

**Sreelatha Vs. Deepthy Kumar**

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**Court :** Kerala

**Decided On :** Dec-18-1997

**Reported in :** AIR1998Ker97

**Judge :** Ar. Lakshmanan and; K.A. Abdul Gafoor, JJ.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13B

**Appeal No. :** M.F.A. No. 944 of 1995-C

**Appellant :** Sreelatha

**Respondent :** Deepthy Kumar

**Advocate for Def. :** Subash Syriac, Adv.

**Advocate for Pet/Ap. :** S.V. Rajan, V.G. Arun and G.S. Prakash

**Judgement :**

**Ar. Lakshmanan, J.**

1. Heard both sides. By consent of both parties namely, the appellant and respondent, who are present in Court at the time of hearing, the matter was taken up and order is passed.

2. M.P.A.No. 944 of 1996 was filed by the appellant (wife) against the judgment dated 28-6-1995 of the Family Court, Thiruvananthapuram in OP(HMA) 237/92

under Section 19 of the Family Courts Act. The said Original Petition was filed for restitution of conjugal rights. The family Court on the basis of the oral and documentary evidence came to the conclusion that the husband is justified in living separately from the wife and therefore the wife is entitled to get a decree of restitution of conjugal rights. In the result the Original Petition was dismissed.

3. The appeal was taken on file by this Court on 28-7-95. When the appeal was posted on 11-12-97, both the parties and their respective counsel represent that the parties have decided to compromise as suggested by the elders, relatives and wellwisher to avoid prolongation of the agony and give a quietus to the litigation which is pending for the last few years. Both the parties again appeared before us on 16-12-97. After due deliberations and discussions both the parties have agreed to file a memo of compromise duly signed by them and also their counsel settling their claims against each other.

4. Both parties are present in Court today. The memo of compromise was filed under Section 13-B of the Hindu Marriage Act, 1953. The petition is numbered as CMP 6193/1997. The memo of compromise sets out the terms and conditions subject to which the parties hither to have agreed to put an end to their relationship as husband and wife by getting dissolution of the marriage solemnized between them, under orders of this Court. Though the proceedings before the Family Court have been initiated as a contestive litigation, having regard to the subsequent development and the compromise brought about by the elders, relatives and well wishers, the parties have agreed by mutual consent they present CMP. 6193/97 to have the marriage between them dissolved. Though normally for a marriage to be dissolved under Section 13(B) of the Hindu Marriage Act, the motion of both parties should have been made to the Court by both parties not earlier than six months after the date of prevention of the petition and not later than 18 months after the said date, having regard to the fact that the parties have been deliberating over the matter all along and in spite of the pendency of the proceedings for nearly two years and more, there was no scope for rapprochement between them, which resulted in the compromise being brought about by elders, relatives and wellwishers.

5. We are of the view that this Court can act on the Memo of Compromise filed before us as indicative of a sane and sober thinking after exploring all possible avenues, if any, for bringing about a union to dissolve the marriage, having failed. We have also verified from the appellant-wife as also the respondent-husband in the presence of their respective counsel in open Court, who also have represented before us that the Memorandum of Compromise has been filed after great deliberations and consideration of the pros and cons involved in the matter. The terms and conditions, subject to which the parties have agreed to have the dissolution of their marriage make it clear that each one of them has no further subsisting claims over the other.

6. The compromise petition in CMP No. 6193/97 has been duly signed by both parties and their respective counsel. Under Clause 5 of the compromise petition it is stated that the husband has agreed to pay a sum of Rs. 1,75,000/- to the wife in two instalments by Demand Drafts in favour of the appellant payable at Kerata State Co-operative Bank, Peroorkada Branch, Thiruvananthapuram. The first payment shall be made by demand draft for Rs. 87,500/- before this Court on 31-1-98 and balance amount by demand draft on or before 28-2-98. Likewise the appellant-wife shall produce her consent letter to withdraw the fixed deposit amount in the joint account of the appellant and the respondent at Kerala State Co-operative Bank, Peroorkada Branch, Thiruvananthapuram giving her consent to the respondent to withdraw the entire amount available in the said account. The appellant/wife shall produce her consent letter on 31-1-98 in this Court. The second payment is to be made on or before 28-2-1988 by the husband. Therefore the decree for divorce by mutual consent shall take effect only after the payment of the second instalment either on 28-2-98 or before.

7. Having regard to all these we are satisfied that the decree for dissolution of marriage solemnised between the parties has to be passed in terms of the memorandum of compromise filed in this Court. Hence the order of the Court below in OP(HMA) No. 237 of 1992 is hereby set aside. There shall be a decree in terms of the memorandum of compromise entered into between the parties and filed in this Court. The compromise memo will form part of the judgment and decree and will be incorporated in the decree to be supplied to the parties.

Six months period provide under Section 30-B is waived for the reason recorded in the earlier part of the judgment.

Both the M.F.A. and CMP is disposed accordingly. No costs.

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