



C.M.S.A.(MD)Nos.31 and 32 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 19.03.2024

Delivered On : **19.06.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)Nos.31 and 32 of 2014

Deepa

... Appellant in both C.M.S.As

Vs.

R.Venkat Raghavan

... Respondent in both C.M.S.As

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 28 of Hindu Marriage Act,1955, to set aside the fair and decreetal order passed in C.M.A.Nos.30 and 31 of 2012 on the file of the Principal District Court, Thanjavur dated 11.04.2014 reversing the fair and decreetal order passed in H.M.O.P.Nos.137 and 131 of 2008 on the file of the Principal Sub Court, Thanjavur dated 11.01.2012.

For Appellant	: Mr.R.S.Prabhu
(in both C.M.S.As)	
For Respondent	: Mr.G.Karnan
(in both C.M.S.As)	

COMMON JUDGMENT

These Civil Miscellaneous Second Appeals have been filed against the judgment and decree passed in C.M.A.Nos.30 and 31 of 2012 on the file of the



C.M.S.A.(MD)Nos.31 and 32 of 2014

Principal District Court, Thanjavur dated 11.04.2014, reversing the fair and decreetal order passed in H.M.O.P.Nos.137 and 131 of 2008 on the file of the Principal Sub Court, Thanjavur dated 11.01.2012.

2.H.M.O.P.No.131 of 2008 was filed on the file of the learned Principal Subordinate Judge, Thanjavur by R.Venkata Raghavan, who is the husband of the appellant herein seeking dissolution of marriage held between him and his wife Deepa, that is the appellant herein. H.M.O.P.No.137 of 2008 came to be filed by the appellant herein namely T.Deepa seeking restitution of conjugal rights as against her husband R.Venkat Raghavan, that is, the respondent herein. The learned Trial Court proceeded to dismiss the petition for divorce in H.M.O.P.No.131 of 2008 filed by the respondent husband thereby allowing the petition for restitution of conjugal rights filed by the appellant wife in H.M.O.P.No.137 of 2008 as against the respondent husband herein. Assailing the same, the husband preferred C.M.A.Nos.30 and 31 of 2012 on the file of the learned Principal District Court, Thanjavur. The learned Principal District Court, Thanjavur was pleased to reverse the finding of the learned Trial Court, thereby allowing the petition for divorce filed by the husband in H.M.O.P.No. 131 of 2008 and dismissing the petition for restitution of conjugal rights filed by the wife in H.M.O.P.No.137 of 2008. Assailing the aforesaid judgments, the



C.M.S.A.(MD)Nos.31 and 32 of 2014

appellant herein has filed these Civil Miscellaneous Second Appeals before this Court.

3.The case of the respondent/husband who filed H.M.O.P.No.131 of 2008 on the file of the learned Subordinate Judge, at Thanjavur seeking dissolution of marriage in nutshell is as follows:-

(i)The petitioner is the legally wedded husband of the respondent and both of their marriage was solemnized on 13.06.2002 at O.V.M.A. New Mahal, Kumbakonam, according to Hindu religious rites and customs. The petitioner is doing business having his office of business at Trichy and the respondent was a House wife. Both started their matrimonial life at the petitioner's residence at Trichy. The petitioner started his marital life with high hopes, but it has been belied by the respondent's adamant attitude and arrogant nature. Ever since the date of marriage the marriage has not been consummated. The respondent was not prepared to live and cohabit with the petitioner. The respondent wife started giving troubles to the petitioner, thereby making the life of the petitioner miserable. The respondent started creating problems to the petitioner even for trivial matters without any reason. The respondent never cooked and the petitioner's mother who was aged and sick had to do all household works. The respondent doesn't respect the petitioner's father and mother. The respondent



C.M.S.A.(MD)Nos.31 and 32 of 2014

was in the habit of creating problems and in the habit of making hue and cry very often during midnight. The respondent was in the habit of practising night mantras and used to spray holy ash all over the room and disturb the petitioner and make him leave the room. The petitioner had warned not to have any connections with few poosaries who usually calls by phone and by letters. Because of the respondent's attitude, the petitioner had asked the respondent to take medical treatment. The respondent's father came down to Trichy and had taken steps to pacify the respondent to live happily but all the efforts ended in vain. The petitioner was very patient tolerating the indifferent behavior of the respondent with the fond hope that, the respondent will change her attitude one day or another but the hopes of the petitioner went in vain. The respondent has accepted her attitude in writing and had promised to the petitioner that she will fall in line in due course of time.

(ii) On 16.06.2004, without lawful reasons the respondent had left the matrimonial house and had willfully deserted. The petitioner by leaving her marital abode to her parental home at Kumbakonam, continuously is residing with her parents for the past two years. The respondent while leaving the matrimonial house has taken away her Articles, Jewels and Sridhan what ever brought at the time of marriage. All the efforts taken by the petitioner,



C.M.S.A.(MD)Nos.31 and 32 of 2014

petitioner's colleagues, relatives and well-wishers could not persuade her to live along with the petitioner. In the month of December 2004, when the petitioner seriously warned her act, the respondent and her family members had created havoc over the entire scenario. During the conciliatory efforts, the respondent adamantly compelled the petitioner and his parents to leave her house and had stated that, she is not ready to cohabit with the petitioner. The petitioner had preferred a complaint before the All Women Police, Fort Police, Trichy on 07.11.2006 for re-union, but the respondent had not responded to the requests of the All Women Police and was not ready to cohabit. The respondent's act clearly shows that she is not willing to cohabit with the petitioner. Realizing the same, the petitioner issued a lawyer's notice through his lawyer on 27.12.2006 and in which sought her mutual consent for divorce and demanded her for the same within seven days from the date of receipt of this notice. The respondent issued a reply notice dated 05.01.2007 with false allegations through her Lawyer. Hence, this case.

4.The defense of the appellant wife for the aforesaid petition in nutshell is as follows:-

(i)The petitioner was given inmarriage to the respondent on 13.06.2002 at Kumbakonam in O.V.M.A. New Wedding Hall as per Hindu Sastras. The



C.M.S.A.(MD)Nos.31 and 32 of 2014

petitioner's parents had spent a lot of amount for the marriage and she was presented with huge Sridhana in the form of money, gold ornaments, silver vessels, household utensils, electronic gadgets etc. After marriage the petitioner and the respondent were leading a happy married life in the respondent's house only for a very short time. The respondent though a very good person with decent habits is unfortunately a person with extreme subordination to his mother. He meekly submit to what all his mother says, like a child holding the apron strings of its mother and the respondent also always used to follow his mother wherever she goes and whatever she does. Hence, at the instance of his mother, he did not even cohabit with the petitioner. Under the pretext of his sister to be married, his wife namely the petitioner was asked to sleep along with his sister. Even after the sister's marriage on 02.05.2004, the respondent was not allowed to sleep with the petitioner at the behest of his mother. Thus the mother had a pivotal role in separating the husband and wife. The petitioner was treated only as a glorified servant in the house.

(ii)The respondent's mother under a mistaken impression that the petitioner will take away her son from the family and lead a separate residence and with that fear the respondent's mother never allowed the husband and wife to have any close contact with each other. Every now and then she used to



C.M.S.A.(MD)Nos.31 and 32 of 2014

pester the petitioner to bring exorbitant amount from the petitioner's house as dowry. Because the petitioner could not do that she found fault with the petitioner for even very petty microscopic trivial matters by magnifying them. Thus the petitioner was experiencing hell in this earth itself. Last but not the least, the respondent's mother also threatened the petitioner that she will require her son to divorce the petitioner and to have a second marriage for him.

(iii)To cover up their faults, the mother-in-law also started calling the petitioner - impotent. Several mediations by several persons to make the husband and wife to live together ended in vain. The respondent's mother never allowed the petitioner even to talk with her husband. To forestall the petitioner's action against the respondent and his parents the respondent's mother very ingeniously sent a notice to the petitioner on 27.12.2006 in the name of her son for which a suitable reply has been given by the petitioner. The petitioner was in the respondents house from 24.11.2007 to 29.11.2007 and even during this period the petitioner was not provided with the basic livelihood necessities like food, clothing, bathing etc. They also complained to the police and the Police enquired into the matter and found out that the petitioner's mother-in-law is the hinch pin of the entire issue.



C.M.S.A.(MD)Nos.31 and 32 of 2014

(iv) Since the petitioner's parents were not in a position to maintain the petitioner, the petitioner has filed a petition for maintenance in M.C.No.35 of 2008 on the file of the learned Judicial Magistrate, Kumbakonam. The petitioner has categorically stated from the beginning, in her reply notice and also on every occasion before the Police, before the mediators and every where and also in the maintenance petition that she is always ready and willing to live with the respondent.

5. For the sake of convenience, the parties herein are referred to as per the rank before the learned Trial Court.

6. Two witnesses were examined on the side of the petitioner in H.M.O.P.No.131 of 2008, that is, the petitioner husband was examined as P.W. 1 and the third party known to the petitioner husband was examined as P.W.2. On the side of the petitioner, Ex.P1 to Ex.P7 were marked. On the side of the respondent, the respondent wife was examined as R.W.1 and Ex.R1 to Ex.R9 were marked on the side of the respondent. Likewise in H.M.O.P.No.137 of 2008, the petitioner wife Deepa was examined as P.W.1 and Ex.P1 to Ex.P5 on the side of the petitioner and on the side of the respondents, neither witnesses were examined nor documents were marked.



WEB COPY

7. The learned Trial Court proceeded to observe that, both the parties have admitted their marriage and the fact that the matrimonial life was commenced in the husband's house at Trichy. The learned Trial Court proceeded to hold that, the petitioner husband miserably failed to prove before the Court with reliable evidence that the marriage was not consummated and that apart the learned Trial Court also recorded the fact that, the petitioner husband has miserably failed to prove that the respondent had left her matrimonial home on 16.06.2004 on the basis of reliable documentary and oral evidence. Thereafter, the learned Trial Court recording the fact that, though the petitioner husband contends that, the respondent had left the matrimonial home on 16.06.2004, the learned Trial Court had recorded the admission of the husband that, there had been mediations between both the parties, after the alleged date of separation. The learned Trial Court further recorded that, the respondent also contended that at least for 15 times, she had went to the petitioner's house after 16.06.2004. However, the parents of her husband refused to allow her to live with her husband. That apart the learned Trial Court had recorded the fact that even in the reply notice issued by the respondent wife on 05.01.2007, she had expressed her willingness to live with the petitioner and on each and every occasion which had come possible to her she had always



C.M.S.A.(MD)Nos.31 and 32 of 2014

expressed her willingness to live with her husband. Though the petitioner husband relied upon the letters marked as Ex.P6 and Ex.P7 stating that the respondent wife had good regards over his family members and all the allegations made by her as to the ill treatment meted out to her by her mother-in-law, those letters would disprove the same. The learned Trial Court proceeded to observe that since the petitioner had failed to establish as to how he got the custody over those letters marked as Ex.P6 and Ex.P7, which is alleged to have been written by the respondent wife to her brother, those documents will not come to the rescue of the petitioner husband and on that basis, the learned Trial Court categorically concluded that the petitioner husband had miserably failed the factum of cruelty and desertion committed on him by the respondent and on that basis, proceeded to dismiss H.M.O.P.No.131 of 2008 and allow H.M.O.P.No.137 of 2008.

8.Assailing the same, the petitioner husband against H.M.O.P.No.131 of 2008 had preferred C.M.A.Nos.30 and 31 of 2012 before the learned Principal District Judge, at Thanjavur. However, the learned First Appellate Court taking cue on the letters marked as Ex.P6 at the time of cross examination of R.W.1, that is, the respondent wife in the petition for divorce observed that the allegations which had been raised by the respondent wife that she had been



C.M.S.A.(MD)Nos.31 and 32 of 2014

subjected to cruelty by her mother-in-law has been disproved by the contents of Ex.P6 letter wherein she herself has admitted that her mother-in-law had been affectionate and kind to her. However, without considering the fact that the respondent wife had visited and stayed in the petitioner husband's house several times even after the year 2004 has not been considered by the learned First Appellate Court and on that basis, the learned First Appellate Court came to a conclusion that the husband has clearly proved that from the year 2004 onwards, the respondent wife had been living separately from the matrimonial home. Relying upon Ex.P6 letter, the learned First Appellate Court concluded that the respondent wife has miserably failed to prove her contentions that her mother-in-law had inflicted cruelty on her as a result of which, she was not allowed to live with her husband and negated the respondent wife's claim for restitution of conjugal rights, thereby allowing the petitioner husband's claim for dissolution of marriage thereby allowing H.M.O.P.No.131 of 2008 and dismissing H.M.O.P.No.137 of 2008 setting aside the order passed by the learned Trial Court.

9. Assigning the aforesaid judgment passed by the learned First Appellate Court, the respondent wife has filed these Civil Miscellaneous Second Appeals before this Court. It is proved that the petitioner husband married the



C.M.S.A.(MD)Nos.31 and 32 of 2014

respondent wife on 13.06.2002 at Kumbakonam and it is an admitted fact that after marriage, the married couple started their matrimonial life at the residence of the petitioner husband at Trichy. The contention of the petitioner husband seeking dissolution of marriage in H.M.O.P.No.131 of 2008 is threefold:-

1.The marriage was not at all consummated.

2.The respondent wife had never respected his parents and him and had committed serious disharmony to their matrimonial life by disobeying the elders and creating situations which were not conducive to a matrimonial life.

3.The respondent wife deserted the petitioner husband voluntarily on 16.06.2004 without any lawful reason and left to her maternal home.

10.On these three grounds, the petitioner husband had built his case categorically contending that the marriage was not consummated and her cruel activities went to the extent of indulging in night mantras and spreading holy ash over the bedroom and disturbing the petitioner husband's age old parents especially his mother without doing any household work compelling his aged mother to involve in household works completely. Further the petitioner husband categorically contended that the respondent wife had voluntarily deserted him on 16.06.2004 without any valid reason and thereafter, she had never come back to resume her matrimonial life with the petitioner husband. To



C.M.S.A.(MD)Nos.31 and 32 of 2014

prove his case, he himself deposed evidence as P.W.1 and a third party known to him deposed evidence as P.W.2.

11.A careful reading of his deposition would reveal that though he had contended that his wife voluntarily deserted him on 16.06.2004, he had admitted in his cross examination that she returned back to the matrimonial home after visiting Tirupati with her father and thereafter even after the filing of this petition for divorce she came and stayed in her matrimonial home for at least five days. However, she was further not permitted to live therein and she was sent back to her maternal home. Thus the entire case of the petitioner husband on the ground desertion goes and the relevant portion of P.W.1 cross examination dated 05.09.2011 is extracted as follows:-

“2006ல் கோட்டை காவல்நிலையத்தில் ஒரு புகார் கொடுத்திருந்தேன். ம.சா.ஆ.3 அந்த புகார் ரசீது என்றால் சரி. இந்த ரசீதுக்கு உண்டான புகார் மனு தாக்கல் செய்யவில்லை. எதிர்மனுதாரரை சேர்த்து வைக்க சொல்ல முயற்சி செய்து பார்த்தேன். ஆனால் முடியவில்லை. அதனால் புகார் கொடுத்தேன். எனக்கும் எதிர்மனுதாரருக்கும் உடலுறவு ஏற்படவில்லை என்பதால் நாங்கள் பிரிந்திருக்கப் போகிறோம் என்று சொல்ல அந்த புகார் கொடுக்கவில்லை. அந்த புகார் கொடுக்கும் போது எதிர்மனுதாரருடன் சேர்ந்து வாழவேண்டும் என்று தான் அந்த புகார் கொடுத்தேன் என்றால். அந்த புகார் கொடுக்கும்போது எதிர்மனுதாரலுக்கும்பகோணத்தில்தான் இருந்தார். அந்த புகாரின் அடிப்படையில்



C.M.S.A.(MD)Nos.31 and 32 of 2014

கோட்டை காவல் நிலையத்தில் வந்ததாக சொன்னார்கள். நான் காவல்நிலையத்தில் போய்க் கேட்ட போது எதிர்மனுதாரரை அழைத்து விசாரித்ததாகவும் அவர் என்னுடன் சேர்ந்து வாழ் விருப்பம் இருப்பதாகவும் அவரே வந்து விடுவார் என்றும் காவல்துறையினர் என்னிடம் சொன்னார்கள். அந்த புகார் கொடுக்கும்போது எதிர்மனுதாரர் என் வீட்டில் இல்லை. 16.07.2004ல் எதிர்மனுதாரர் அவர் வீட்டிற்குபோய்விட்டார். திருப்பதி போவதாக சொல்ல எதிர்மனுதாரர் போனார் பிறகு என் வீட்டிற்கு வந்தார்.

21.11.2007ல் எதிர்மனுதாரர் என் வீட்டிற்கு வந்தார், என்றால் சரி. அதற்கு முன்பே எதிர்மனுதாரருக்கு அறிவிப்பு கொடுத்து வழக்கு போட்டுவிட்டேன். எதிர்மனுதாரரும் பதில் கொடுத்திருந்தார். வழக்குமுதல் வாய்தாவிடற்கு முன்பே வழக்கை வாபஸ் பெற்றுக்கொள்ளும் படி கேட்டார். ஆனால் வீட்டிற்கு விடாமல் பக்கத்து அறையிலேயே 6 நாட்கள் வைத்திருந்தேன் என்றால் சரியல்ல. சுமார் 4, 5, நாட்கள் என் வீட்டு ஹாலில் தான் இருந்தார்.“

12.To crush the respondent wife's contention that she was continuously subjected to harassment, abuse, cruelty and difficulty by her mother-in-law by not allowing her to live peacefully with her husband especially the behavior of the mother which went to the extent of not permitting her to sleep with her husband. The petitioner husband relied upon Ex.P6, which was marked through the respondent wife at the time of her cross examination a letter which has been written by her allegedly to her brother. However, it is ridiculous as to how such letter which was written by the respondent wife to her brother came to the



C.M.S.A.(MD)Nos.31 and 32 of 2014

custody of the petitioner husband has not been properly examined and the facts and circumstances which led to the custody of Ex.P6 with the petitioner husband is not at all explained by the husband in any of his pleadings or in his evidence. Further another letter allegedly written by the respondent wife addressed to her father-in-law and mother-in-law has been marked as Ex.P2 by the petitioner husband and the First Appellate Court relying upon Ex.P2 and Ex.P6 had come to a conclusion that the respondent wife had miserably failed to prove her case of cruelty being inflicted on her by mother-in-law by recording the admission made by the respondent wife in those two documents as to the goodness and bonafide/kind nature of her in-laws. However, the learned First Appellate Court failed to look into the fact that the respondent wife had consistently denied those two documents on the pretext that she had written those documents on the instruction of the petitioner and his parents.

13. That apart a careful reading of Ex.P2 would reveal that the petitioner husband has failed to explain on what circumstance, the respondent wife had written such a letter addressing to athai mama, that is, father-in-law and mother-in-law. The petitioner husband having failed to explain the circumstances and date and other details as to which the respondent wife had written Ex.P2 and having failed to explain how the custody of Ex.P6 came to



C.M.S.A.(MD)Nos.31 and 32 of 2014

him, since the same has been allegedly returned to her brother, this Court is of the considered view that the learned Trial Court rightly concluded that those two documents cannot be relied upon in favor of the petitioner husband.

14. That apart this Court is of the considered view that the learned First Appellate Court has lost sight on the admission made by the petitioner husband in his cross-examination as to the fact that the respondent wife had returned back to her matrimonial home after the alleged date of desertion that is on 16.06.2004 after visiting Tirupati along with her father and she stayed in her matrimonial home. Fully agreeing the observation of the learned Trial Court in concluding that the respondent wife, from the first instance of replying to the legal notice seeking dissolution of marriage by mutual consent issued by the petitioner husband, had continuously expressed her intention of rejoining and living with her husband and that apart she had also filed a petition for maintenance before the jurisdictional Magistrate Court even in which she had expressed her intention to live with her husband and the said document has also been marked as Ex.P5 in H.M.O.P.No.137 of 2008. That apart both in her counter filed in H.M.O.P.No.131 of 2008 and in her petition seeking restitution of conjugal rights in H.M.O.P.No.137 of 2008 and in her evidence, she had categorically contended that she is always willing to live with her husband and



C.M.S.A.(MD)Nos.31 and 32 of 2014

the separation had happened only due to the attitude of her in-laws who never ever allowed her to live with her husband. That apart the evidence of P.W.2 on Shanmuga Sundaram who has been examined on the side of the petitioner husband would throw light on the fact that a panchayat, that is a mediation was initiated between relatives and friends, however the same had failed and nothing more than that could be understood from his evidence. That apart he had categorically deposed his evidence by admitting that he do not know anything more than that except as to the conduct of the said mediation. In view of the same, the aforesaid evidence of P.W.2 will also not come to the rescue of the petitioner husband.

15. That apart, the respondent wife has categorically deposed in her examination-in-chief as well as in her cross-examination that after the alleged date of desertion, that is, on 16.06.2004, at least for more than 15 attempts she had visited her maternal matrimonial home for rejoining with her husband, which was carefully prevented by her in-laws. Recording the admission made by the petitioner husband that after that the alleged date of desertion, she came back to his home after visiting Tirupati along with her father, this Court is of the considered view that the ground of desertion is also not fairly established beyond doubt by the petitioner husband.



C.M.S.A.(MD)Nos.31 and 32 of 2014

WEB COPY

16. It is an established position of law that the relief of divorce cannot be granted merely on the ground that the marriage has irretrievably broken down. The husband having created situations for a wife which is not conducive for her to live in her matrimonial home and who had continuously along with his parents had refused to permit the respondent into her matrimonial home cannot seek divorce on the ground that the wife had voluntarily left her matrimonial home. The petitioner husband has also miserably failed to establish all the allegations as to cruelty especially with respect to the allegation of black magic indulged by the respondent wife with proper oral and documentary evidence. That apart the contention of the petitioner husband that the marriage had never been consummated is also not properly explained and duly proved and I am of the considered view that the learned Trial Court is certainly right in making a pertinent observation that a couple who had lived together from 13.06.2002 for more than 2 years continuously under a same roof cordially and thereafter having travelled to several places could not be believed to have not consummated their matrimonial ties.

17. In view of the same, fully concurring with the observation and findings of the learned Trial Court, this Court is of the considered view that the



C.M.S.A.(MD)Nos.31 and 32 of 2014

findings of the learned Principal District Judge, Thanjavur in C.M.A.Nos.30 and 31 of 2012 is liable to be set aside. Accordingly, the common judgment and decree in C.M.A.Nos.30 and 31 of 2012 dated 11.04.2014, by the learned Principal District Judge Thanjavur is hereby set aside and consequently, the common judgment and decreetal order passed by the learned Principal Subordinate Judge, Thanjavur in H.M.O.P.Nos.131 and 137 of 2008 dated 11.01.2012 is hereby restored. Accordingly, the Civil Miscellaneous Second Appeals stands allowed. There shall be no order as to costs.

19.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

- 1.The Principal District Judge, Thanjavur.
- 2.The Principal Sub Judge, Thanjavur.
- 3.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD)Nos.31 and 32 of 2014

L.VICTORIA GOWRI, J.

Mrn

C.M.S.A.(MD)Nos.31 and 32 of 2014

19.06.2024