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C.M.A.Nos.1602 & 1603 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

Coram

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

C.M.A.Nos.1602 & 1603 of 2018

Samitha

W/o.Thirumal

... Appellant in both appeals

Vs.

V.R.Thirumal

S/o.V.N.Ranganathan

... Respondent in both appeals

Civil Miscellaneous Appeals filed u/s.19 of the Family Court Act against the judgment and decree dated 01.08.2017 passed in FCOP No.228 of 2015 and FCOP No.28 of 2016 by the Family Court, Chengalpattu.

For Appellant : Mr.M.Kempraj
[in both appeals]

For Respondent : Mr.M.Govindaraju
[in both appeals]

COMMON JUDGMENT

[Delivered by **R.SUBRAMANIAN, J**]

Both these appeals are by the wife. Challenge is to the grant of divorce at the behest of the husband on the ground of cruelty u/s.13(1)(i-a)



of the Hindu Marriage Act,1955 and rejection of the claim of the wife for restitution of conjugal rights.

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2. The husband filed a petition for divorce before the Sub Court, Chengalpet, in H.M.O.P.No.9 of 2012. The same was transferred to the Family Court upon its constitution and renumbered as FCOP No.228 of 2015 on the file of Family Court, Chengalpet. The husband sought for divorce contending that the marriage took place on 20.08.2010 at Chengalpet and the marriage expenses were shared between the families. It was also contended that the husband did not make any demand for dowry. It was further averred that the husband was a type-1 diabetic and insulin dependant. This fact was informed to the wife and her family and they agreed for the marriage only after ensuring with the doctor that the condition suffered by the husband would not in any manner affect the marital life. The husband would further plead that the wife was not in favour of pregnancy and therefore, she did not allow normal matrimonial life. She was avoiding cohabitation even when they were on a honeymoon at Kodaikannal. According to the husband, after some time, the wife started disrespecting and quarrelling with her in-laws even for small and trivial



matters and started abusing the husband claiming that he is impotent. It was also claimed that the wife had, in a marriage of the husband's cousin Nandhini, complained to the relatives about the husband and his parents. She also proclaimed that the husband was impotent thereby causing severe embarrassment to the husband and his family. It was also claimed that the brother of the wife Gurunathan had slapped the parents of the husband when he was told about the happenings. Claiming that the conduct of the wife amounted to severe mental cruelty, the husband sought for divorce.

3. The wife filed a counter denying the averments made in the petition and contended that she was always living as a dutiful wife and it was the husband, who had created material to project her as a demon. She would also claim that the proceedings before the Sub Court, Chengalpet, were initiated when they were living together in the very same house. It was claimed that the notice was sent to her parents house and the same was received by her sister's daughter. It was the further contention of the wife that the husband and his counsel entered the house at about 09.50 p.m. on 11.03.2013 and attempted to remove the belongings which was thwarted by the wife. When this was brought to the notice of the police, the police



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officer had directed her to go to her mother's house and since a case was already pending, she could work out her rights in the Court where the divorce proceedings were pending. She would also deny the claim that she had ill-treated the husband and the claim that the husband shared 40% of the marriage expenses. She would also claim that one lawyer, by name Bose, claiming to be the friend of the husband, had threatened her to agree for divorce. The sum and substance of the counter statement filed before the Family Court was to the effect that the wife is still ready and willing to live with the husband despite the fact that he is a diabetic.

4. Pending FCOP No.228 of 2015, the wife filed FCOP No.28 of 2016 u/s.9 of the Hindu Marriage Act seeking restitution of conjugal rights. The same was resisted by the husband stating that the said petition was filed four years after filing of the divorce petition and it was an afterthought. It was also contended that in view of the cruel attitude of the wife, restitution is impossible. Both the petitions were tried jointly.

5. At trial, the husband was examined as PW-1 and Exs.P1 to P7 were marked. The wife was examined as RW-1 and Exs.R1 to R6 were marked.



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The Family Court, upon consideration of the evidence on record, particularly, the manner in which the husband was cross-examined by the counsel for the wife concluded that the husband has suffered mental cruelty. On the said conclusion, the Family Court granted divorce and dismissed the petition for restitution of conjugal rights. Hence, these appeals.

6. We have heard Mr.M.Kemprij, learned counsel appearing for appellant and Mr.M.Govindaraju, learned counsel appearing for respondent.

7. Mr.M.Kemprij, learned counsel appearing for appellant, would vehemently contend that the evidence available does not justify the claim of cruelty made by the husband. He would point out that it is the husband, who had thrown out the wife from the matrimonial home and thereby, deceitfully, created a cause of action. Learned counsel would also contend that even when they were living together, the husband had launched proceedings showing her to be living in her mother's house. Learned counsel would also submit that the evidence of the husband alone without any corroborative material cannot form the basis for grant of divorce particularly u/s.13(1)(ia) of the Hindu Marriage Act,1955. Learned counsel would also point out the



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evidence of wife as RW-1 wherein she has reiterated her willingness to live with the husband despite the fact that he is a chronic diabetic.

8. We have considered the rival submissions.

9. The only question that would arise for determination is whether the husband had established cruelty pleaded by him so as to justify the grant of divorce by the Family Court. We have been taken through the evidence on record. As far as the documentary evidence is concerned, the same is not very helpful as what has been produced are only certain police complaints, resignation of the husband and medical records of the father and the husband himself. May be those documents by themselves cannot establish cruelty, but, at the same time, we find that the tenor and the manner in which the husband (PW-1) has been cross-examined by learned counsel for the wife would by itself justify the conclusion of the Family Court. We find that the cross-examination has been thoroughly indecent and vulgar throughout. The suggestions made and the answers elicited are shocking to say the least. We feel it appropriate to reproduce the same in vernacular itself to ensure that it does not lose its effectiveness in our attempt to translate it. We,



therefore, reproduce the relevant portion of the cross-examination:

"மேலும் என்னுடைய திருமணத்தின் போது நான் திருமணம் செய்து கொண்ட பின்பு என் மனைவியை தாம்பத்ய உறவில் முழு திருப்தி அளிக்க கூடிய மனநிலை கொண்டுள்ளதாக நான் மனநிறைவு அடைந்திருந்தேன். எனக்கு எங்களுடைய முதல் இரவு எதிர்மனுதாரருடைய பெற்றோர் வீட்டில்தான் நடைபெற்றது. அப்போதுதான் எனக்கு என்னுடைய மனைவியுடன் நீண்ட நேரம் தாம்பத்ய உறவில் ஈடுபடவில்லை என்று அன்றுதான் உணர்ந்தேன். அன்றைய தினம் எங்களுடைய தாம்பத்ய உறவின்போது என்னுடைய ஆணுறுப்பில் விறைப்புத்தன்மை இல்லை என்றும் அதன் காரணமாக எதிர்மனுதாரரிடம் நான் முழுமையான தாம்பத்ய உறவில் (பெனிட்ரேஷன்) ஈடுபட இல்லை அதன் மூலம் எதிர்மனுதாரரை முதல் இரவு அன்று என்னால் திருப்திபடுத்த இயலவில்லை என்று சொன்னால் சரியல்ல. மேலும் வயாகரா என்ற மாத்திரையை நான் உட்கொண்ட பின்பும் எனக்கு என்னால் எதிர்மனுதாரருடன் தாம்பத்ய உறவில் ஈடுபட்டு திருப்திபடுத்த முடியவில்லை என்று சொன்னால் நான் முதல் இரவு அன்று வயாகரா மாத்திரையை உட்கொள்ளவில்லை. ஆனால் எதிர்மனுதாரருடன் அன்றைய தினம் தாம்பத்ய உறவு கொண்ட சமயத்தில் என்னால் நீண்ட நேரம் உடலுறவு கொள்ள இயலவில்லை. எனக்கு 40 வயது ஆகிவிட்டபடியால் அந்த சமயத்தில் எனக்கு உள் முச்சு வாங்கிவிட்டது.

முதல் இரவு நடைபெற்ற பின்பு பின்னிட்ட நாட்களில் தேனிலவிற்காக வேண்டி கொடைக்கானல் சென்றோம் என்றால் சரிதான். அவ்வாறு கொடைக்கானலுக்கு பேருந்தில் இருவரும் அருகருகே உட்கார்ந்து சென்றோம் என்று சொன்னால் சரிதான். அவ்வாறு பயணம் செய்த போது எதிர்மனுதாரருடைய அங்கங்கள் ஏதும் என் மீது படாத அளவிற்கு பார்த்துக்கொண்டு பயணம் செய்தேன் என்று சொன்னால் சரியல்ல. மேலும் கொடைக்கானல் சென்ற பின்னர் ஹோட்டலில் தனி ரூம் எடுத்து நானும் எதிர்மனுதாரரும் ஒன்றாக தங்கிய போதும் அங்கு



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வைத்தும் எங்கள் இருவருக்கும் இடையே எந்தவிதமான தாம்பத்ய உறவும் ஏற்படவில்லை என்றால் சரிதான்.

என்னுடைய முதல் விசாரணையில் 2ம் பத்தியில் எதிர்மனுதாரரின் சாதாரண உணர்ச்சிகளுக்கு கூட என்னால் ஈடுகொடுக்க முடியவில்லை என்று கூறியுள்ளேன் என்றால் எதிர்மனுதாரரை நான் முழுமையான முறையில் தாம்பத்ய உறவில் திருப்தி படுத்த முடியவில்லை என்றும் எதிர்மனுதாரர் என்னிடம் கூறியதாலும் மேலும் எதிர்மனுதாரர் என்னிடம் என்னுடைய ஆணுறுப்பை எதிர்மனுதாரருடைய பெண்ணுறுப்பில் வைத்து வைத்து உடனடியாக எடுத்துவிட்டதாக கூறியதால் அவரை என்னால் முழுமையான தாம்பத்ய உறவில் திருப்திபடுத்த முடியவில்லை என்று என்னுடைய முதல் விசாரணையில் பக்கம் 2ல் கூறியுள்ளேன்.

என்னிடம் இருந்த தாம்பத்ய குறைபாடு சம்மந்தமான பிரச்சினை இருந்த போதிலும் அதனை பொருட்படுத்தாமல் என்னுடன் நல்ல முறையில் அன்பு செலுத்தி எதிர்மனுதாரர் என்னுடன் வாழ்ந்து வந்தார் என்றாலும் மேலும் எதிர்மனுதாரர் எனக்கு காபியில் அதிகப்படியான சர்க்கரையை போடவும் இல்லை என்னை கொடுமைபடுத்தவும் இல்லை என்று சொன்னால் சரியல்ல.

என்னுடைய முதல் விசாரணையில் பக்கம் 2ல் "என்னை எதிர்மனுதாரர் இரவு நேரங்களில் எங்கள் படுக்கையறையில் 4 கவர்களில் கேவலமாக கெட்ட வார்த்தைகளில் கேலி செய்து ஒரு பெண்ணை அவருடைய உணர்ச்சியை திருப்திபடுத்த முடியாத நிலையில் உனக்கு எதற்கு திருமணம் என் வாழ்க்கையை சீரழித்துவிட்டாய் என்று கேலி செய்து என்னை பலவித கோலங்களில் மனதளவிலும் உடலாலும், உள்ளத்தாலும் பாதிப்பு ஏற்படுத்தி வந்தார்" என்று சொல்லியுள்ளது உண்மை என்றால் சரிதான். மேலும் என்னை எதிர்மனுதாரர் "ஆண்மை இல்லாத உனக்கு எதற்கு திருமணம்" என்று பிரதி தினமும் கேவலப்படுத்தினார் என்று நான் என்னுடைய முதல்



விசாரணையில் பக்கம் 2ல் கூறியுள்ளது உண்மை என்றால் சரிதான்.

எனக்கு ஆண்மைகுறைவு இருந்தபோதிலும் எதிர்மனுதாரர் என்னோடு நல்ல அன்பான மனைவியாக இறுதி வரையில் என்னுடன் சேர்ந்து வாழ தயாராக உள்ளார் என்று சொன்னால் சரியல்ல."

10. The above cross-examination, in our opinion, justifies the claim of the husband that the wife having married him with the knowledge of his condition (chronic diabetic) had ill-treated him and abused him pointing out to his physical inability which will definitely constitute a ground for divorce u/s.13(1)(i-a) of the Hindu Marriage Act, 1955. Surprisingly, we find that the wife is highly educated and possessed of M.Sc., M.Phil and M.Ed. Degrees. She is shown to be working as a lecturer in Meenakshi Ammal Teacher Training Institute, Uthiramerur, at the time of marriage. Despite having such education her behaviour towards the husband as we could gather from cross-examination of her husband by her counsel is quite appalling and is in very bad taste. What is more intriguing is the fact that the wife had admitted that she had knowledge of the health condition of the husband even before the marriage. Having married a person at 40 years of age with a knowledge that he is a type 1 diabetic, the conduct of the wife, in



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our opinion, is not very conducive for continuation of the marital life. The Family Court has also found that the wife had even indulged in manhandling her in-laws resulting in them rushing for medical aid. We find that the Family Court has taken into account the entire scenario as made available to it and the evidence on record and come to a just conclusion to grant divorce. We see no reason to interfere with the findings of the Family Court.

11. The appeals fail and they are, accordingly, dismissed. However, in the circumstances, there shall be no order as to costs.

Mr.M.Kempuraj, learned counsel appearing for appellant, would submit that there is an order for payment of maintenance. It will be open to the wife to execute the same in the manner known to law.

[R.S.M., J] [N.S., J]
16.11.2023

Index:No
Speaking Order
Neutral Citation:No
gm



To

The Family Court,
Chengalpattu.

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