURESH KUMAR, J.

AND

DR.A.D.MARIA CLETE, J.

KST

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