



C.M.A.(MD)Nos.456 and 457 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.08.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE M.D.SUMATHI**

C.M.A.(MD)Nos.456 and 457 of 2022

C.M.A.(MD)No.456 of 2022:-

P.Murugan

... Appellant

Vs.

C.Sivakami

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, to set aside the impugned order and decretal order dated 29-10-2021 made in OP.No.146 of 2020 on the file of Family Court, Sivagangai and allow this appeal and thereby to allow the petition for divorce in OP.No.146 of 2020 on the file of the Family Court, Sivagangai.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.K.C.Ramalingam



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C.M.A.(MD)No.457 of 2022:-

WEB CO P.Murugan

... Appellant

Vs.

C.Sivakami

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 19 of Family Courts Act, to set aside the impugned order and decretal order dated 29-10-2021 made in OP.No.75 of 2021 on the file of Family Court, Sivagangai and allow this appeal and thereby to dismiss the petition for restitution of conjugal rights in OP.No.75 of 2021 on the file of the Family Court, Sivagangai.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.K.C.Ramalingam

COMMON JUDGMENT
(By G.R.Swaminathan, J.)

The marriage between the appellant/Murugan and the respondent/Sivakami was solemnized on 11.06.2000 at Sri Pushpavaneswar Soundranayagi Temple, Thiruppuvanam as per Hindu rites and customs. It was the first innings for the appellant. The respondent had earlier married one Murthy and the said Murthy had



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unfortunately passed away in the year 1999 itself. Through the first marriage, the respondent herein had begotten a girl child. Through the wedlock between the parties herein, a male child was born on 06.06.2003. The appellant is employed in the education department as an Assistant and the respondent is a P.G.Assistant (Tamil) in a government school. It is too obvious that the respondent is earning a far higher salary compared to the appellant herein. Be that as it may, the relationship between the parties had suffered a breakdown by 2016. The husband had left the matrimonial home in the same year. He filed O.P.No.146 of 2020 on the file of Family Court Sivagangai seeking divorce on the ground of cruelty and desertion. As a counter claim, the respondent herein filed O.P.No.75 of 2021 seeking restitution of conjugal rights.

2.The appellant examined himself as P.W.1 and marked Exs.P1 to P3. The respondent examined herself as R.W.1. One Raghubathi was examined as R.W.2 and Exs.R1 to R4 were marked. After hearing both the parties and considering the evidence on record, the Court below vide order dated 29.10.2021 dismissed O.P.No.146 of 2020 and allowed the counter claim. Challenging the same, these civil miscellaneous appeals have been filed.



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3.The appellant and the respondent are remaining separate from 2016 onwards. The appellant having left the matrimonial home, cannot accuse the wife of desertion. The respondent after obtaining an order for restitution of conjugal rights as early as on 29.10.2021, till date has not chosen to enforce the same. From this single circumstance, one can safely conclude that the respondent is also not interested in continuing the marital relationship.

4.Section 13(1-A)(ii) of the Hindu Marriage Act, 1955 reads as follows:-

“(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground -

(i)...

“(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.”



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We are of the view that even at the appellate level, this point can be pressed into service. The Hon'ble Supreme Court in the decision reported in **2023 Live Law (SC) 353 (Shri Rakesh Raman Vs. Smt.Kavita)** had held that long separation between the parties itself would constitute cruelty.

5.In view of these twin reasons, namely, non-resumption of conjugal rights and the long separation between the parties, we are of the view that the marital tie between the two deserves to be snapped. The impugned order is set aside.

6.The appellant having fathered a child has certain duties to discharge. Of course, the son is now aged about 23 years and he cannot make any claim for maintenance. Till 2016, obviously, the appellant would have been sharing his responsibility along with the respondent. But post 2016, the appellant does not appear to have contributed a single pie. Therefore, the appellant is directed to deposit a sum of Rs.3,00,000/- as a goodwill gesture within four months the credit of O.P No.75 of 2021 and the son of the parties can withdraw the same. Once the deposit is



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made, intimation will be given to the respondent herein. If there is no withdrawal within four weeks thereafter, the amount will be invested in a nationalised bank in an interest bearing account.

7.These civil miscellaneous appeals are allowed accordingly. No costs.

(G.R.S. J.) & (M.D.S. J.)
18.08.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

The Family Court,
Sivagangai.

Copy to:

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



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