

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.1372 of 2015
and M.P.Nos.1 and 2 of 2015

Candida Justina Appellant / Respondent
Vs.

Sunderbabu Respondent / Petitioner

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, against the Judgment and Decree, dated 20.04.2015 made in M.O.P.No.184 of 2009 on the file of the Family Court, Puducherry.

For Appellant : Mr.S.Subbiah

For Respondent : Mr.S.Vimal

JUDGMENT

(Judgement of the Court was delivered by
P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal is directed against the Judgment and Decree, dated 20.04.2015 passed in M.O.P.No.184 of 2009 by the Family Court at Puducherry, dissolving the marriage, as prayed for by the respondent / husband.

2. The wife is the appellant in this Civil Miscellaneous Appeal. The averments of the respondent / husband in nutshell are as follows :

(i) The appellant and the respondent married on 09.06.2008 at Anderea Church, Reddiarpalayam, Pondicherry and followed by a reception and the same was registered before the Oulgaret Municipality on the same day. The marriage is arranged one. During the first night, the appellant had refused to consummate the marriage with the respondent / husband and had requested the husband with folded hands to postpone the consummation of marriage to later date. The husband also agreed to the same on humanitarian grounds. Even after that she kept

distance from the husband and his family members and her behaviour was indifferent. She had repeatedly expressed aversion to sex life and deceived the husband the matrimonial bliss. Immediately after marriage, i.e., on 11.06.2008, the appellant asked the respondent / husband for a divorce. She further stated that she is not interested in matrimonial life and the marriage was forced upon her by her parents and elders.

(ii) She also informed that her consent for marriage was obtained forcibly by her parents and she had only preferred to become a Nun. The marriage was not consummated and the husband was awaiting consummation of marriage. The spouses came to the matrimonial home on 14.06.2008 from appellant's parents house and immediately on the next day, 15.06.2008, the appellant asked her husband to take her to her parent's house. In spite of his advice, she persisted and therefore, the husband took her to her father's house. She returned to the conjugal home only after a week.

(iii) The appellant's aversion to the matrimonial life made the respondent's life a misery and he felt the agony of living with an unwilling wife. Suddenly on 24.08.2008, the appellant packed all her things and stated that she is going to her parent's house and will not come back at all to the shock of the respondent and his parents. When asked she told that she is not interested in marriage life and the respondent and the respondent's parents tried to convince her. On 30.08.2008, the appellant had left the conjugal home and went to her parent's house with all her clothes and jewels. The respondent immediately went and informed the appellant's parents about the happenings and they told that they would convince and send back the appellant within 15 days.

(iv) The appellant came back to the conjugal home after 20 days. After few days, when the husband tried to consummate the marriage, the wife had stated that she will commit suicide if he tries to consummate with her. On 18.10.2008, the appellant's father came to the conjugal home and took the appellant to his house saying that he will bring the appellant back after 15 days. Even after a month, she did not turn up. Therefore, the husband went to the appellant's house and called but she refused to come back. Thereafter, on 16.11.2008, he sent his elder sister and brother-in-law to the appellant's house to convince and bring her back, but they were abused by the parents of the appellant and asked the respondent to come. When the respondent again went, he was also abused and assaulted by the appellant's father and one Murali.

3. The respondent sent legal notice on 15.02.2009, calling upon the appellant for mutual divorce, but she sent reply dated 03.03.2009 stating vexatious and false allegations.

The allegations about peeping through the hole in the window by the mother of the husband and the demand of dowry are all false.

4. The averments of the appellant / wife in her counter are as follows :

(i) The marriage is admitted. Non-consummation is false. On the date of marriage itself, the appellant and the respondent have got consummated the marriage. When the newly wedded couple were in the bed room at odd hours, the mother of the husband used to peep through the hole in the window. The respondent's mother on the next day morning itself, had indecently asked his son in the presence of the appellant as to whether he was satisfied and also to tell the number of times he had consummated with his wife on that night. The appellant shocked to hear that type of conversation between the mother and his own son.

(ii) The respondent's mother was often demanding more dowry from the appellant on many occasions. On the retirement of her father from service, the respondent's mother tortured the appellant to obtain four sovereigns of bangles and more money from her father. Instead of taking back the appellant to the matrimonial home, the husband has chosen to send a legal notice on 15.02.2009, demanding her to give her consent for the dissolution of the marriage.

5. The husband and wife being petitioner and wife before the trial Court examined themselves as witnesses. Excepting themselves, no other witness was examined. On the side of the petitioner, 7 exhibits were marked.

6. The learned trial Judge, after analysing both the oral and documentary evidence, granted divorce as prayed for in the petition filed by the respondent / husband.

7. The learned counsel appearing for the appellant vehemently argued that the trial Court is not correct in entertaining the petition for divorce under Article 242 of French Code Civil in as much as the Courts in India are not bound by French Code any more, as the Union Territory of Pondicherry is governed under the provisions of the Christian Marriage Act No.15 of 1872 and the Divorce Act No.4 of 1869. It is further contended that the respondent / husband had failed to prove his case falling within Section 10(1)(vii) and 10(1)(x) of the Divorce Act, 1869. The learned trial Judge had not rendered any finding as to whether the appellant had wilfully refused to consummate the marriage and the marriage had not therefore been consummated. Without rendering any such finding, the decision of the learned trial Judge is erroneous.

8. It is the further contention of the learned counsel for the appellant that when there is neither pleadings nor evidence to show that the wife had treated the husband with such cruelty as to cause a reasonable apprehension in the minds of the respondent, that it would be harmful or injurious for him to live with the appellant, the trial Court cannot import into any other interpretation relating to the act of cruelty.

9. The learned counsel appearing for the respondent per contra contends that the trial Court, after considering the evidence of both sides, has rightly found that the marriage was not consummated and there was also cruelty caused by the wife to the husband and therefore, the order of the trial Court, dissolving the marriage is perfectly correct and the same is to be upheld.

10. It is seen from the records that the petition has been filed under Article 242 of the French Code Civil, for dissolution of the marriage. Though French Code was applicable initially at the time of Independence, now pursuant to the enactment of the Pondicherry (Extension of Laws) Act 1968 (No.26 of 1968), specified in Part I of the Schedule and Part II of the Schedule has been extended to Pondicherry, subject to the modification, if any specified in the Schedule. The Indian Christian Marriage Act, 1872 is also found extended to Pondicherry. Therefore, the Divorce Act, 1869 is applicable to the parties. Misquoting the provisions in the petition, does not preclude the parties from getting the relief, as per law applicable to them. Therefore, the contention of the learned counsel for the appellant that entertaining the petition itself is illegal cannot be accepted.

11. The fact remains that the marriage between the appellant and the respondent took place on 09.06.2008 and the same was registered. After few months, the appellant had been living with her parents. From the averments of the petition, it is seen that the dissolution of marriage is sought, one on the ground of non-consummation of the marriage and second on the ground of cruelty and mainly due to non-consummation of the marriage.

12. The relevant provision under Divorce Act, 1869 is extracted below :

"10. Grounds for dissolution of marriage - (1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent -

...
(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

...
(x) has treated the petition with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent."

13. It is averred by the respondent / husband that the marriage was never consummated and the wife had repeatedly expressed aversion to sex life and deceived the respondent, the matrimonial bliss. The wife's aversion to the matrimonial life made the respondent's life a misery and the respondent felt the agony of living with an unwilling wife. Thus, it is clearly averred by the respondent that the marriage was never consummated and due to that, he suffered with mental agony, resulting in cruelty.

14. The husband examined as P.W.1. In his evidence, has stated what he averred in the petition. The wife's contention is that the marriage was consummated between the appellant and the respondent and she also averred and deposed so to that effect.

15. Here, the husband pleads non-consummation of marriage, whereas the wife pleads that marriage has been consummated between them.

16. The learned counsel for the appellant argued that the husband has not taken any steps to subject her wife for medical examination, so as to establish that marriage has not consummated. But subjecting to medical examination is legally under the option of the wife and she cannot be compelled to go for medical examination. When she claims the existence of a fact that marriage has been consummated and subjecting herself for medical examination is at her option, she could have very well established the fact she pleaded by undergoing medical examination.

17. It is pertinent to note that the appellant, in her cross-examination has categorically deposed that she had no problem with her husband and she was sent from the home on demand of dowry by her mother-in-law. Though she pleaded and deposed about demand of dowry by her mother-in-law, she has not given any details about the demand and there is also no corroborative evidence for that. The marriage was held on 09.06.2008 and she left the matrimonial home permanently in the end of August of the same year. She has not even lived three months in the matrimonial home and even in those three months,

she was taken to her parent's house at her instance and stayed there weeks together, as per the evidence of P.W.1, the husband.

18. Another aspect to be looked into is that the appellant / wife had not filed any petition for restitution of conjugal rights. Had she really interested in joining with the husband, she would have filed the same. It is also a corroborative factor for the respondent's contention.

19. The averments of the appellant / wife that her mother-in-law peeped into the hole in the window during night hours and the conversation with his son about consummation are all not believable and acceptable. The fact that the wife had lived only short period in the matrimonial home and even in that short stay, she often left for her parental home and further witnessing the peeping through the same hole in the window and non-closing the hole are the factors to hold that the evidence of the wife raising allegations against her mother-in-law is unbelievable.

20. Sex plays an important role in matrimonial life. Refusal for consummation will definitely lead to mental agony and it amount to cruelty. In this case, the husband, in his evidence has categorically says that he attempted several times and the wife was unwilling to consummate. He says that she refused with folded hands not to consummate and in another occasion, she said that she is not interested in married life and she told that she would commit suicide if he attempts. Thus, it is clear that the wife has wilfully refused to consummate the marriage. Such non-consummation amounts to mental cruelty, which falls well within the definition of Section 10(1)(vii) & (x) of the Divorce Act, 1869. Therefore, this Court is of the considered view that the husband established the grounds of wilful non-consummation of marriage, resulting in mental cruelty deserving for dissolution of marriage.

21. The trial Court has rightly dissolved the marriage between the parties. For the aforesaid reasons, the marriage between the appellant and the respondent held on 09.06.2008 is to be dissolved.

In fine, the Civil Miscellaneous Appeal is dismissed, confirming the Judgment and Decree, dated 20.04.2015 made in M.O.P.No.184 of 2009 on the file of the Family Court, Puducherry. Consequently, connected miscellaneous petitions are closed. The parties shall bear their own cost.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

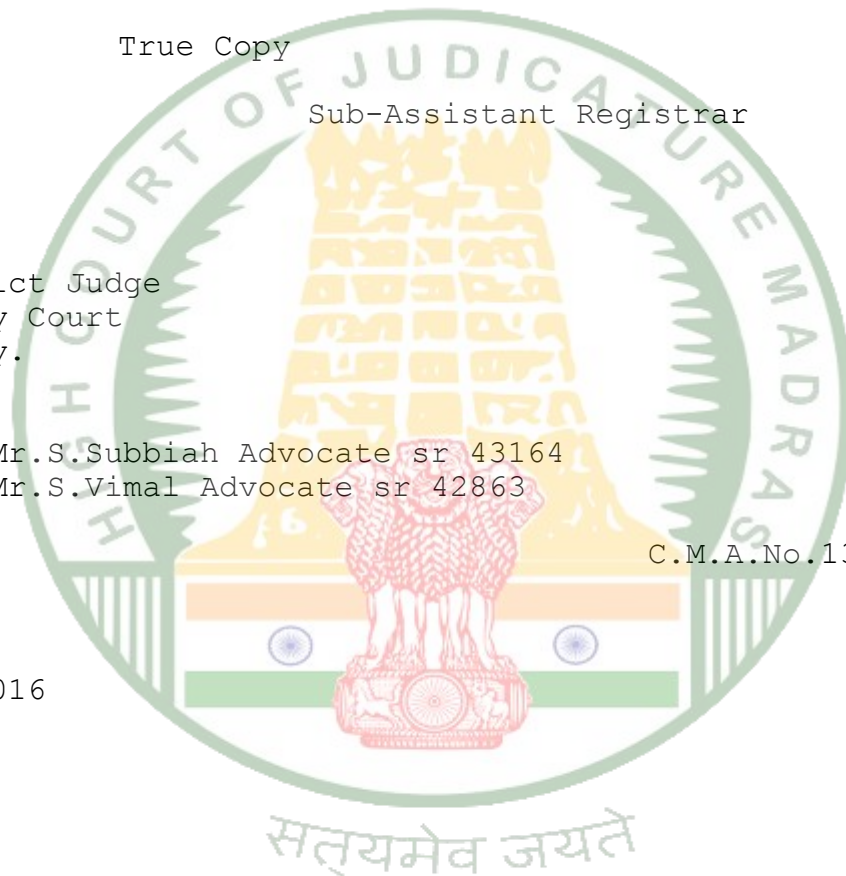
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To
The District Judge
The Family Court
Puducherry.

+1 cc to Mr.S.Subbiah Advocate sr 43164
+1 cc to Mr.S.Vimal Advocate sr 42863

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