



WEB COPY



C.M.A.Nos.1592 and 1593 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.1592 and 1593 of 2017
and CMP.No.13259 of 2017

Mythili

...appellant in both the appeals

Vs.

S.Ganesan

...respondent in both the appeals

Prayer in CMA.No.1592 of 2017: Civil Miscellaneous Appeal filed under Section 19 (1) of Family Court Act 1984 to set aside the order and decretal order dated 28.03.2017 passed in OP.No.4105/2010 by the Hon'ble I Additional Principal Judge, I Addl. Family Court, Chennai and consequently to allow O.P.No.4105 of 2010.

Prayer in CMA.No.1593 of 2017: Civil Miscellaneous Appeal filed under Section 19 (1) of Family Court Act 1984 to set aside the order and decretal order dated 28.03.2017 passed in OP.No.816/2011 by the Hon'ble I Additional Principal Judge, I Addl. Family Court, Chennai and consequently to dismiss O.P.No.816 of 2011.



WEB COPY



C.M.A.Nos.1592 and 1593 of 2017

For Appellant : Ms.Uma Vidyapathi
(in both the appeals)
For Respondent : Served. No Appearance
(in both the appeals)

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBRAMANIAN, J]

These appeals are at the instance of wife challenging the dismissal of the Original Petition filed by her seeking divorce on the ground of cruelty and allowing the Original Petition for restitution of conjugal rights filed by her husband.

2. The appellant married the respondent on 16.02.1990 and they have 2 sons out of the marriage. Almost after 20 years of the marriage, the appellant sought for divorce on the ground of cruelty contending that the respondent had made various false allegations against her, which include the allegations regarding her chastity. It is the further contention of the appellant/wife that her husband had never taken care of the family and all expenses including household expenses were borne by her. It is also added that the respondent has taken away the earnings, house documents and gold



C.M.A.Nos.1592 and 1593 of 2017

and silver articles from the appellant and refused to part with his salary. It is

also contended that he had in his reply to the lawyers notice describing her as an immoral person. It is also claimed that the respondent had falsely associated the appellant with her colleague one Mr.Muralikrishnan. Contending that these allegations *per se* amount to mental cruelty, the appellant sought for divorce. Soon thereafter, the respondent filed the Original Petition in O.P.No.816 of 2011 seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act. Even in the said petition, while seeking restitution, the respondent had stated that the appellant has got illicit intimacy with one Muralikrishnan. Even after saying so, he would seek restitution of conjugal rights.

3. Before the Family Court, the petitioner in HMOP.No.4105 of 2010, the appellant/wife was examined as PW1 and respondent/husband was examined as RW1. Exhibits P1 to P9 were marked on the side of the wife and Exhibits R1 to R8 were marked on the side of the husband. The Family Court on appreciation of the evidence concluded that since the couple have got one major and one minor son, the family cannot be separated. The Family Court also accepted the explanation offered by the husband to the contents of the Ex.P6 document to the effect that he was asked to write like



that by his father. Therefore, the Family Court concluded that there was no mental cruelty.

4. We have heard Ms.Uma Vidyapathi, learned counsel appearing for the appellant. Though the respondent was served, does not appear either in person or through counsel duly instruct.

5. The learned counsel appearing for the appellant would rely upon the evidence of the husband in cross-examination, wherein, the husband has deposed that he does not know what his two sons are doing. He had also deposed that he does not know where the second son is studying. He does not know what is the School fee payable. He has also admitted that in Ex.P6, the letter addressed by the husband to the counsel for the wife, he had described her as follows:

"மா.சா.ஆ.6ல் பக்கம் 2ல் என் மனைவி எப்படிப்பட்ட திமிர்பிடித்த சரியான மோசக்காரி, நன்றிகெட்டவள், சந்தர்ப்பவாதி, பண ஆசைபிடித்த பேராசைக்காரி, நடத்தை கெட்டவள், நன்றி கெட்டவள், ஒழுக்கம் கெட்டவள் மற்றும் பண்பு அற்றவள் என்று கூறியுள்ளது சரிதான் என்றால் சரிதான். மா.சா.ஆ.6 நான் கைப்பட எழுதியதுதான் என்றால் சரிதான். அந்த ஆவணத்தை யாராவது கூட்டாக எழுதினீர்களா என்றால் நானும் எனது தந்தையும் சேர்ந்துதான் எழுதினோம் மற்றும் எனது தந்தை கூறி நான்



C.M.A.Nos.1592 and 1593 of 2017

எழுதினேன். இந்த வழக்கறிஞர் அறிவிப்பிற்கு பதில் அனுப்பவே வேண்டாம் என்று என் தந்தையிடம் முறையிட்டேன். ஆனால் எனது தந்தைதான் அனுப்பச்சொன்னார். நீங்கள் எதையும் யோசித்து சுயமாக செய்யமாட்டீர்களா என்றால் நான் எனது தந்தையின் துணையுடன் அவரை சார்ந்து வாழ்ந்ததால் அவரின் சொல்லை என்னால் தட்டமுடியவில்லை."

6. Apart from the above, even in the petition for restitution of conjugal rights filed by him, the husband had made a claim that the appellant was having immoral relationship with one Muralikrishnan. The relevant portion of the petition in HMOP.No.816 of 2011 filed by the husband read as follows:

"4. The petitioner states that the respondent when working in Bombay developed a friendship with a person named K.R.Muralikrishnan, who was also working in ONGC, Bombay. She developed the friendship with the said Muralikrishnan, in the event of purchasing medicine for the eye treatment of his son, named Vaibhav. The petitioner was helping in getting the medicines for the said Muralikrishnan. After the petitioner got transferred to Jabalpur, the respondent gave voluntary request transfer to Chennai and came down to live with her child in Chennai. Immediately after the shifting of the respondent the above said Muralikrishnan also got request transfer to Chennai ONGC.



WEB COPY

.....

.....

6. The petitioner states that after the transfer of the respondent from Bombay to Chennai and her stay in Chinmaya Nagar, the said Muralikrishnan got transferred to Chennai and came to Chennai in 2001 itself. The above said Muralikrishnan had indifference with his wife Vijayashree and filed a divorce petition in the year 2005 and numbered as O.P.No.502/2006. The wife of said Muralikrishnan contested the matter for four long years and finally agreed for divorce by mutual consent, on 28.04.2009. The custody of their child was also given to the said Muralikrishnan. The said Muraliskrishnan after divorce, rented out a flat near the respondent's house and resides there till date."

7. The learned counsel for the appellant would contend that these averments by themselves would constitute mental cruelty and no further evidence is required. Unfortunately, the Family Court did not advert to this evidence, but accepted the feeble explanation offered by the husband that he was forced to write Ex.P6 by his father. The husband even after 20 years of marriage is unable to comprehend the effect of the statement made in the letter and offered the explanation that he had wrote it at the instance of the father, the same should not have been accepted by the Family Court. The



C.M.A.Nos.1592 and 1593 of 2017

very fact the husband has made such scurrilous allegations against her wife after 20 years of marriage would demonstrate that he had committed mental cruelty.

8. The averments in the petition for restitution of conjugal right also add fuel to the fire. We are therefore convinced that the very contents of Ex.P6 and the contents of the petition for restitution of conjugal rights would show that the husband had not treated his wife properly and has committed mental cruelty. Therefore the judgment of the Family Court is set aside. The petition for divorce will stand allowed. Both the appeals will stand allowed.

9. The petition for divorce in OP.No.4105 of 2010 will stand allowed and the petition for restitution of conjugal rights in OP.No.816 of 2011 will stand dismissed. Since the husband is not appearing, we direct the wife to bear her own cost. No costs.

(R.S.M.J.) (S.S.K.J.)
02.02.2023

Index : No
Speaking order: Yes
pvs



C.M.A.Nos.1592 and 1593 of 2017

To

1. I Additional Principal Judge,
I Additional Family Court, Chennai
2. The Section Officer,
VR Section High Court, Madras.



WEB COPY



C.M.A.Nos.1592 and 1593 of 2017

R.SUBRAMANIAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

pvs

C.M.A.Nos.1592 and 1593 of 2017

02.02.2023