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C.M.A. Nos.1009 & 1011 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 13 / 11 / 2024

JUDGMENT DELIVERED ON: 4 / 06 / 2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NOS.1009 AND 1011 OF 2023

CMA NO.1009 OF 2023

T.Sivakumar

... Appellant / Respondent

Vs.

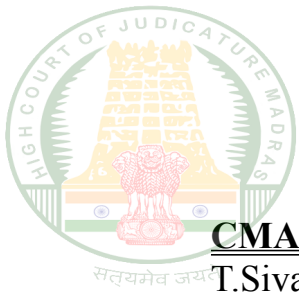
D.Narmadha

... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the Fair and Final Order dated December 13, 2022 passed in O.P.No.2395 of 2020 by the I Additional Family Court, Chennai.

For Appellant : Ms.Girija Velmurugan

For Respondent : Mr.T.Sri Krishna Bhagavat



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CMA NO.1011 OF 2023

T.Sivakumar

... Appellant / Petitioner

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Vs.

D.Narmadha

... Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the Fair and Final Order dated December 13, 2022 passed in O.P.No.3713 of 2021 by the I Additional Family Court, Chennai.

For Appellant : Ms.Girija Velmurugan

For Respondent : Mr.T.Sri Krishna Bhagavat

COMMON JUDGMENT

R.SAKTHIVEL, J.

The parties herein got married on June 14, 2017, according to Hindu rites and customs. Some disputes arose between the couple. Consequently, on August 18, 2020, the husband filed a petition under Section 13 (1) (i-a) of the 'Hindu Marriage Act, 1955' ['H.M. Act' for short] before the Principal Sub Judge, Trichy against his wife praying to dissolve the marriage between them, and on October 28, 2020, the wife filed a petition in O.P.No.2395 of 2020 under Section 9 of the H.M. Act

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before the 'I Additional Family Court, Chennai' ('the Family Court' for short) praying for restitution of conjugal rights. The petition filed by the husband was later transferred to the Family Court and renumbered as O.P.No.3713 of 2021. Joint trial was conducted. On the side of the wife, wife was examined as P.W.1 and Ex-P.1 to Ex-P.9 were marked. On the side of the husband, the husband was examined as R.W.1 and Ex-R.1 to Ex-R.4 were marked. The Family Court eventually ruled in favour of wife by way of a Common Judgment and Decree dated December 13, 2022. Challenging the same, the husband has preferred these Civil Miscellaneous Appeals.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array before the Family Court in O.P.No.3713 of 2021 *i.e.*, the husband will be referred to as the petitioner and the wife as the respondent.

PETITIONER'S (HUSBAND) CASE

3. Case of the petitioner is that the marriage between the petitioner (husband) and the respondent (wife) took place on June 14, 2017, according to Hindu rites and customs. The respondent's parents had



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rented a house at Nandanam even before the marriage and insisted the petitioner to begin their matrimonial life there. Accordingly, the couple moved into the rented house after marriage. Two months into the marriage, the respondent without any intimation to the petitioner, brought in her aunt and later her parents. This resulted in loss of privacy to the petitioner.

3.1. The petitioner is running his own software company, M/s. Xenovex Technologies Pvt. Ltd., with about 100 employees in Vadapalani, Chennai. When he requested to move closer to his office, the respondent refused insisting to live along with her parents at the Nandanam House. This caused hardship to the petitioner.

3.2. Meanwhile, the first floor of the Nadhanam House became vacant and the petitioner wanted to move into it along with the respondent. But the respondent's parents moved into the first floor citing good ventilation. Thereafter, the petitioner attempted to live peacefully with the respondent in the ground floor. However, the respondent was arrogant and quarrelsome. Further, the respondent was avoiding physical intimacy with the petitioner.



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3.3. The respondent is not ready and willing to give birth to a child. Whenever the petitioner insisted on having a child, the respondent gave one reason or another for not having children of their own, instead suggesting adopting a child. The respondent is always concerned about her physique and is not at all ready to give birth to a child, while the petitioner and his family are very eager to welcome children.

3.4. Thereafter, the couple agreed between them to separate through mutual divorce. But, later the respondent disagreed. The attitude and acts of the respondent have caused mental cruelty to the petitioner. Hence, he has filed for divorce on the ground of cruelty.

RESPONDENT'S (WIFE) CASE

4. Case of the respondent is that after their marriage, the couple was living together in a rented house at Nandanam. The petitioner and the respondent had a normal sexual relationship and it is false that the respondent was unwilling to give birth to a child. The respondent is equally interested in having a baby.

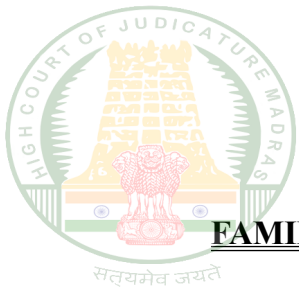


4.1. At the time of marriage, the petitioner had informed that

he would have to travel to South Africa. Therefore, both decided to stay in Nandanam and there were never any talks of moving out of Nandanam as claimed by the petitioner. The respondent's father was diagnosed with renal failure in the month of July 2019 and had to be on dialysis. For lack of sufficient facilities at her home town, she had her parents stay at the Nandanam House. As a daughter, it is her duty to take care of her parents.

4.2. The respondent discharged her duties as a dutiful wife to the petitioner and wanted to stay at her in-laws' place during the lockdown period so that their understanding would improve. However, things turned out otherwise and she was treated like a third person in that house.

4.3. The petitioner and the respondent were living together till April 2020. Thereafter, the petitioner withdrew from the society of the respondent without any valid reason. The respondent never caused any cruelty to the petitioner. Hence, the petition for restitution of conjugal rights. Accordingly, the respondent sought to dismiss the divorce petition.



FAMILY COURT

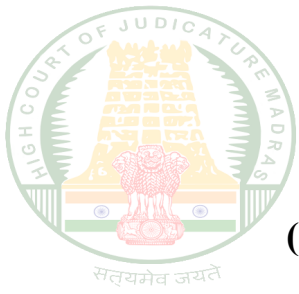
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5. The Family Court, after analyzing the oral and documentary evidence available on record, concluded that mere austerity of manners and occasional wordy altercations does not amount to mental cruelty. The petitioner failed to prove his case. Accordingly, dismissed the petition filed by the petitioner (husband) in O.P. No. 3713 of 2021 for divorce, and allowed the petition filed by the respondent (wife) in O.P. No. 2395 of 2020 granting a decree of restitution of conjugal rights, by a Common Judgment and Decree dated December 13, 2022.

6. Feeling aggrieved, the husband has preferred these Civil Miscellaneous Appeals.

7. Upon perusing the entire evidence available on record and the memorandum of grounds of appeal, the following points arise for consideration in these Civil Miscellaneous Appeals:

- (i) *Whether, in the facts and circumstances of this case, the wife's parents staying with the couple for a considerably long time, invades the privacy of the couple and amounts to cruelty ?*



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(ii) *Whether the averment that the wife is unwilling to bear a child is proved ?*

(iii) *Whether the petitioner has made out a case under Section 13 (1) (i-a) of H.M. Act ?*

(iv) *Whether the Family Court's Judgment and Decree is to be interfered with?*

ARGUMENTS

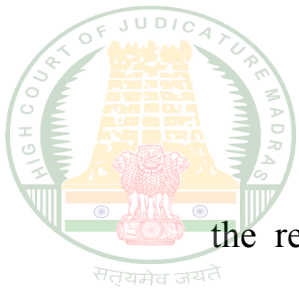
8. The learned Counsel for the petitioner / husband submitted that the Family Court's Order is against law and evidence. The Family Court wrongly dismissed the petitioner's divorce petition in O.P.No.3713 of 2021 and allowed the respondent's petition for restitution of conjugal rights in O.P.No.2395 of 2020, which amounts to great injustice to the petitioner. The respondent had decided even before marriage that she would not give birth to a child and insisted on adoption. Despite the petitioner's strong desire for a biological child, she refused, which amounts to mental cruelty, as held by the Hon'ble Supreme Court in *Samar Ghosh vs. Jaya Ghosh* reported in (2007) 4 SCC 511. Even though the petitioner helped her to clear her family debts, she continued her hostile



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and indifferent behaviour. Further, she refused to set up a separate matrimonial home and insisted that the petitioner live with her family, infringing his right to privacy. Accordingly, she prayed to allow the appeals, set aside the Judgment and Decree of the Family Court and dissolve the marriage between the couple by way of divorce on the grounds of cruelty.

9. On the other hand, the learned Counsel for the respondent / wife argued that the Family Court's decision is correct and does not require any interference. The petitioner failed to prove any serious allegations of cruelty, and petty quarrels and disagreements cannot be grounds for divorce. There is no evidence of any police complaints or serious disputes between the parties. She also filed a petition for restitution of conjugal rights, showing her willingness to continue the marriage. Caring for parents is a duty of both sons and daughters and the respondent merely fulfilled her responsibility. She was merely taking care of her ailing father. The parents of the respondent stayed along with the couple for lack of better medical facilities in their home town. And when the first floor of the rented house became vacant, they moved into it giving more space and privacy for the couple. It is absolutely false that



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the respondent is not interested in bearing a child. The respondent is equally interested in welcoming a child into the family. The couple was leading a normal marital life with the usual wear and tear until April 2020. Thereafter, without any reasonable cause, the petitioner withdrew himself from the society of the respondent. The respondent's father passed away in October 2020, and it is the moral obligation on the part of the petitioner to extend support and care during such hard times. Hence, the Family Court was right in allowing the wife's petition for restitution of conjugal rights and dismissing the divorce petition. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeals and uphold the verdict of the Family Court.

DISCUSSION

10. This Court has heard the arguments of the learned Counsels on either side in full and perused the entire materials available on record.

11. Cumulative reading of the evidence of P.W.1 / respondent and R.W.1 / petitioner would reveal the following. The marriage between the couple was solemnized on June 14, 2017. The petitioner was running



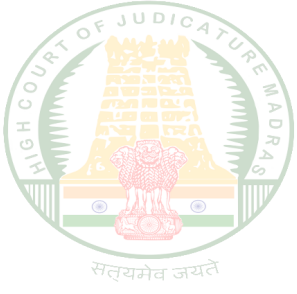
an Software Company at Chennai and the respondent was also working in Chennai. Before the marriage, the respondent along with her family was staying in the said rental house at Nandanam. After marriage, the couple set up their matrimonial house there itself as the petitioner had plans to travel to South Africa on a few months trip, and the respondent's parents moved to their home town. When the petitioner went to South Africa, the respondent's aunt stayed with her in the Nandanam rented house for companionship. Only in December 2019, the respondent's parents moved into the Nandanam rented house for her father's medical requirements and treatment. Thereafter, when the first floor portion of the said house became vacant, the respondent's parents moved into it, while the couple continued to stay in the ground floor. In January 2020, the respondent got employed in an MNC. Until then there were no disputes between the couple other than the usual wear and tear of marriage. There is no serious dispute with the above facts.

12. Admittedly, the respondent's father was sick. Being a daughter, it is an obligation on the part of the respondent to take care of him. The respondent states that there were no proper medical facilities at her home town and that is why she moved her parents into the Nandanam



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rented house. This might have affected the privacy of the couple, but cannot be termed to be cruelty. The respondent was merely fulfilling her duty as a daughter. She was looking after her ailing father suffering from renal failure. It is to be noted that when the first floor of the Nandanam rented house became vacant, her parents moved in there. As a daughter, she has a duty to care of her parents and merely maintaining her parents cannot be considered cruelty. The husband's claim that his privacy was affected due to the presence of his in-laws is not sufficient to constitute cruelty under the law. Further, the respondent has stated in her evidence that she never refused to relocate near the petitioner's office. She has stated that they looked for rental houses but they could not arrive at a consensus - what the respondent liked was not liked by the petitioner and vice versa. Even while assuming otherwise, the respondent could have wanted to stay closer to her ailing father which is also a valid concern. This cannot be termed as cruelty. Disputes do not mean cruelty. At its core, it is a difference of opinion between the spouses and it can only be resolved by themselves through mutual understanding. Accordingly, Point No.(i) is answered in favour of respondent and against the petitioner.

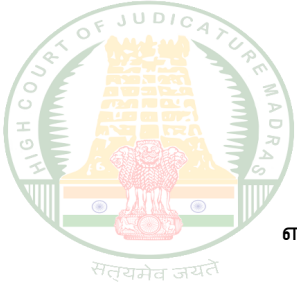


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13. The petitioner's main contention is that the unwillingness

of the respondent to bear a child has caused cruelty to him. P.W.1 / respondent in Paragraph No.15 of her chief affidavit has clearly stated that she is equally interested in having a baby. Conjoint reading of the cross-examination of R.W.1 / petitioner would show that the sexual relationship between the couple was normal and the respondent was also willing to bear a child. Relevant extract is hereunder:

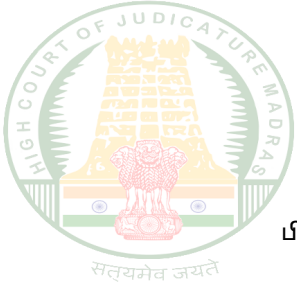
“திருமணத்திற்கு முன்பு நான் என் மனைவி மீது எல்லா வகையிலும் திருப்தியடைந்த பிறகு தான் திருமணத்திற்கு ஒப்புக்கொண்டேன் என்றால் சரிதான். நாங்கள் இருவரும் திருமணத்திற்கு முன்பு குறைந்தது 5 மணி நேரம் பேசினோம். அப்போது குழந்தை மற்றும் குடும்பத்தை பற்றி தான் பேசினோம். அதில் திருமணம் ஆகி 6 மாதத்திற்கு பிறகு குழந்தை பெற்றுக்கொள்ளலாம் என்று பேசிக்கொண்டோம். அதில் எல்லாம் சரியாக இருந்ததால் நான் திருமணத்திற்கு ஒத்துக்கொண்டேன். அந்த திருமணம் எனது தனிப்பட்ட விருப்பத்தின் பேரில் நடந்ததா, எனது பெற்றோர்கள் ஒப்புதலோடும் அனைத்து குடும்ப உறுப்பினர் ஒப்புதலோடும் நடந்தது. திருமணத்திற்கு முன்பு என் மனைவி அவரது பெற்றோர்களுடன் சென்னையில் வசித்து வந்தார்கள் என்பது எனக்கு தெரியுமா என்றால் என் மனைவி தான் தனது அத்தை உடன் வசிப்பதாக என்னிடம் கூறினார்..... நான் என் மனைவியுடன் ஒரு வாரத்தில்



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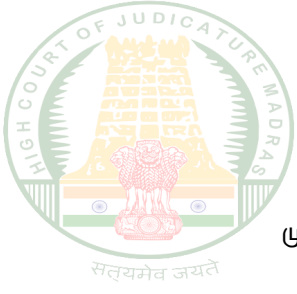
எத்தனை முறை தாம்பத்திய உறவில் ஈடுபடுவேன் என்றால் அவ்வப்போது நாங்கள் தாம்பத்திய உறவு ஈடுபடுவோம். எனக்கும் என் மனைவிக்கும் குழந்தை பெற்றுக்கொள்வதில் எந்த வித குறைபாடும் இல்லை என்றால் சரிதான். நான் என்னுடைய மனுவில் ஜெயந்தினி என்ற மனநல மருத்துவரிடம் நான் சிகிச்சைக்கு போனேன் என்று நான் சொல்லியுள்ளேன் என்றால் நான் மேற்படி மருத்துவரிடம் ஆலோசனைக்கு தான் சென்றேன். குடும்பத்தில் நடக்கும் பிரச்சினைக்கு தீர்வுகாணவேண்டி ஆலோசனைக்காக சென்றேன். நான் தான் முதலில் மேற்படி மருத்துவரிடம் சென்றேன் என்றால் சரிதான். நான் என் மனைவியை வற்புறுத்தி அதே மருத்துவரிடம் அழைத்துசென்றேனா என்றால் இல்லை. மருத்துவர் அவரை தனியாக வரச்சொல்லியிருந்தார். அவர் தனியாக போய் பார்த்தார். என்னிடம் காட்டப்படும் ஆவணம் ஜெயந்தினி என்ற மருத்துவர் எனக்கு வழங்கிய ஆலோசனை குறிப்பு என்றால் மேற்படி ஆவணத்தை மருத்துவர் என்னிடம் கொடுக்கவில்லை. வேறு குடும்ப நல ஆலோசகருக்கு சிபாரிசு செய்தார். என்னிடம் காட்டப்படும் ஆவணத்தில் என்ன எழுதியிருக்கிறது என்று எனக்கு தெரியாது. மேற்படி குடும்ப நல ஆலோசகரின் பெயர் என்ன என்றால் அது எனக்கு தெரியாது. என் மனைவி தான் அவரிடம் தொலைபேசியில் பேசி அவரை சந்திப்பதற்கு appointment வாங்கி அவரை சந்தித்தோம். எப்போது அவரை சந்தித்தோம் என்றால் மருத்துவர் ஜெயந்தினியை பார்த்ததிலிருந்து ஒரு வாரம் கழித்து பார்த்தோம். எனக்கு சரியாக மாதம் தெரியவில்லை. ஜெயந்தினி என்ற மருத்துவரிடம் 2004 முதல் சில மன



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பிரச்சினை எனக்கு இருந்ததாக சொல்லியுள்ளேன் என்றால் இல்லை. என்ன சொன்னேன் என்றால் தொழில் ரீதியாக பல பிரச்சினைகளை சந்திக்கவேண்டியுள்ளது என்றும், அதனால் மன அழுத்தம் ஏற்பட்டு துக்கம் பாதிக்கப்பட்டதாக சொல்லியிருக்கிறேன்..... என்னுடைய நிறுவனம் வடபழனியில் இருந்தது. அதனால் அலுவலகத்திற்கு அருகில் வீடு பார்க்க வேண்டும் என்று சொல்லி நான் அவரிடம் சண்டைபோட்டேன். அதற்கு அவர் நந்தனத்தை விட்டு அவர் வரப்போவதில்லை என்று என்னிடம் சண்டைபோட்டார். மீண்டும் எத்தனை நாட்கள் கழித்து நந்தனம் வீட்டிற்கு திருப்பி வந்தேன் என்றால் அடுத்தநாளே வந்துவிட்டேன். ஏனென்றால் என் நண்பர்கள் என் மனைவியிடம் பேசி என்னிடமும் சமாதானம் பேசி என்னை நந்தனம் வீட்டில் கொண்டுவந்து விட்டார்கள். கடைசியாக நந்தனம் வீட்டிலிருந்து மனைவியை விட்டு எந்த அறிவிப்பமின்றி பிரிந்து சென்றேன் என்றால் நான் முன்னதாகவே தெரிவித்துவிட்டு ஆகஸ்ட்டு 2019 ல் சென்றேன். குழந்தை பேறு சம்பந்தமாக எங்களுக்குள் விவாதம் நடந்தது. 2019 க்கு பிறகு நான் மீண்டும் என் மனைவியுடன் சேர்ந்த வாழ்ந்தேனா என்றால் சேர்ந்து வாழ்ந்தேன். நான் 2019ல் என் மனைவியை பிரிந்து சென்றேன் என்று சொல்வது தவறு என்றால் சரியல்ல. நான் எப்போது கடைசியாக பிரிந்தேன் என்றால் ஏப்ரல் 2020 அன்று பிரிந்து சென்றேன். என் மனைவி தாக்கல் செய்துள்ள மனுவை நான் படித்து பார்த்தேன். அதில் பத்தி 7ல் ஏப்ரல் 2020 வரை எங்களுக்குள் தாம்பத்திய உறவு இருந்தது என்று சொல்லியுள்ளார் என்றால் இருக்கலாம். ஏப்ரல் 2020 க்கு



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முன்பு கடைசியாக எங்களுக்குள் தாம்பத்திய உறவு இருந்தது என்றால் ஏப்ரல்

WEB COPY 2020 க்கு ஓரீரு மாதங்களுக்கு முன்பு வரை இருந்திருக்கலாம்.”

13.1. Perusal of the evidence would show that the couple was living together under one roof till April 2020, and leading a normal marital life. There is no concrete proof that the wife refused cohabitation for having a child. The petitioner has not let in any positive evidence to show that the respondent is unwilling to bear a child. In view of the above, the said contention of the petitioner deserves to be rejected. Point No.(ii) is answered accordingly.

14. From the evidence available on record, it can only be concluded that there was nothing more than natural wear and tear in the marital life of the petitioner and the respondent. There appears to be no cruelty caused to the petitioner. The petitioner has not made out a case for cruelty under Section 13 (1) (i-a) of H.M. Act. The petitioner abandoned his wife / the respondent without any sufficient cause. He failed to look after her when she would have needed him the most – the demise of the respondent's father. The burden of proving the reasonable excuse / cause lies on the person who withdrew himself from the society of the other



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spouse. The petitioner has not discharged the said burden. In these circumstances, this Court is of the view that the wife is entitled to restitution of her conjugal rights. The Family Court correctly concluded that the allegations of cruelty were not established. Since the husband left the matrimonial home without sufficient cause, the Family Court rightly ordered restitution of conjugal rights in favour of the wife. Point Nos.(iii) and (iv) are answered accordingly, in favour of the respondent and against the petitioner. Therefore, this Court finds no merit in these appeals filed by the petitioner / husband.

RESULT

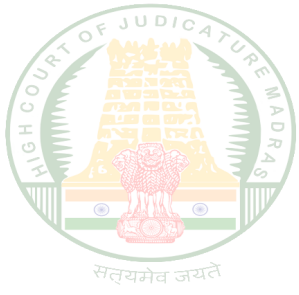
15. Accordingly, both CMAs are dismissed. In view of the facts and circumstances of this case, the parties shall bear their own costs.

[J.N.B., J.]

[R.S.V., J.]

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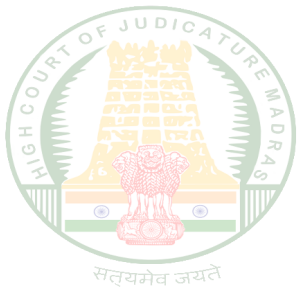
Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK



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The I Additional Principal Judge
I Additional Family Court
Chennai.



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J. NISHA BANU, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.1009 AND 1011 OF 2023

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