

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (C) NO. 83 OF 2019

DIVYA NAIR

.....PETITIONER(S)

Vs.

ARJUN SASIKUMAR

.....RESPONDENT(S)

WITH  
TRANSFER PETITION (C) NO. 463 OF 2019

WITH  
CONTEMPT PETITION (C) NO. 30 OF 2021  
IN  
TRANSFER PETITION (C) NO. 83 OF 2019

O R D E R

1. Learned counsel for the parties have referred to the settlement agreement executed by and between the parties on 16.11.2019 before the Delhi High Court Mediation and Conciliation Centre, New Delhi as also the joint application (I.A. No. 61749 of 2022) supported by affidavits of both the parties; and have submitted that all the disputes and difference of the parties having been amicably resolved, appropriate and necessary orders may be passed in terms of their agreement.
2. In these matters, having their genesis in the matrimonial dispute, wife is the petitioner in Transfer Petition (C) No. 83 of 2019 whereas husband is the petitioner in Transfer Petition (C) No. 463 of 2019. The respective parties have prayed for transfer of the petition filed by the other party under the Guardians and

Wards Act, 1890, seeking guardianship and custody of their son.

3. After exchange of pleadings in these petitions, the parties were referred to mediation by the order dated 05.07.2019 and the mediation sessions were conducted at the Delhi High Court Mediation and Conciliation Centre, New Delhi. Ultimately, both the parties came to an agreement and settled their disputes as per the Settlement Agreement dated 16.11.2019.

4. The said settlement agreement was placed before the Hon'ble Single Judge of this Court dealing with these transfer petitions, who recorded the terms of agreement as also passed necessary orders for disposing of and/or closing the other proceedings arising due to the matrimonial dispute but then, found two aspects remaining to be taken care of, namely, dissolution of marriage by a decree of divorce by mutual consent and interim custody of the child to the wife during Christmas vacations. Thus, a detailed order dated 04.12.2020 was passed in the matter incorporating the terms of settlement agreement too. For its relevance, the said order dated 04.12.2020 is reproduced *in extenso* as under: -

“The first transfer petition is by the wife seeking transfer of the petition filed by the husband under the Guardians and Wards Act, 1890 and the second transfer petition is by the husband seeking transfer of a similar petition under the Guardians and Wards Act, 1890.

The parties were referred to the Delhi High Court Mediation and Conciliation Centre at Delhi High Court and in the Mediation Centre, the parties reached a settlement.

**The Settlement Agreement dated 16.11.2019 reads as follows:**

**Delhi High Court Mediation and Conciliation Centre**

**Delhi High Court, Shershah Road, New Delhi**

**Dated 16.11.2019**

**SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT is entered into on 16.11.2019

SMT. DIVYA UDAYBHASKAR NAIR W/O. SH. ARJUN SASIKUMAR R/O 167, VINAYAM, RAMNAGAR, NEAR SONY CENTRE, NAGPUR-440033, MAHARASHTRA (MOBILE – 9823264230) **(FIRST PARTY / PETITIONER / WIFE)**

**AND**

SH. ARJUN SASIKUMAR, S/O SH. K.SASIKUMAR R/O 5/2616D, 'DEVADATTA', RELCON VILLA #3, T.D.SANNIDHI ROAD, THAMMANNAM, KOCHI – 682032, KERALA (MOBILE – 9567090398) **(SECOND PARTY/ RESPONDENT/ HUSBAND).**

**WHEREAS** there are two transfer petitions before the Hon'ble Supreme Court filed under Section 25 of the Code of Civil Procedure, 1908 read with Order XLI of the Supreme Court Rules, 2013. the first petition has been filed by the First Party wife bearing T.P (C) No.83/2019 titled as 'Divya Nair Vs. Arjun Sasikumar', seeking Transfer of O.P No.1358/2018 for custody of the child (filed by the Second Party, father) from the Family Court, Ernakulum, Kerala to Family Court, Nagpur, Maharashtra. The Second Petition bearing T.P. (C) No.463/2019 "Arjun Sasikumar Vs. Divya Nair" was filed by the Second Party seeking Transfer of O.P No. D3/2019 for custody of the child (filed by the First Party, mother) from the Family Court, Nagpur, Maharashtra to Family Court, Ernakulum, Kerala.

WHEREAS the facts and circumstances leading upto the above transfer petitions are as follows:-

1) The First Party and Second Party were married in accordance with Hindu rules and customs, on 03.11.2011 at the Sree Krishna Inn, Guruvayoor Trichur District, Kerala in the presence of friends and relatives in accordance with the Hindu Marriage Act, 1955 and customs of Hindu Nair community. The parties subsequently registered their marriage on 23.02.2012 at the Mannath Bhagavathi Temple, Koduvayoor.

2) Out of this wedlock, the parties were blessed with a son on 25.07.2012 whom they named Advait Nair.

3) The Second Party had been gainfully employed in the Middle East prior to his marriage to the First Party. The Second Party had, shortly before the wedding resigned from his job to commence a share trading marketing business at Kochi, Kerala. After the parties marriage, the Second Party was appointed as Director in two companies of the First Party's father in April, 2012, subsequent to which the Second Party relocated to Nagpur and began assisting his father-in-law in family business.

4) Disputes and differences arose between the parties following which the Second Party returned to Kochi at the time end of 2013. Despite several attempts including the parties attempting to live together at Kochi, the parties were unable to reconcile their disputes differences. Several attempts were made to mediate between the parties herein by

relatives and well-wishers. During the course of attempts at reconciliation, the Family Court, Ernakulam passed a judgment and decree in O.P(G&W) No.1358/2017 recording that the matter had been settled between the parties and the compromise duly executed had been filed. Under the said settlement agreement the custody of the minor son of the parties was mutually given to the Second Party, father.

5) Unfortunately, the said settlement agreement did not finally end the disputes and differences between the parties and led to the filing of the following litigations:-

### **I. List of Cases filed by the First Party against the Second Party**

(i) Custody Petition filed by the First Party bearing No. O.P D3/2019 filed before the Family Courts, Nagpur.

(ii) First Party filed FIR bearing 1056 of 2018 under u/s 509 IPC, 67 IT Act 120(o) Kerala Police Act being Petition No. Cr. No. 1056/2018 filed with Palarivattom Police Station, Ernakulam, Kochi.

### **II. List of cases filed by the Second Party against the First Party**

(i) OP No. 1358/2017 before the Family Court, Ernakulam

(ii) Complaint dated 30.06.2017 before the Commissioner of Police, Kochi

(iii) Complaint and F.I.R No. 1696/2018 before the Palarivattom Police Station, Kerala

(iv) F.I.R No. 44/2019 at the Pazhayannur Police Station, Kerala.

**AND WHEREAS** the two custody petitions referred in paras I and II above namely OP D3/2019 filed by the First Party against the Second Party at Nagpur and OP 1358/2017 filed by the Second Party against the First Party at Kochi came up for hearing before the Hon'ble Supreme Court vide Transfer Petitions filed by both parties.

**AND WHEREAS** vide Order dated 05.07.2019, the Hon'ble Supreme Court appointed Ms.Sadhana Ramachandran, Advocate/ Mediator, Supreme Court Mediation Centre as Mediator in the present mediation proceedings.

**AND WHEREAS** with the consent of the parties and their respective counsel, it was agreed that all mediation sessions will be conducted at Samadhan (Delhi High Court Mediation and Conciliation Centre).

**AND WHEREAS** comprehensive mediation sessions were held on 29.07.2019, 30.07.2019, 14.08.2019, 19.08.2019, 20.08.2019, 28.08.2019, 29.08.2019, 30.08.2019, 06.09.2019, 13.09.2019, 04.11.2019, 06.11.2019, 13.11.2019 and 16.11.2019 jointly and separately between the parties and learned counsel for the parties.

**AND WHEREAS** during the course of mediation, the parties resolved not to continue their marriage and have decided to dissolve their marriage by mutual consent under the following settlement terms: -

#### **A. Settlement in the Welfare and Interest of the Child**

i. It is agreed between the parties they are entering into this Settlement Agreement to peacefully resolve their disputes and differences and move on in life with their primary concern being the welfare and interest of their son Advait Nair who is presently 7 years old and who deserves to grow to his fullest potential physically, emotionally, educationally and socially and has the company, guidance and love of both parents.

#### **B. Divorce by Mutual Consent**

i) It is agreed between the parties that they shall jointly apply before the Hon'ble Supreme Court of India praying for grant of a decree of divorce by mutual consent on the next effective date of hearing.

ii) In the event the Hon'ble Supreme Court is not pleased to grant the prayer of decree of divorce by mutual consent on the next effective date of hearing, it is agreed between the parties that in pursuance of their mutual decision to dissolve their marriage, they shall file a Divorce Petition under Section 13-B of Hindu Marriage Act before the concerned Family Court at Ernakulam.

iii) It is agreed between the parties that in the event that the first motion is filed under Section 13 B (1) of the Hindu Marriage Act, 1955 before the Family Court at Ernakulam, Kerala it shall be done on or before 15th of December 2019. It is further agreed between the parties that once the first motion is filed before the Family Court at Ernakulam, Kerala, they will request the concerned Family Court at Ernakulam, Kerala to exempt the cooling period to file the Second motion.

#### **C. Custody of the Child**

##### **Custody with the Second Party/ father**

i) It is agreed between the parties that the custody of the child Advait aged 7 years till he completes the age of 14 shall exclusively and solely vest with the Second Party. It is further agreed between the parties that the First Party after the execution of this settlement will not claim any custody right over child till he finishes Class 9 in the custody of the Second Party and both parties will withdraw their respective Custody Petitions filed before the Family Courts, Nagpur and Ernakulam.

ii) It is further agreed between the parties that after he finishes class 9 in the custody of the father since he will be 14 years old, the child's preference will be taken for his further choice of residence/place of education. It is further agreed between the parties that the child will be allowed to continue his studies at the location and under the custody of the parent in accordance with his preference.

iii) It is agreed between the parties that when the child is in the custody of the either party, the child shall be allowed privacy to speak to the other party without any hindrance or disturbance from the custodian party or his/her family member.

iv) It is agreed between the parties that the at all times they will both ensure that the child is in touch with both his parents irrespective of the parent who has the custody.

v) It is agreed between the parties that till the child attains majority, the parent who has custody of the child will keep possession of the passport and other documents of the child safely and ensure that if either parent has planned to take the child abroad, the other parent will extend all possible help in respect of the passport and other documents of the child as and when necessary.

vi) It is agreed between the parties that in case the child is unable to meet the non-custodial parent due to illness, exams or other engagements, the meeting right of the non-custodial parent would be carried forward and amicably rearranged between the parents. It is further agreed between the parties that prior intimation of any such illness as and when it occurs shall be given to the non-custodial parent. However, it is made clear that the will of the child will be paramount importance.

vii) It is further agreed between the parties that in case the child expresses his desire to meet either parent beyond the scheduled meetings, both parents shall cooperate and extend all possible help in facilitating such meetings.

viii) It is agreed between the parties that the First Party shall handover the child Advait to the custody of his father today i.e. 16.11.2019.

**D. Visitation rights of the First Party mother, when the child is in the custody of the father.**

It is agreed between the parties that when the child is in the custody of the father, the mother shall have the following visitation rights and access to the child:-

i) It is agreed between the parties that when the child is in the custody of the Second Party, the First Party shall have a right to meet the child every 3rd weekend of the month (Friday 8 p.m to Sunday 4 p.m). It is further agreed between the parties that this arrangement of visitation during the 3rd weekend will not apply in the months when the First Party mother gets visitation of the child for vacations, irrespective of the dates. It is also hereby agreed between the parties that the First Party/mother shall have the right to take Advait within a reasonable distance from Kochi, preferably within 600 kms from Kochi. It is agreed between the parties that the First Party shall stick to the Friday 8 p.m to Sunday 4 p.m visitation schedule and ensure the child is back to Kochi by 4 p.m.

ii) It is agreed between the parties that the visitation/weekend custody of the child shall not interfere with the examinations/ academic interests of the child, and that in such an eventuality, both parents shall mutually agree on an alternate weekend for visitation.

iii) It is further agreed between the parties that if the child is enrolled for academic or extra-curricular coaching/ training, while the First Party/mother has visitation on weekends, the Second Party/ father alone shall take the child to attend such coaching/ training at the appropriate time and drop him back with the First Party/ mother immediately after such coaching/ training.

iv) It is agreed between the parties that both parties shall have free access to the child through telephone/SMS/E-mail/Facetime/Skype/Whatsapp/Video conferencing etc when the custody of the child is with the other parent. It is further agreed between the parties that the First Party/mother shall have the right to attend parent-teacher meetings and school events of the child, and that she shall inform the Second Party/ father atleast 2 days in advance of her plans.

v) It is further agreed between the parties that both parents shall be sensitive to the child's school hours and the First Party will not speak to the Child on the phone/email/SMS during his school time. It is further agreed between the parties that when the child is in the custody of the Second Party, the father also will not disturb the child on the phone/email/SMS during his school time.

vi) It is agreed between the parties that when the child is in the custody of the father, his summer vacations shall be divided between the parents in terms of 60% time with the mother and 40% time with the father. It is further agreed between the parties that the dates of the respective time with the respective parents shall be decided mutually between the parents and communicated to each other prior to the handover of the child to the First Party. It is also agreed between the parties that during the Vishu Holiday which falls in the second week of April, the custody of the child shall be alternatively arranged between both the parties for the period of one week which shall be inclusive of the share of custody for the summer vacation in the 60:40 ratio. It is agreed between the parties that the arrangement of Advaith's Vishu holiday shall begin from 2020 when Advaith shall spend Vishu with Second Party father. Accordingly, Advaith shall spend Vishu of 2021 with the First Party mother. It is further agreed between the parties that the date of the return of the child to the Second Party shall be agreed upon prior to the change of visitation from the Second Party to the First Party and the First Party shall not unilaterally make any changes to such date whatsoever without the consent of the Second Party with atleast 10 days prior intimation. It is further agreed between the parties

vii) It is further agreed between the parties that the two major vacations of the child which is Onam (in September for 7-8 days) and Christmas/New year (in December – January for 7-8 days) shall be shared alternatively between the parents so that in the year when the

child is spending Onam with the mother, he spends Christmas/ New Year with the father and vice-n-versa. It is agreed between the parties that Advaith shall spend Christmas 2019 with Second Party Father and Onam 2020 with the First Party mother. The rest of the agreed arrangement shall follow.

viii) It is further agreed between the parties that if the child spends Onam vacations with the mother in one year, he shall spend the Onam vacations in the following year with his father, and vice versa.

ix) It is agreed between the parties that when the First Party is having the custody for the Holidays which is other than the Summer Vacations, she shall drop the child to Kochi one day prior to re-opening of his school.

x) It is agreed between the parties that all future matters relating to the custody of the child shall lie within the jurisdiction of the Family Court, Ernakulam, Kerala.

**E. Visitation rights of the Second Party father, when the child is in the custody of the mother.**

i) It is agreed between the parties that both parties shall have free access to the child through telephone/ SMS /E-mail/ Facetime/ Skype/ Whatsapp/ Video conferencing etc when the custody of the child is with the First Party.

**F. The Child's Birthday:**

i) It is agreed between the parties that the child Advaith shall spend his birthday which falls on 25th July as follows:-

The First Party mother shall come to Kochi and spend some time with Advaith on his birthday. If the birthday is on a school day the First Party mother shall spend the evening with Advaith. If the birthday falls on weekend or holiday both the parties shall divide the day for celebration of Advaith's birthday in accordance with their mutual convenience. It is further agreed between the parties that any birthday celebrations of Advaith shall not disturb his school attendance and studies. It is therefore agreed between the parties that both parents shall ensure that the Birthday celebrations of Advaith are held properly on a convenient weekend around his birthday.

**G. Responsibilities of both parties:**

i) It is agreed between the parties that when the First Party wishes to take the child aboard or to any place in India during her tenure of visitation, she shall share the complete details of the country and place they are visiting, copy of the air tickets, visa details as well as details of the stay with the other party. The First Party shall ensure that the Second Party and the child stay in touch during such time over telephone /sms/email/whatsapp/facetime/ video calling etc. It is also agreed

between the parties that this provision of visitation shall come into effect from December, 2019.

ii) It is further agreed between the parties that the passport of the minor child Advaith Nair will bear the name of both father and mother for all times to come.

iii) It is further agreed between the parties that for the visitation period of the First Party with her child, the mother shall pick up Advaith from Kochi and the Second Party/ father shall bring back Advaith from Nagpur. It is further agreed between the parties that the parent picking up the child shall bear all the travel expenses of the child and themselves. It is further agreed between the parties that the responsibility of the maintenance of the child during the visitation period shall be with the First Party mother.

iv) It is further agreed between the parties that at all times both parents shall make every endeavour to ensure that the child's movement from one parent to the other is done peacefully and smoothly without any emotional problem being caused to the child.

v) It is further agreed between the parties that while the child's visitation is with the First Party, she shall ensure that the child is not sent for academic tuitions and is helped in his studies by the First Party.

vi) It is further agreed between the parties that if the child is enrolled for extracurricular coaching/training while his custody is with the First Party, she shall ensure that the same may be continued without any hindrance wherever the child is located.

vii) It is further agreed between the parties that while the child is with the Second Party, the First Party shall have access to the child through the Second Party's parents telephone, whatsapp, video calling, skype etc since the Second Party's schedule might not allow the First Party to comfortably talk to the child after his school hours.

#### **H. Permanent alimony, Maintenance and Stridhan**

i) It is agreed between the parties that the principal amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) owed by the company in which the father of the First Party is the Chairman to the Second Party shall be paid by the father of the First Party to the Second Party on or before 31st December, 2019 vide cheque No. 74319 drawn on Bank of Maharashtra, Laxmi Nagar Branch, Nagpur in the name of Arjun Sasikumar Nair.

ii) It is agreed between the parties that the following portions of land shall be transferred towards settlement of maintenance and permanent alimony by the Second Party to the First Party and her nominees Mr. Uday Bhaskar and Mr. Siddarthan P.:

All lands described below are in Village: Kaniyarkode, Taluka: Thalapilly District: Thrissur, State: Kerala.

a. Land in the name of Arjun Sasikumar having title vide Sale Deed: 1049/2012, Thandaper No: 9722 having land extent of 1.6421 hectares

b. Land in the name of K. Sasikumar (father of the Second Party) having title vide Sale Deed: 1050/2012, Thandaper No: 9720 having land extent of 1.3011 hectares

c. Land in the name of Praveena Sasikumar (mother of the Second Party) having title vide Sale Deed: 1048/2012, Thandaper No: 9721 having land extent of 1.9990 hectares.

d. The original documents regarding the portion of land owned by the First Party which are presently in the Second Party's custody shall be handed over to the First Party on or before the date of registration of land.

iii) It is agreed between the parties that the land referred to in G (ii) a in the name of the Second Party shall be transferred by the Second Party by way of gift to the First Party on or before 22.11.2019.

iv) It is agreed between the parties that the land referred to in G (ii) b in the name of the K. Sasikumar (father of the Second Party) shall be transferred by K. Sasikumar by way of sale to Udaybhaskar Nair (father of the First Party) for a consideration of Rs. 6,75,000/ (Rupees Six Lakhs Seventy Five Thousand only) vide cheque bearing No. 87988 drawn on the Federal Bank Limited, Nagpur in the name of K. Sasikumar on or before 22.11.2019.

v) It is agreed between the parties that the land referred to in G (ii) c in the name of the Praveena Sasikumar (mother of the Second Party) shall be transferred by Praveena Sasikumar by way of sale to the nominee of the First Party namely Siddharthan P. for a consideration of Rs.8,00,000/- (Rupees Eight Lakhs only) vide cheque bearing No. 886232 drawn on the State Bank of India, Palakkad in the name of Praveena Sasikumar on or before 22.11.2019.

vi) It is agreed between the parties that the First Party shall complete all formalities on her behalf and cooperate with the Second Party to close the S/B Account No. 50100128235441 opened in the joint names with the Second Party and operated with HDFC Bank, Jawahar Nagar, Kochi. It is further agreed between the parties that the First Party has no claims or liability on the amount held in such account upon closure.

vii) It is further agreed between the parties that the First Party shall prepare all documentation and complete all formalities for the transfer of ownership of the land referred to in para (v) above. It is further agreed between the parties that all costs/ taxes/ duties/ fees of such transfer shall be borne by the First Party, and that the Second Party shall not be liable for any of the same. It is also agreed between the parties that after the sale documentation is cleared by legal opinion for the Second Party, the First Party shall make necessary arrangements and facilitate the transfer within 10 days of such confirmation.

viii) It is agreed between the parties that the land owned by the Second Party and his parents are valued substantially higher, and that the First Party thereby surrenders all claims, present and future, on account of alimony/ maintenance/ stridhan etc against the Second Party, and that the First Party shall have no claim of any sort, against the Second Party in future over the movable and immovable property of the Second Party and his family members.

**I. Actions by both parties to end litigations pending between them:**

TABLE

<b>Sr. No.</b>	<b>Title &amp; Case No.</b>	<b>Filed by</b>	<b>Status</b>	<b>Action to be taken</b>
1.	Custody Petition bearing no. O.P. D3/2019 filed before the Family Courts, Nagpur	First Party	Pending	The First Party with the filing of the First Motion will withdraw, her Petitions bearing O.P. D3/2019 titled Divya Nair versus Arjun Sasikumar (Custody Petition) filed before the Family Court, Nagpur.
2a.	FIR bearing 1056 of 2018 under u/s 509 IPC, 67 IT Act, 120(o) Kerala Police Act being Petition No. Cr. No. 1056/2018 filed with Palarivattom Police Station, Ernakulam, Kochi.	First Party	Pending	The Second Party and the First Party shall jointly move an appropriate petition for getting the said FIR No. 1056/2018 quashed from the Hon'ble High Court at Kochi and complaint on the same grounds at Ambazari Police Station, Nagpur.
2b.	Same complaint filed at Ambazari police station, Nagpur	First Party	Pending	Since the FIR was filed due to a mistake of fact by the First Party. The Second Party agrees and undertakes to cooperate with the First Party in this regard.
3.	Second Party was	First	Pending	wife will also

	made the guarantor for a loan of Rs 4.5 crore taken by a company owned by her father i.e. Shri Udaybhaskar Nair from Sunderlal Sawji Co-operative Bank, Nagpur in 2015.	Party			handover to the husband a Non-Liability Certificate issued by Sunderlal Sawji Cooperative Bank Nagpur, releasing the Husband of the liability
4.	Complaint dated 02.05.2016 before the Commissioner of Police, Kochi.	Second Party		Pending	The Second Party agrees to withdraw the said complaint from the Police Station.
5.	OP No. 1358/2017 before the Family Court, Ernakulam	Second Party		Pending	The present case shall cease to exist once the settlement is arrived at by the parties. The present transfer petition arises out of the said case.
6.	Complaint dated 30.06.2017 before the Commissioner of Police, Kochi	Second Party		Pending	The Second Party agrees to withdraw the said complaint from the Police Station.
7.	Complaint and F.I.R before the Palarivattom Police Station, Kerala	Second Party		Pending	The First Party shall move an appropriate application for quashing of the said FIR before the Hon'ble High Court at Kochi. The Second Party undertakes to cooperate with the First Party.
8.	F.I.R. No. 44/2019 at the Pazhayannur Police Station, Kerala	Second Party		Pending	The Second Party and the First Party shall jointly move an appropriate petition for getting the said FIR No. 44/2019 quashed from the Hon'ble High Court at Kochi. Since the FIR was filed due

to a mistake of fact by the Second Party. The First Party agrees and undertakes to cooperate with the Second Party in this regard.

**Prayer to the Hon'ble Supreme Court regarding actions to be taken by both parties to end litigation pending between them:-**

i) That the above mentioned cases/litigations mentioned at para I, column No.2 and column No.8 may be quashed by the Hon'ble Supreme Court in light of the present Settlement Agreement arrived at between the parties.

ii) That the complaints filed at para I, column No. 4, 6 and 7 may also be quashed by the Hon'ble Supreme Court in light of the present Settlement Agreement arrived at between the parties.

iii) Any other relief as the Hon'ble Supreme Court deems just and fit in the welfare of the child and in interest of both the parties.

J. It is agreed between the parties that in case the Second Party after signing of the Settlement Agreement and subsequently taking the custody of child under the terms of this Settlement Agreement does not honour any of the remaining terms of the present Settlement Agreement specifically in relation to the transfer of land, the Second Party shall voluntarily give up his rights to the custody of the child permanently. It is further agreed between the parties that in case, the First Party does not honour the payments as mentioned above, in respect of the transfer of the land, the First Party shall voluntarily give up her rights of visitation permanently. It is further agreed between the parties that this term shall become applicable provided both parties complete all formalities required to be done at their respective ends in terms of documentation, registration and any other necessary formality.

It is further agreed between the parties that the Second Party shall give an affidavit before the Hon'ble Supreme Court stating his desire to willingly give up his rights of the custody of the child permanently in case he defaults in honouring the term pertaining to the transfer of lands as mentioned hereinabove.

It is agreed between the parties that neither party shall seek any rectification/modification/ alteration/ or setting aside of the present Settlement Agreement during custody or visitation of the child Advait.

**K. Applicability of the Contempt of Courts Act, 1971.**

I) It is further agreed between the parties that any breach of any term of the present Settlement Agreement by any party shall attract proceedings under Contempt of Courts Act, 1971.

II) The parties further agree that the terms and conditions stipulated in this settlement agreement regarding shall be taken as their undertakings to the Hon'ble Supreme Court and in case of any default by anyone, the defaulting party shall be held for contempt under the Contempt of Courts Act, 1971.

III) It is further agreed between the parties that they shall, on their own behalf and on behalf of the parties they represent, undertake before the Hon'ble Supreme Court to abide by all terms of this Settlement Agreement failing which proceedings under Contempt of Courts Act, 1971 shall be attracted.

IV) The terms covered under the Settlement Agreement which, if not adhered to by either party, shall attract proceedings under the Contempt of Courts Act, 1971 are as follows:

- **Settlement in the Welfare and Interest of the Child**
- **Divorce by Mutual Consent**
- **Custody of the Child**
- **Custody with the Second Party/ father**
- **Visitation rights of the First Party mother, when the child is in the custody of the father**
- **Visitation rights of the Second Party father, when the child is in the custody of the mother**
- **The Childs Birthday**
- **Responsibilities of both parties**
- **Permanent alimony, Maintenance and Stridhan**
- **Actions by both parties to end litigations pending between them.**

Failure to adhere with any of the above mentioned settlement terms shall attract proceedings under the Contempts of Courts Act, 1971.

#### **L. Parties undertaking not to misuse social or any other media:-**

I) It is undertaken by the parties that they shall not to interfere in each other's peaceful life henceforth and respect each other's privacy.

II) It is further undertaken by both the parties that they shall not use social media like whatsapp, facebook, twitter, skype, instagram etc platforms to share any part of this Settlement Agreement or to put any derogatory, harmful, abusing or damaging remarks and or content regarding each other or each other's family members. Any attempt to put any such content on social media shall attract proceedings under the Contempt of Courts Act, 1971. The parties agree that this undertaking shall be deemed to be and taken as an undertaking before the Hon'ble Supreme Court.

By signing this Settlement Agreement the parties hereto state that they shall have no further claims or demands against each other and all the disputes and differences have been amicably settled by the Parties hereto through the process of Mediation, as embodied in the Settlement Agreement.

That the parties undertake that they are bound by this Settlement Agreement and to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.

**PARTIES SIGNATURES**

Divya Udaybhaskar Nair  
**(Petitioner/Wife/Mother)**

Arjun Sasikumar  
**(Respondent/Husband/Father)**

**WITNESS SIGNATURES**

Udaybhaskar Nair  
**(Father of the First Party)**

Rajinder Singh  
**(Friend of the Second Party)**

**COUNSEL'S SIGNATURES**

Mr. Ranjith K.C., Advocate on Record for the First Party  
Enrol No. K/101/1997 and

Mr. Abhishek Singh, Enrl.No. D/2808/2016  
Advocates for the First Party

Mr. Akhil Abraham Roy, Enrol No. D/2708/2016  
on behalf of K.J. John & Co.  
Advocate for the Second Party

**(Sadhana Ramachandran)**  
**Mediator**

Unfortunately after the parties reached a settlement agreement, lot of disputes arose with regard to enforcement of the terms agreed to between the parties. Therefore, on the last occasion, when the transfer petitions came up for hearing, I directed the learned counsel for the parties to give a list of obligations pending on both sides. Today, the learned counsel on either side pointed out that all financial obligations agreed between the parties have been fully and finally discharged and both of them do not have any further or other financial obligations against each other.

The learned counsel on both sides also agree that the properties, to be conveyed as per the settlement agreement, have also been conveyed and both the parties have no claim against each other in respect of any properties.

Learned counsel submits that five cases are now pending between the parties. The first is the custody petition bearing No. O.P. D3/2019 filed by the wife before the Family Court, Nagpur, the second is a petition filed by the husband in O.P. No. 1358/2017 before the Family Court, Ernakulam for the custody of the child, the third is a police complaint filed in Case Crime No. 1056/2018 before the Palarivattom Police Station, Ernakulam, Kochi for the alleged offences under Sections 509 of the Indian Penal Code, 67 of the Information and Technology Act and 120(o) of the Kerala Police Act against the husband for the alleged defamatory comments on the social media, the fourth is the complaint in FIR No. 1696/2018 before the Palarivattom Police Station, Kerala and the fifth is another criminal complaint in FIR No. 44/2019 registered at Pazhayannur Police Station, Kerala filed by the husband against the wife.

Since the parties have reached a settlement agreement, both the child custody petitions filed under the Guardians and Wards Act shall stand disposed of in terms of the agreement reached between the parties on 16.11.2019.

All the police complaints filed against one another shall stand closed in view of the settlement agreement with a direction to the police to close the FIRs. There is one more criminal complaint lodged by the husband in FIR No. 71/2020 before Maradu Police Station, Ernakulam against the wife and others under the Protection of Children from Sexual Offences Act.

It appears that the police have already filed a closure report. The learned counsel for the husband states that the husband is prepared to accept the closure report without conceding the findings recorded therein by the police. This is to ensure that no further action is taken by the wife on the basis of the findings recorded by the Investigation Officer. Since the parties cannot have a dispute after a settlement agreement is reached, it is recorded that the closure report shall be treated as final and the complaint in FIR No. 71/2020 is closed with a view to give an effect to the settlement agreement in true letter and spirit without any findings recorded therein affecting any of the parties.

There are two more things remaining to be done. The first is to file a joint application seeking dissolution of marriage by a decree of divorce by consent and the second thing that remains to be done is to provide interim custody of the child to the wife during Christmas vacation.

In order to encourage the parties to honour their commitments under the agreement and not to create any further problems between them, I keep both these transfer petitions pending. The husband shall hand over the custody of the child to the wife on 19.12.2020 and the wife shall return

the custody of the child to the husband on 01.01.2021. During this period, the child shall be with the mother.

These transfer petitions may be called immediately after the Court re-opens after Christmas vacation. On the next date of hearing, both parties may file a joint application for divorce by mutual consent. The parties shall bear in mind that unless this arrangement is worked out by both of them smoothly, their application for dissolution of divorce will be in jeopardy and it may not be viewed in the light of the settlement agreement.”

5. Thereafter, a few disputes, mostly pertaining to the visitation rights, remained or cropped up and hence, the parties were again referred to mediation but then, this second round of proceedings in mediation could not be taken further and, having regard to the circumstances, this Court placed the matters for hearing. In the meantime, the petitioner-wife had filed a contempt petition that was also placed for consideration alongwith these transfer petitions.

6. When these matters were taken up for hearing, reference was made to the said order dated 04.12.2020 and it was pointed out that the arrangements, as expected therein, did not work out, for which, each of the parties had its own submissions to make. However, having regard to the circumstances of the case and the applications placed before the Court, one for dissolution of marriage by a decree of divorce by mutual consent and another by the wife regarding custody of the minor child, this Court passed an order on 27.04.2022 providing for interim custody of the child with his mother from 04.05.2022 to 30.05.2022 with directions to the Courts concerned to facilitate the necessary processes.

7. Ultimately, it is given out before the Court that the expected arrangements have indeed worked smoothly and the parties are willing to go ahead with their joint application seeking divorce by mutual consent and are

ready and willing to abide by all the terms of settlement.

8. Taking note of the submissions so made, we have examined the joint application (I.A. No .61749 of 2022) moved by the parties wherein, they have prayed for decree of divorce by mutual consent with the submissions, *inter alia*, as under: -

“9. That as per the clause No- B of the settlement agreement dated 16.11.2019 it was also agreed between the parties that they would jointly pray before this Hon'ble Court for dissolution of marriage U/s. 13 B of Hindu marriage Act, 1955 by invoking inherent and extra ordinary powers Under Article 142 of the Constitution of India. Hence the present application is filed for dissolution of marriage.

10. It is submitted that the petitioner/wife has received permanent alimony and maintenance as provided under clause H of the settlement agreement dated 16.11.2019 from the respondent. The petitioner will not make any future claim of maintenance or alimony against the respondent/husband. Further the father of the petitioner has paid the amount mentioned in Clause H Para (i) of the settlement agreement dated 16.11.2019 to the respondent. The respondent has transferred the land mentioned in clause H para ii, iii, iv, and v of the settlement agreement dated 16.11.2019 and the petitioner has paid the amounts mentioned in the said paragraphs to the to the respondent for the transfer of the land and documentation of land has completed. All the stipulations under Permanent alimony, Maintenance and Stridhan under the Clause H of the settlement agreement dated 16.11.2019 are complied by both the parties in the agreement. Hence there is no mutual claims against each other under the head of Clause H of the settlement agreement dated 16.11.2019

11. That in the facts and circumstances of the present case this Hon'ble Court may be pleased to pass the decree of divorce by mutual consent u/s 13 B Hindu Marriage Act 1955 by exercising the inherent and extra ordinary jurisdiction of this Hon'ble Court Under Article 142 of the Constitution of India for the ends of justice.

#### PRAYER

It is therefore most respectfully prayed from this Hon'ble Court may Pleased to;

- a) invoke inherent and extra ordinary power under article 142 of the Constitution of India and pass a decree of divorce by mutual consent dissolving the marriage between the parties under section 13B of Hindu Marriage Act 1955; and
- b) pass such and further orders as this Hon'ble Court may deem fit and proper in the fact and the circumstances of the case.”

9. Having regard to the above, and in the circumstances of the case, we

are of the considered view that the settlement agreement entered into between the parties deserves to be accepted; and the prayer jointly made, for dissolution of marriage solemnised on 03.11.2011, deserves to be granted. Further, it is also just and proper that all the proceedings pending between the parties be disposed of, on the terms and conditions as stated and agreed to by the parties.

10. Accordingly and in view of the above:

a) the joint application (I.A. No. 61749 of 2022) is allowed and by invoking powers under Article 142 of the Constitution of India, we grant a decree of divorce by mutual consent to the parties with reference to Section 13B of the Hindu Marriage Act, 1955. Consequently, the marriage of the parties solemnised on 03.11.2011 stands dissolved and their undertakings given in the Settlement Agreement dated 16.11.2019 are accepted.

b) The Settlement Agreement dated 16.11.2019 is taken on record, made part of this order, and accepted by the Court. All claims stand settled in terms of the settlement agreement read with aforesaid order dated 04.12.2020.

11. The parties agree that, henceforth, they will not initiate any proceedings against each other in reference to the issues which stand foreclosed in terms of the settlement agreement. The parties undertake to abide by their obligations without any exception.

12. Consequently, these transfer petitions, being Transfer Petition (C) No. 83 of 2019 and Transfer Petition (C) No. 463 of 2019, stand disposed of in the aforementioned terms. There being no necessity or requirement of adopting the

proceedings for any wilful or deliberate disobedience of any order of this Court, the proceedings in Contempt Petition (C) No. 30 of 2021 also stand closed; and all the pending applications also stand disposed of.

13. While disposing of these matters, we would indeed place on record our appreciation for the efforts made by the learned Mediator which resulted in the Settlement Agreement dated 16.11.2019; and even though taking the matter to its finality has taken some time because of divergent stand of the parties on a few aspects yet, the matter has ultimately reached to its conclusion for which, we would also place on record our appreciation for the respective learned counsel, who have ably assisted the parties to reach to a consensus and to bring an end to this litigation.

.....J.  
(DINESH MAHESHWARI)

.....J.  
(SUDHANSHU DHULIA)

**NEW DELHI;  
AUGUST 26, 2022.**

ITEM NO.46

COURT NO.11

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Transfer Petition (Civil) No. 83/2019

DIVYA NAIR

Petitioner(s)

VERSUS

ARJUN SASIKUMAR

Respondent(s)

(IA No. 1561/2021 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 49352/2019 - APPROPRIATE ORDERS/DIRECTIONS  
IA No. 49423/2020 - CLARIFICATION/DIRECTION  
IA No. 6308/2019 - EX-PARTE STAY  
IA No. 105680/2020 - EXEMPTION FROM FILING O.T.  
IA No. 49424/2020 - EXEMPTION FROM FILING O.T.  
IA No. 145353/2021 - PASSING APPROPRIATE ORDER OR DECREE UNDER  
ARTICLE 142 OF THE CONSTITUTION  
IA No. 19918/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES  
IA No. 30684/2019 - VACATING STAY)

WITH

T.P.(C) No. 463/2019 (XVI-A)

(IA No. 37085/2019 - STAY APPLICATION)

CONMT.PET.(C) No. 30/2021 in T.P.(C) No. 83/2019 (XVI-A)  
(FOR ADMISSION.)

Date : 26-08-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI  
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Parties

Mr. Pallav Shishodia, Sr. Adv.  
Mr. Ranjith K. C., AOR  
Mr. Abhishek Singh, Adv.  
Ms. Shreya Singh, Adv.  
Mr. Onkar Singh, Adv.  
Mr. Sahil Singh, Adv.

Mr. Kush Chaturvedi, AOR  
Mr. Priyashree Sharma, Adv.  
Mr. Syed Faraz Alam, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

The transfer petition Nos. 83 of 2019 and 463 of 2019 stand disposed of and the proceedings in Contempt Petition also stand closed in terms of the Signed order.

All pending applications also stand disposed of.

**(SNEHA DAS)**  
**SENIOR PERSONAL ASSISTANT**

**(RANJANA SHAILEY)**  
**COURT MASTER (NSH)**

**(Signed order is placed in the file)**