

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2016

CORAM:

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

C.M.A.No.677 of 2011

G.Suresh Murthy Appellant / Petitioner

Vs.

Uma Respondent / Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, against the fair and decretal order, dated 28.12.2010 passed in O.P.No.1947 of 2008 on the file of the II Additional Principal Judge, Family Court, Chennai.

For Appellant : Mrs.Rita Chandrasekaran
for M/s. Aiyar & Dolia

For Respondent : Mr.S.V.Karthikeyan for
Dr.S. Gopinath

JUDGMENT

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

The husband, as appellant has challenged the order, dated 28.12.2010 passed in O.P.No.1947 of 2008 by the II Additional Principal Judge, Family Court at Chennai, dismissing the O.P for Divorce, on the grounds of cruelty and desertion.

2. The appellant, as petitioner has filed the petition in question under Section 13 (1) (i-a), (i-b) of the Hindu Marriage Act, 1955, praying to dissolve the marriage, held in between him and the respondent.

3. The averments of the petition in brief are :

(i) The petitioner married the respondent as per Hindu rites and customs on 19.06.2003 at Padi, Chennai - 600 050. The marriage was arranged one. The petitioner being only son to his parents was confident of helping them at their old age with the help of the respondent, but the respondent ever from the date of marriage, wanted to separate the petitioner from his parents and wanted to live with her parents only. The

respondent often left the matrimonial home from the inception of the marriage, even without a courtesy to inform the petitioner and on several occasions stayed in her parents home for more than a fortnight on each occasion. Once her mother-in-law needed assistance for undergoing cataract surgery, she purposely left the matrimonial home and evaded the assistance. The respondent tried to threaten the petitioner and his parents, saying that she will commit suicide by consuming poison and putting blame on them. She was repeatedly creating mental agony to the petitioner by often shouting at him and insulting him at public.

(ii) On one occasion during the course of an altercation, the respondent threw away sacred mangalyam and she has not repented to it so far. She even went to the extent of suspecting the sexual potentiality of the petitioner. The respondent deserted the petitioner on 14.01.2005, the auspicious Pongal day, without informing the petitioner or his parents. On 02.04.2005, she along with 8 persons came to the petitioner's parents and asked to put up a separate family. The petitioner took a house for rent and put up a separate family on 19.06.2005, only to satisfy the respondent. The respondent wanted to dictate terms to the petitioner and his parents. She wanted to succeed in her attempts by hook or crook, by way of threatening through her brothers and relatives. This has forced the petitioner to move this Court for Anticipatory Bail.

(iii) Before putting up separate family, when she left the matrimonial home on 01.04.2005, legal notice was issued by the petitioner on 29.04.2005. Afterwards, the respondent was brought by her mother and relatives to the matrimonial home on 12.05.2005. After setting up separate family in rented house on 19.06.2005, she has taken all of her belonging including the jewels and left the matrimonial home finally on 30.10.2006. Therefore, the petitioner caused legal notice on 18.01.2007. She was not responding to the legal notice, hence, the petitioner caused another and final legal notice, dated 29.05.2008, calling upon the respondent to state whether she is willing to agree for divorce by mutual consent, for that she sent a reply in her letter, dated 09.06.2008. The respondent has no interest to rejoin the petitioner and it may not be possible for the petitioner to live with her, when her past conducts are recollected. Therefore, he filed this petition.

4. The respondent in her counter contends as follows :

(i) The marriage is admitted. All the allegations of cruelty and desertion are denied. Only as per the wish of the petitioner, they had separate living. They lived happily in their separate house. The respondent is very affectionate towards her husband and in-laws. The respondent is not interested for joining in any job and she wants to be a good

house wife, but this was not liked by her in-laws and the trouble started only on this issue. Only with permission, she visited her parents and she never threatened the petitioner and his parents that she would commit suicide by consuming poison. She never threw her Thali, as alleged in the petition. She did not know the reason for the petitioner moving Anticipatory Bail Application.

(ii) Only to be away, the petitioner is advised by his parents to avoid the respondent and parents want to marry a rich girl to their son. The respondent did not reply to the notice, as she wants to live with her husband. The petitioner has created false statements, only to make a ground for divorce. Hence, the petition has to be dismissed.

5. The petitioner and the respondent were examined as P.W.1 and R.W.1 respectively. On the side of the petitioner, Ex.P.1 to Ex.P.8 and on the side of the respondent, Ex.R.1 to Ex.R.6 were marked. The Family Court Judge, after analysing the above oral and documentary evidence, dismissed the petition, as the petitioner has failed to establish his case.

6. The point for consideration in this Appeal is whether the appellant / petitioner is entitled to get the relief of divorce as prayed for, on the grounds of cruelty and desertion and whether this appeal has to be allowed.

7. Heard the learned counsel for the appellant / petitioner and also the respondent.

8. The learned counsel appearing for the appellant strenuously argued that the Court below failed to see that the respondent falsely improved her case, regarding removal of Thali while deposing, without any pleadings; that the contents of the letter written by the respondent are unusual and artificial; that living away from her husband will also amount to cruelty; that the respondent took away the Stridhana property, including the motor cycle to her parental house, which shows that she is not interested in leading the matrimonial life and that the respondent has filed documents to the effect that the appellant / petitioner is an impotent, which does not reveal anything as such and therefore, she is in the habit of meting out cruelty to the petitioner in one form or another.

9. The learned counsel appearing for the respondent, per contra argued that the trial Court, in a well considered order, rejected the contentions of the petitioner that the respondent though denied the allegation about throwing away the Thali, explained in her evidence, how the sacred Thali is in the hands of the petitioner and that the respondent narrated her natural affection towards her husband in her letter. He further contends that the respondent was made to be away from the appellant / petitioner, as the appellant /

petitioner only opted transfer to Madurai from Chennai and that the appellant / petitioner never attempted to take the respondent to Madurai and that the document produced by the respondent in the proceedings, to show that both the petitioner and respondent went for medical check up, as they have no issues.

10. It is admitted fact that the marriage between the appellant / petitioner and the respondent was solemnized, as per the Hindu rites and customs on 19.06.2003, as arranged by the elders of both the spouses. The spouses were put up separately in a rented house in June 2005 and they lived there till the petitioner got his transfer to Madurai.

11. The present petition has been filed on the grounds that the respondent has caused cruelty to the petitioner and also left the matrimonial home deserting the petitioner.

12. Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 reads as follows :

"has, after the solemnization of the marriage, treated the petitioner with cruelty"

Section 13(1) (i-b) of the said Act reads as follows :

"has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition"

13. Before analysing the evidence regarding cruelty in this case, it is note worthy to cite the following the Supreme Court Judgment.

14. In Sobha Rani v. Madhukar Reddi, reported in (1998) I SCC 105, the Supreme Court held as follows :

"The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately,

it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

15. In the back drop of the above ruling, this Court has to analyse the evidence that whether any conduct complained of is grave and weighty to constitute cruelty. It is also to be borne in mind that the cruelty should be beyond the wear and tear of matrimonial life and weighing the allegations and conduct about cruelty should depend on the status of spouses atmosphere, in which they live.

16. The main conduct of cruelty focussed by the appellant is that the respondent threw away the sacred mangalyam (Thali). The respondent denied the allegation in her counter saying that she never threw away mangalyam. But when she was questioned, while in box, she explained that she questioned her husband why he tied mangalayam, when he gave importance to others than her. Her husband asked to give the mangalyam he tied, hence, she removed the mangalyam and gave it to her husband and the said mangalyam is with him. Therefore, consequent to the wordy altercation between the spouses, the respondent removed her mangalyam and handed over to her husband at the spur of the movement.

17. The Supreme Court in S.Hanumantha Rao v. S.Ramani, reported in AIR 1999 SC 1318 has held as follows :

"The removal of the Mangalsutra by the wife, at the instance of her husband does not amount to mental cruelty, within the meaning of Section 13 (1) (i-a) of the Act."

18. In this case on hand, the respondent gave away the mangalyam, at the instance of her husband during a wordy altercation. It is also not the case of the appellant / petitioner that she threw away the mangalasutra and walked out of her husband's house. Therefore, the above conduct does not attract cruelty.

19. The next conduct shown by the appellant / petitioner regarding cruelty is that the respondent suspected the sexual potentiality of the appellant / petitioner. Only because of marking of medical reports on the side of the respondent, it could not be said that the respondent suspected sexual potentiality of the appellant / petitioner. Neither in the letter sent by the respondent to her husband, Ex.P.7, nor in

the evidence, she has stated about sexual potentiality of the appellant / petitioner. Only the appellant / petitioner in his petition as well as in the proof affidavit says so. It is admitted by the appellant / petitioner during cross-examination that both the spouses went for medical examination, as they had no issues. The intention of the respondent in marking these documents is only to establish her contention that the appellant / petitioner wants to get a divorce from the respondent, to marry another girl by one or other reasons, particularly by making false allegation as to cruelty against the respondent as alleged in her counter.

20. Another conduct leads to cruelty shown is that the respondent threatened the appellant / petitioner and her parents through her relatives, which forced the appellant / petitioner to move this Court for Anticipatory Bail. The respondent, in her evidence says that she does not know what for the appellant / petitioner moved for Anticipatory Bail. Nothing has been brought forth as to the existence of the complaint against the appellant / petitioner to move for Anticipatory Bail. Therefore, the above contention is to be ignored.

21. The other conducts, that the respondent often left the matrimonial home without informing the appellant / petitioner and that she evaded assistance to her mother-in-law during eye surgery and that she threatened to commit suicide are denied by the respondent. Except the evidence of the appellant / petitioner, there is no acceptable evidence. Even according to the appellant / petitioner, there is no whisper of similar allegation as against the respondent, after setting up of separate family from 19.06.2005. Though the respondent is alleged to have left the matrimonial home on 14.01.2005, she was brought back to the matrimonial home by her relatives on 12.05.2005 and the spouses set up separate residence in a rented house and started living from 19.06.2005 till 30.10.2006. Whatever cruelty that has been alleged prior to 19.06.2005 is to be construed as condoned by the appellant / petitioner.

22. The Division Bench of the Delhi High Court in J.L.Nanda v. Veena Nanda, reported in II 1983 DMC, 135, affirmed by the Hon'ble Supreme Court, reported in AIR 1988 SC 407, held as follows :

"In any case, all these alleged incidents stood condoned by the appellant first by giving in to the wishes of the respondent to live separately by taking a house in Kidwai Nagar, and then a child being born to them in August, 1964 and another child being conceived in 1966."

23. Following the above ruling, the above alleged conducts need not be considered. Even otherwise, the above conducts cannot be considered to be grave and weighty beyond the wear and tear of married life.

24. Yet another conduct focussed by the appellant / petitioner is that the respondent took away all her Stridhana properties, including the motor bike to her matrimonial home, when he was transferred to Madurai. The appellant / petitioner in his cross-examination admits that he only opted and got transfer from Chennai to Madurai. The reason given by him is that he could not tolerate the misdeeds of the respondent. He has not said what are the misdeeds she committed during separate living from 19.06.2005 to 30.10.2006. The conduct he alleges during that period is that she called him over phone during office hours and tortured him and except his evidence, there is no acceptable evidence even for that conduct. When the appellant / petitioner got transfer on his own volition and was not taking her to Madurai, there is a reasonable cause for the respondent to live with her parents. It is also pertinent to note that there is no material to show that the appellant / petitioner made an attempt to take the respondent to Madurai, after opting transfer to Madurai.

25. For the aforesaid reasons, we are of the view that the trial Court has rightly rejected the ground of cruelty.

26. As far as desertion is concerned, though the respondent is alleged to have deserted her husband on 14.01.2005, the spouses started living separately from 19.06.2005. After separate living, she is alleged to have left the matrimonial home on 30.10.2006. Therefore, the date of desertion is only 30.10.2006 and that the present Divorce O.P was filed on 18.06.2008. Therefore, within 20 months from the date of alleged desertion, the present petition has been filed. As per Section 13 (1) (i-b) of the Act, desertion should be for a continuous period of not less than 2 years, preceding the presentation of the petition. That apart, as already pointed out, there is sufficient cause for the appellant / petitioner for living with her parents, as the appellant / petitioner opted transfer for Madurai and has not taken any steps to take her to Madurai. Therefore, the ground of desertion does not attract and fails. The trial Court has rightly rejected the Original Petition on both the grounds and dismissed the petition.

27. We do not see any reason to interfere with the findings and conclusions of the trial Court and accordingly, the Civil Miscellaneous Appeal stands dismissed without cost

and the order, dated 28.12.2010 passed in O.P.No.1947 of 2008 on the file of the II Additional Principal Judge, Family Court, Chennai is confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The II Additional Principal Judge,
Family Court, Chennai.

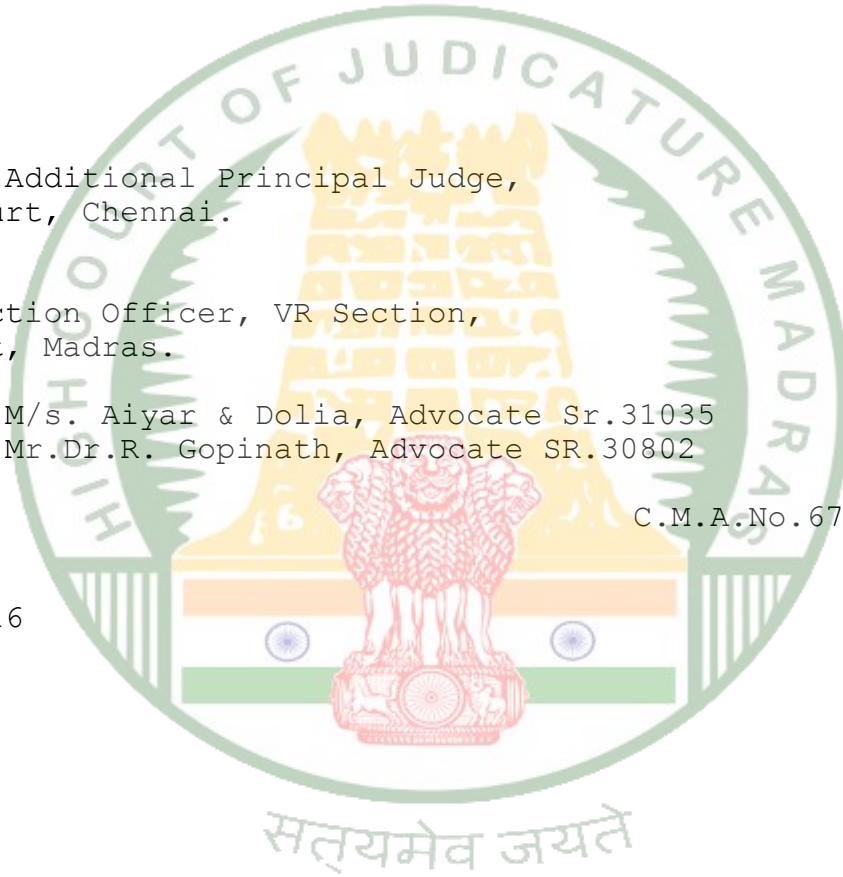
2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to M/s. Aiyar & Dolia, Advocate Sr.31035

+ 1 cc to Mr.Dr.R. Gopinath, Advocate SR.30802

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