



C.M.A.(MD).No.926 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.11.2023

Delivered on: 22.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A.(MD).No.926 of 2017

B.Sivakumar

... Appellant / Petitioner

Vs.

S.Shanmuga Priya

... Respondent / Respondent

Prayer:- Appeal filed under Section 19 (1) of the Family Courts Act, against the judgment and decree, dated 28.04.2017 passed in H.M.O.P.No. 392 of 2015, on the file of the Family Court, Tiruchirappali, Tiruchirappalli District, wherein the petition filed by the appellant herein, seeking Divorce under Section 13(1) (iii) of Hindu Marriage Act, was dismissed.

For Appellant : Mr.N.Subramani

For Respondent : Ms.V.Nirmala Rani

JUDGMENT

P.B.BALAJI,J.

The husband, aggrieved by the dismissal of his divorce petition in H.M.O.P.No.392 of 2015 on the file of the Family Court, Tiruchirappalli, is the appellant before us.



C.M.A.(MD).No.926 of 2017

WEB COPY

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3(a). The case of the husband / petitioner before the Family Court was that, he married the respondent on 22.01.2015 as per the Hindu Rites and Customs; at the time of their marriage, the respondent's parents gave 25 sovereigns of gold jewels and 5 sovereigns of gold articles, besides house hold articles.

3(b). The respondent never allowed the petitioner to touch her right from the first night and she herself admitted that she was suffering from Psychiatric illness and requested the petitioner to leave her alone.

3(c). Immediately, the petitioner contacted the respondent's father and enquired about the illness of the respondent and questioned as to why the same was suppressed before the marriage, to which his father-in-law represented that things would become normal in course of time and there is nothing to worry.



C.M.A.(MD).No.926 of 2017

WEB COPY

3(d). The petitioner being a B.Sc, graduate with M.B.A, working in Pharmaceuticals line, he took the advice of Doctors, who are leading psychiatrists, and came to know that the respondent was taking heavy dosage of tablets, which had caused her mental condition and further he was shocked to know that the side effects of the said tablets would even lead to an incapacity of becoming pregnant; the respondent returned to her parent's home on the very next day of her marriage, taking all the gold ornaments presented, leaving behind only five sovereigns of gold to the petitioner, besides the house hold articles; the respondent was taken to a Doctor at Trichy, who diagnosed her condition as “chronic depression illness”; the petitioner cannot be reasonably expected to live with the respondent and therefore sought for dissolution of the marriage.

4. The respondent / wife filed a counter along with a counter claim under Section 23 (A) of the Hindu Marriage Act. According to the respondent, she is a Graduate in B.Sc. Fashion Technology and completed the course obtaining first class; the respondent conducted herself as any normal adult of her age and the petitioner was fully appraised that the respondent was taking treatment for depression which is periodical and



C.M.A.(MD).No.926 of 2017

WEB COPY

the petitioner himself being a medial representative was well aware that the condition of the respondent would not in any way affect their matrimonial life. The allegation of depression is stoutly denied and also denied. The allegation that the respondent never allowed the petitioner to touch her was denied and according to the respondent, they were living happily. Insofar as the visit to the hospital in Trichy, the respondent states that she never suspected any motive and accompanied the petitioner. Thereafter, the petitioner had stated that he was seeking another expert opinion from a psychiatrist, Salem and the respondent co-operated with the petitioner and they went and met a Doctor at Salem on 31.03.2015. The petitioner was only trying to search for a cause of action to desert himself from the respondent and the allegation that the side effects of the medicines being taken by the respondent would render her incapable of being pregnant was also stoutly denied and contending that there are absolutely no grounds warranting divorce, the respondent sought for dismissal of the divorce petition and stated that she was always ready and willing to live with the petitioner and prayed for the counter claim, namely, restitution of conjugal rights being ordered.



C.M.A.(MD).No.926 of 2017

WEB COPY

5. Before the Family Court, on the side of the petitioner, the petitioner examined himself as P.W.1 and Dr.V.R.Annadurai examined as P.W.2 and 3 documents were marked as Ex.P1 to Ex.P3. On the side of the respondent, no oral or documentary evidence was adduced.

6. On considering the pleadings and evidence let in by the petitioner / husband, the Family Court, found that there were no ground which necessitated dissolution of marriage on the allegations set forth by the petitioner in his petition and that the evidence let in by him also did not satisfy the requirement for seeking a divorce on the ground that the respondent was suffering from “chronic depression illness”, which was incurable. Though the respondent had made a counter claim for restitution of conjugal rights, considering that the respondent had not chose to enter the witness box and file documents to establish her case, the Family Court proceeded to pass orders only on the divorce petition filed by the petitioner and dismissed the same.

7. Aggrieved by the same, the husband has preferred the present Civil Miscellaneous Appeal on the grounds that the Family Court has not



C.M.A.(MD).No.926 of 2017

WEB COPY

appreciated the oral and documentary evidence, especially, the evidence of expert - Dr.V.R.Annaduari, who clearly spoke about the mental illness of the respondent and that the respondent / wife had taken treatment during the year 2014-2015 for mental disorder; the Family Court failed to see that the appellant had given cogent evidence with regard to recurrent attacks of insanity of the respondent; the Family Court erred in holding that the appellant did not establish that the respondent was taking treatment prior to the marriage, when the Doctor/ P.W.2's evidence was clearly establishing that the respondent was taking treatment, even in the year 2014 and failed to see that the marriage was celebrated only on 22.01.2015; the respondent never appeared before the Family Court, after filing counter claim and she did not choose to cross examine the said Doctor; therefore, in the absence of any contra evidence, the Family Court ought to have allowed the divorce petition, as the evidence of P.W.1 and P.W.2 remain rebutted; the Family Court has not appreciated the evidence of the expert witness, namely, P.W.2-Doctor as a whole and as discredited the evidence of P.W.2, picking selective portions of his evidence.



C.M.A.(MD).No.926 of 2017

WEB COPY

8. We have heard Mr.N.Subramani, learned counsel for the appellant / husband. Though Ms.V.Nirmala Rani, learned counsel for the respondent / wife did not come forward to present her arguments on 10.11.2023, we reserved judgment and in order to give one final opportunity to the respondent, we also gave a week time for the respondent to file her written submissions. Thereafter, she filed her written submissions, after serving the copy of the same on the appellant / petitioner.

9. The learned counsel for the respondent has also placed reliance on the decision of the Hon'ble Supreme Court in ***Ram Narain Gupta V. Smt.Rameshwari Gupta*** reported in ***AIR-1988-SC- 2260***.

10. The learned counsel for the appellant / husband, besides canvassing the various grounds set forth in the Memorandum of grounds in the Civil Miscellaneous Appeal, would submit that the Family Court ought to have granted a divorce on the basis of the oral and documentary evidence adduced by the appellant, which remained unrebutted in view of the wife abandoning the trial of the case midway. He would also submit



C.M.A.(MD).No.926 of 2017

that the Family Court has discredited the expert, namely, P.W.2's evidence on the ground that the appellant has not put questions to him whether the mental condition of the respondent would affect the marital life of the appellant and the respondent and the same was totally perverse, since the said expert was examined on the side of the appellant, it was only for the respondent to have cross-examined P.W.2 and established falsity in the evidence adduced by the said Doctor. He would, therefore, prayed that the appeal is to be allowed.

11. Per contra, the learned counsel for the respondent / wife would state, through the written submissions that the appellant has not proved any of the allegations putforth in the divorce petition and even P.W.2 – Doctor, who was examined on the side of the appellant, has clearly stated that the mental depression of the respondent would not affect the marital life of the respondent. Further, she would state that under Section 13(1)(iii) of Hindu Marriage Act, the husband to satisfy two elements become entitled to dissolution of marriage, namely, (i) the respondent was incurably of an unsound mind, or (ii) mental condition of the respondent must be of such a nature that the appellant cannot



C.M.A.(MD).No.926 of 2017

reasonably be expected to live with her and even in the absence of establishing one of the two elements, the appellant cannot become entitled to a decree of dissolution of marriage.

12. In a recent decision in ***Smt.Roopaa Soni Vs. Kamalnarayan Soni*** [2023InSC814], the Hon'ble Supreme Court has held as under:

“10.On the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance.”

13. In the instant case, the petitioner husband has filed an application under Section 13(1)(iii) of the Hindu Marriage Act, 1955 on the ground that on the date of the marriage, the wife was suffering from mental disorder so as to endanger her life and he could not lead any matrimonial life. In this connection, he has specifically stated, in his evidence as P.W.1, that he was subjected to mental cruelty as on the very first nuptial night of the marriage, the respondent/wife had recurrent attack of insanity and there is no cross examination on the said oral assertion of



C.M.A.(MD).No.926 of 2017

the husband assumes significance. Furthermore, to substantiate his version, the Doctor who had given treatment to the wife, namely, V.R.Annadurai of Mercy Hospital, Trichy was examined as P.W.2, he in his evidence, has stated that,

“நான் சண்முகப்பிரியாவிற்கு வழங்கிய மருத்துவ குறிப்பேடுகள் அடிப்படையில் சாட்சி சொல்ல வந்துள்ளேன். என்னிடம் காட்டப்படும் சண்முகப்பிரியாவை பரிசோதித்து மனநலம் குறித்து கேஸ் சம்மரி எகஸ்பிட் பி.3. ஆகும், நான் சண்முகப்பிரியாவிற்கு வழங்கிய சிகிட்சையின் குறிப்பில் அவர் மனஅழுத்தம் மனசோர்வினால் மனநலம் பாதிக்கப்பட்டதற்கு என்னிடம் சிகிட்சை எடுத்துக்கொண்டார்.

மனசோர்வு சரியான வார்த்தையாகு..2014ல் அவருக்கு டெலசல் ஆப் லவ் என்ற மனநோய் அதாவது மற்றவர்கள் தன்னை விரும்புவதாக கற்பனை செய்து கொள்வார். சண்முகப்பிரியா தனக்குள்ள மனசோர்வு ஏற்பட்டு டெலசல் ஆப் லவ் ஆகி தொடர்சிகிச்சை பெற்று மருந்து உட்கொண்டுவந்தார். புறநோயாளியாக இருந்து சிகிட்சை பெற்றார். இந்த சிகிட்சைக்காக 2014, 2015 ஆகிய இருவருடங்கள் சிகிட்சையில் இருந்தார். அதற்கான தேவையான மாத்திரைகளை உட்கொண்டு வந்தார். மருந்து உட்கொண்ட பிறகு அந்தமாதிரியான நோய்



C.M.A.(MD).No.926 of 2017

WEB COPY

திரும்ப வர வாய்ப்பு உண்டு. 2015 திரும்ப வர வாய்ப்பு உண்டு.

....

சண்முகப்பிரியாவை என்னிடம் சிகிச்சை எடுத்தபோது
மனசோர்வு இருந்ததால்தான் அவருக்கு மனசார்ந்த
பிரச்சினை இருந்ததால்தான் சிகிச்சை எடுத்து மனசிகிச்சை
குறித்து குறிப்பிட்டுள்ளேன் என்றால் அது சரிதான்□

and the Doctor was also not cross examined by the wife.

14. After going through the oral evidence of P.W.2, we find that even prior to the date of marriage, the wife is said to have taken treatment for delusional disorder and the Doctor has explained such disorder as the person will think “that everyone loves her” and “proposes her” and hence, even without the cross examination, it appears that the Family Court Judge has stated the respondent/wife remained *ex parte* and pass final orders and we find that cross examination of the medical witness is essential ground, the plea raised by the husband in support of his claim under Section 13(1) (iii) of the Hindu Marriage Act and hence, we find that we are not in haste to decide the issue rather to give an opportunity to the wife to cross examine atleast P.W.2 within a reasonable time.



C.M.A.(MD).No.926 of 2017

WEB COPY

15. In the result,

- (i) The Civil Miscellaneous Appeal is allowed;
- (ii) The order of the Family Court, Tiruchirappali in H.M.O.P.No.392 of 2015 is set aside;
- (iii) The Family Court shall post the matter for cross examination of P.W.2 and the respondent/wife is given liberty to examine the Doctor within a period of four weeks from the date of first hearing and thereafter, if both parties want to adduce any evidence, it is open to give the evidence and the Family Court shall dispose of the case within a period of 12 weeks therefrom;
- (iv) The cost of P.W.2 travelling allowance and incidental charges shall be borne by the respondent/wife;
- (v) No costs.

(T.K.R.J.) & (P.B.B.J)
22.12.2023

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C.M.A.(MD).No.926 of 2017

To

1.The Family Court,
Tiruchirappali,
Tiruchirappali.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.926 of 2017

RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI, J

Ls/sji

judgment in
C.M.A.(MD).No.926 of 2017

22.12.2023