

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.2114 of 2016
and
C.M.P.No.15289 of 2016

Vinay Kumar Shet ... Appellant/Respondent

Vs.

Swapna ... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, against the judgment and decree of the Additional Family Judge, Additional Family Court, Coimbatore dated 24.2.2016 made in HMOP No.952/2015.

For Appellant : Mrs.T.Jayalakshmi for
M/s.Paul & Paul

For Respondent : Mr.Chandrasekar

J U D G M E N T

(made by S.MANIKUMAR, J.)

Challenge in this appeal is to the judgment and decree in HMOP No.952/2015 dated 24.2.2016 on the file of the Additional Family Court, Coimbatore, by which, the marriage between the parties dated 16.5.1994, has been dissolved by a decree for divorce.

2. Questioning the correctness of the judgment and decree, husband has filed the instant appeal, contending inter alia that the Additional Family Court, Coimbatore, ought not to have held that the acts of the appellant had caused mental agony and suffering to the respondent, when the same are not substantiated

by any documentary evidence.

3. It is also submitted that the Additional Family Court has not given valid reasons for granting divorce on the ground of cruelty. Another contention made in this appeal is that there is no documentary evidence. Appeal has been filed with a delay. Respondent has entered appearance through a counsel, whose name is shown in the cause list. Considering the manner in which the lis between the parties has been decided, by granting a decree of dissolution of marriage on the grounds of cruelty, we heard Mr.Chandrasekar, learned counsel for the respondent also.

4. Perusal of the impugned judgment and decree shows that before the Additional Family Court, Coimbatore, respondent-wife has examined her as PW1 and marked Ex.P1 - marriage invitation dated 16.5.1994, Ex.P2 - marriage photograph and Ex.P3 - xerox copy of bank passbook of the petitioner/wife. Husband, did not appear and hence he has been set ex-parte. After going through the oral testimony and the above said exhibits, the learned Additional Principal Judge of Additional Family Court, Coimbatore, has observed that the testimony of PW1/Wife was uncontravorted. By observing that PW1/wife has deposed as to the acts of the appellant/husband caused mental agony and suffering, and thus the same comes within the purview of cruelty, under section 13(1)(i-a) of the Hindu Marriage Act, 1955, held that wife has established her case for the relief sought for.

5. For the purpose of brevity, paragraph Nos.8 and 9 of the impugned order are extracted here under:

"8. PW1 have deposed as to the acts of the respondent which caused PW1 mental agony and suffering. The acts of the respondent comes within the purview of "cruelty" as stated u/s 13(1)(i-a) of Hindu Marriage Act.

9. In other words, this Court holds that the petitioner has established the grounds u/s 13(1)(i-a) that is, 'cruelty' which entails him with the relief sought for by him. Accordingly this point is answered in the affirmative."

Accordingly, the learned Additional Principal Judge, Additional Family Court, Coimbatore has dissolved the marriage between the spouses solemnised on 16.5.94 and granted a decree for divorce.

6. Going through the impugned judgment with reference to the grounds raised in the instant appeal, we are of the considered that the learned Additional Principal Judge, Additional Family Court, has not even referred to the alleged acts of cruelty, stated to have caused mental agony and suffering, to invoke Section 13(1)(i-a) of the Hindu Marriage Act, 1955. Merely by recording that PW1/wife has deposed as to the acts of the

appellant herein/husband, the learned Judge, has granted a decree for divorce. Court below ought to have briefly recorded the alleged acts of cruelty. Though ex-parte judgment need not be more elaborate, yet there should be a brief record of facts and discussion on the evidence adduced with reference to the acts of cruelty, and as to how the court has come to the conclusion that Section 13(1)(i-a) of the Hindu Marriage Act, 1955 is attracted. Going through the impugned judgment, we are of the considered view that there is conspicuous omission of the above.

7. Thus, for the reasons stated supra, we deem it fit to set aside the impugned judgment and decree dated 24.2.2016 made in HMOP No.952/2015 on the file of the Additional Principal Judge, Additional Family Court, Coimbatore and allow the appeal. Learned Additional Principal Judge, Additional Family Court, Coimbatore is directed to provide an opportunity to the appellant herein/husband and proceed further in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Asr

Copy to:

The Additional Principal Judge
Additional Family Court, Coimbatore

+1 cc to M/s.Paul and Paul Advocate sr 54839
+1 cc to Mr.S.Chandrasekar Advocate sr 54717

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