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C.M.A.No.1780 of 2021
and C.M.P.No.10576 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.11.2022
Pronounced on : 25.01.2023

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1780 of 2021
and C.M.P.No.10576 of 2021

M.K.Vijayakumar ...Appellant

Vs.

V.Deepalakshmi ...Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, 1984 to set aside the Judgment and decree dated 08.03.2021 made in H.M.O.P.No.1393 of 2020 on the file of learned I Additional Family Court, Chennai.

For Appellant : Mr.D.Gopal
For Respondent : Mr.G.Thyagarajan



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J U D G M E N T

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(Judgment of the Court was delivered by SUNDER MOHAN,J.)

The above appeal has been filed by the appellant challenging the Judgment and Decree passed by the learned I Additional Family Court, Chennai in H.M.O.P.No.1393 of 2020 dismissing his petition for divorce filed on the grounds of cruelty and desertion.

2.The appellant filed the petition for divorce stating that the marriage between the appellant and the respondent was solemnized on 26.06.2011 at Chennai. After marriage, they both lived in the respondent's house. Though, the appellant invited the respondent to live with him in his parent's house, she refused stating that she did not like his family members. The appellant left for Greece in about two weeks after marriage. The respondent never cooperated for cohabitation. She picked up frequent quarrels with the appellant. Thereafter, the appellant set up a separate house since the respondent refused to live in a joint family. Subsequently, the appellant and the respondent left for Greece, she had always doubted the appellant's character and made him delete his women friends in the Facebook. She also made constant threats of suicide. The respondent used to throw tantrums and broke all household articles and even went to the extent of physically assaulting the appellant. The appellant in



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order to sustain the matrimonial life took the respondent to various places.

However, the respondent never mended her ways. They returned to India and the respondent gave birth to a male child on 05.01.2013. They both left for Belgium in September 2013. Even though the respondent picked up frequent quarrels with the appellant and returned to India in July 2014, she forced the appellant to quit his job and live with her. The respondent continued to live with her parents and never joined with the appellant. The respondent conceived again. Thereafter, differences between the couple became worse and the appellant was not allowed to meet the girl child which was born on 03.08.2015. The respondent lodged a complaint before the Kodungaiyur Police Station and even during enquiry, she did not accept the suggestions made by the Police for reunion. She refused to join with the appellant stating that the disease of the appellant's mother who had suffered Cancer is contagious. The appellant thereafter filed a petition for restitution of conjugal rights and even thereafter the respondent refused to live with the appellant.

3.The respondent herein filed a counter denying all the averments made in the petition and submitted that though the appellant filed H.M.O.P.No.3419 of 2015 for restitution of conjugal rights, when the respondent filed the application for maintenance the appellant withdrew the petition for restitution



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of conjugal rights. The respondent financially supported the appellant for his studies in Belgium. The respondent was forced to resign her Job when she was drawing a salary of 4.3 lakhs per month. The appellant never cared for her or the children. The respondent has taken care of the children. She is now dependent on her father who is an Ex-servicemen from the Indian Air Force.

4.Before, the Family Court, the appellant examined himself as P.W.1 and marked Exs.P.1 to P.7. The respondent examined herself as R.W.1 and no documents were marked on the side of the defence. The family Court found that the appellant had not established the grounds of cruelty and desertion and dismissed his petition for divorce.

5.Against the said order dated 08.03.2021 made in H.M.O.P.No.1393 of 2020, the appellant has come out with the present appeal.

6.The learned counsel for the appellant submitted that the appellant and the respondent are living separately since 2015 and this separation itself is a ground for cruelty. The dispute between the appellant and the respondent became severe on the day of the birth of second child on 03.08.2015. The respondent had not obeyed the orders of Family Court allowing the



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visitation rights for the appellant. She deliberately denied his right to visit the children. The learned counsel for the appellant further submitted that all efforts taken by the elders for reunion ended in vain. In fact, this Court had sent the parties for Mediation. The Mediation failed. The Marriage has become dead and since there is no possibility of reunion, the martial tie has broken and prayed for divorce by allowing the appeal.

7.The learned counsel for the respondent submitted that the allegations do not in any manner constitute cruelty. The parties were living together happily both in Greece and Belgium. Normal happenings have been projected as acts of cruelty. The Family Court rightly found that the cruelty and desertion has not been established and hence there is no ground for interference in the said Judgment and prayed for dismissal of the appeal.

8.Heard the learned counsels on either side and perused the pleadings, documents and evidence on record.

9.Point for consideration:-

Whether appellant is entitled to divorce on the ground of cruelty and desertion?



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10.The evidence adduced by the parties show that the appellant and the respondent have been living separately since 2015. It appears that the appellant was living in a Slum Clearance Board Apartment. The evidence discloses that the respondent was not too happy with the said fact and it was suppressed by the appellant.

11.The relevant portions of the evidence of R.W.1 (Deepalakshmi) is extracted hereunder:

“குடிசை மாற்று வாரியத்தில் மனுதாரர் வாழ்ந்தது பற்றி எனக்கு ஏதாவது கவலையாக இருந்ததா என்று கவலை எதுவும் இல்லை மறைத்து திருமணம் செய்துவிட்டார்களே என்று வருத்தமாக இருந்தது. திருமணத்திற்கு பிறகு இந்த காரியத்திற்காக நான் என் கணவரிடம் சண்டை போட்டது உண்டா என்றால் சண்டை வரவில்லை. நான் சமரச மையத்தில் வைத்து பேசும்போது அவர் குடிசை வாரியத்தில் குடியிருப்பது தெரிந்திருந்தால் திருமணமே செய்திருக்க மாட்டேன் என்று கூறியது உண்மையா என்றால் ஆமாம். அந்த காரியத்தினால் மனுதாரரை நான் அடிக்கடி அந்த வார்த்தையை சொல்லி பேசியுள்ளேன் என்றால் பாகுபாடு எதுவும் பண்ணவில்லை, வருத்தத்தை சொல்லியுள்ளேன். நான் என் வருத்தத்தைதான் வெளிப்படுத்தினேன்.



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12.The above evidence would disclose that the respondent was not too happy with the appellant and had expressed her displeasure to the Mediators. She would further admit that they are living separately since 2015, she further admits that her father gave a complaint against the appellant and his mother alleging that the appellant's mother had physically assaulted her. She further admitted that she was not aware of the death of the appellant's mother due to cancer. The relevant portions of the evidence are extracted hereunder.

“என் கணவரின் அம்மா கேன்சரில் இறந்த விவரம் எனக்கு தெரியுமா என்றால் தெரியாது. என் கணவர் மீதும், என் கணவரின் அம்மா மீது நான் கொடுங்கையூர் காவல் நிலையத்தில் புகார் கொடுத்தேனா என்றால் இல்லை. என் கணவர் மீது புகார் என் அப்பாதான் கொடுத்தார். சிஎஸ்யூர் காப்பி என்னிடம் உள்ளது. என் அப்பா ஏன் என் கணவரின் தாயாரின் பெயரில் புகார் கொடுத்தார் என்றால் என் மாமியார் என்னை அடித்ததால் அவரது பெயரை சேர்த்தார்கள்.”

13.The complaints given by the respondent had not resulted in registration of FIR. The tendency therefore to lodge complaints by the respondent against the appellant and his mother is proved. Further, the respondent's admission that she is not aware of the appellant's mother death



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also show that the lack of communication between the appellant and the respondent.

14. We also rely upon the Judgment of the Hon'ble Apex Court in “**Naveen Kohli v. Neelu Kohli** reported in “**(2006) 4 SCC 558**” wherein it is held as follows:

“86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.”



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15.Further in the Judgment of the Hon'ble Apex Court “**Samar Ghosh v. Jaya Ghosh**, reported in **(2007) 4 SCC 511 : 2007 SCC OnLine SC 423**”, it is held that:-

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

16.Applying the above principles, we see that the appellant and the respondent are living separately since 2015. The respondent through her father has filed complaint against the appellant and his mother. The respondent has admitted that she was not aware of the death of the appellant's mother which establishes that there is absolutely no communication between the appellant and the respondent. All efforts made for re-union have ended in vain. This Court attempted to send the parties for Mediation and the same failed. In such



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circumstances, the matrimonial bond is beyond repair and considering the allegations and evidence on record, we are convinced that the marriage has to be dissolved on the ground of cruelty. However, we find from the evidence on record, the appellant has not established the ground of desertion as against the respondent. The point that has arisen in this appeal is therefore partly held in favour of the appellant to the extent that the appellant is entitled for divorce only on the ground of cruelty.

17.For the above reasons, Civil Miscellaneous Appeal is allowed, setting aside the Judgment and decree dated 08.03.2021 made in H.M.O.P.No.1393 of 2020. The divorce is granted on the ground of cruelty. No costs. Consequently, the connected miscellaneous petition is closed.

[V.M.V.,J]

[S.M.,J]

25.01.2023

Index : Yes / No

Neutral Citation Case: Yes/No

Speaking or Non-speaking order

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To

1.The I Additional Family Court,
Chennai.

2.The Section Officer
VR Section
High Court of Madras
Chennai.



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and
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Pre-delivery Judgment in
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