

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..11..2016

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.M.A No. 1134 of 2007

Vallabhi .. Appellant
Vs.
R.Rajasabhai .. Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the fair and decretal order dated 27.02.2007, passed in F.C.O.P. No. 2135 of 2005 on the file of the Principal Family Court, Chennai.

For Appellant : Mrs. Geetha Ramaseshan

For Respondent : Mr. N. Jayabalan

JUDGMENT

PUSHPA SATHYANARAYANA.J

Happy is the man who finds a true friend, and far happier is he who finds that true friend in his wife. A successful marriage requires falling in love many times, always with the same person. Let the wife make the husband glad to come home, and let him make her sorry to see him leave.

2. Nowadays, marriage has become biggest gamble in human life. We never know when and how this relation sours and ends. Couples in urban areas split up more often than we might think. Unfortunately, couples often arrive for remedy with some knowledge that the relationship is either hanging by a thread or even that one or both members is seeking a sort of permission to dissolve the connection. There are cases where one of the partners approaches the court for a divorce, citing grounds such as cruelty or adultery. Such cases are mostly bitter and become a conflict about money, mainly because of vengeance.

3. This case presents a very unpleasant tale of an Ortho Doctor in Sivakasi and a B. Com. Graduate fighting a bitter matrimonial battle.

4. The unsuccessful wife has come up with the instant Civil Miscellaneous Appeal assailing the order of the Principal Family Court, Chennai, dated 27.02.2007 passed in F.C.O.P. No. 2135 of 2005 dismissing the Petition filed by the appellant / wife for divorce under Section 13 (1)(ia) of the Hindu Marriage Act on the ground of cruelty; for Rs. 50 Lakhs towards permanent alimony under Section 25 of the Act; and for permanently custody of her two minor sons under Section 26 of the Act.

5. In this Judgment, for the sake of convenience, the parties are referred to as arrayed in the petition.

6. Shorn off unnecessary details, the indispensable skeletal material facts necessary for appreciation of the controversy, in brief, are as follows:-

The petitioner / wife and the respondent / husband tied nuptial knot on 18.06.1995 as per the Hindu rites and customs, in Sivakasi. They were blessed with two children, by name, Mathana Gopal, who born on 26.8.1996 and Hari Hara Sudhan born on 08.4.1999. They lived together for five years and since 26.6.2000, they are living separately. Citing several instances to allege that the respondent had treated the petitioner cruelly, she had filed the petition for divorce.

7. Counter affidavit was filed by the respondent, who, as seen from the papers, is an Orthopaedic surgeon, hailing from a middle class family, denying the allegations. It is stated that the petitioner stayed with her father on her own accord and returned to the matrimonial at her own whims and fancies. He denied the allegation that he never allowed the respondent to go anywhere. According to him, it is only on the security and safety point of view, he advised her to return early while she wanted to go to her relatives' house and he advised the respondent to avoid gossiping and loose talks with the flower vendor and milk vendor as they are the source of rumour monger. It is also the case of respondent that since he has to devote most of the time in the Hospital attending the patients, he could not concentrate in certain family matters. Besides, according to the respondent, the petitioner left the matrimonial house on her own accord in his absence handing over the keys to the neighbours and only with a view to justify her decision, he has filed the petition for divorce. He also stated that he is always ready and willing to accept the petitioner. As regards the maintenance sought for by the petitioner, the respondent has stated in his counter that she is not entitled for maintenance as she wanted to part away with his company on false allegations. He has further stated that since he came from a middle class family and completed his studies by

borrowing loan from Banks, he has to clear the same and hence, he is not in a position to pay alimony much less, Rs. 50,00,000/- as sought for by the petitioner. According to the respondent, the petition for divorce was filed on unfounded allegations.

8. Both the parties led evidence, both oral and documentary, in support of their cases. The Family Court, on assessing the evidence on record, dismissed the petition for divorce filed by the appellant / wife. Hence, the present appeal.

9. Heard the learned counsel appearing for the parties and perused the records.

10. As mandated by law, this Court also made serious efforts of reconciliation between the parties and in that view, the matter was referred for mediation before the Tamil Nadu Mediation and Conciliation Centre where the parties also appeared. But since the parties were unable to arrive at an amicable settlement, the matter was sent back to this Court on 27.3.2013. Even thereafter, the parties were provided with another opportunity for settlement by this Court on 14.8.2014 but the same went in vain. Hence, the matter was posted for arguments.

11. The two issues that remain for consideration in this appeal are (i) whether the issue of mental cruelty deserves to be accepted in the factual matrix, and (ii) whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive.

12. By a catena of decisions, it is well settled law that the mental cruelty under Section 13(1)(ia) of the Act should show that what made it not possible for the party to live with the other. In other words, mental cruelty must be of such nature that the parties cannot reasonably be expected to live together. The situation must be such that the wrong party cannot reasonably be asked to put up that conduct and continue to live with the other party. It is a matter to be determined in each case having regard to the facts and circumstances of the case.

13. It is true that variety of complex factual situations do arise in matrimonial relationship, more so, in strained one, depending upon the multiple factors like age and family background of the parties, their qualifications, their occupation, business or profession, their place of residence, their bent of mind, psychology, presence of children out of the wedlock, behaviour of their family members, efforts by them for

reconciliation etc. and, therefore, no straitjacket formula can be applied in such circumstances.

14. In the light of the settled legal position, the question now requires to be considered is as to whether the accusations alleged in the petition by the wife would construe mental cruelty for sustaining the petition under Section 13(1) (ia) of the Hindu Marriage Act for divorce? It is trite law that it is absolutely for the petitioner to substantiate the petition averments to prove the alleged cruelty by the spouse.

15. Mrs. Geetha Ramaseshan, learned counsel for the petitioner / wife has submitted that the petitioner has alleged several incidences of cruelty in the petition and the petitioner has deposed to prove the same and since the above said incidences happened between the husband and wife, the petitioner / wife alone is competent to speak about the alleged cruelty. Learned counsel for the petitioner has urged at the time of hearing that the petitioner has duly proved various instances of cruelty suffered by her. Learned counsel vehemently contended that the trial Court has failed to consider the evidence of the petitioner / wife that the respondent / husband had treated the petitioner cruelly. According to the learned counsel, in any event, the marriage has broken down irretrievably since the parties are living separately since 2000 and on that score alone, the decree of divorce should have been passed.

16. In support of her contention, learned counsel appearing for the petitioner / wife relied on the following decisions:-

- (i) A. Jayachandra vs. Aneel Kaur [AIR 2005 SC 534]
- (ii) Samar Ghosh vs. Jaya Ghosh [(2007) 4 SCC 511]
- (iii) U. Sree vs. U. Srinivas [(2013) 2 SCC 114]
- (iv) Malathi Ravi vs. B.V. Ravi [(2014) 7 SCC 640]

17. Per contra, learned counsel appearing for the respondent / husband contended that the respondent has not caused any mental or physical cruelty to the petitioner as alleged in the petition and the petitioner / wife has failed to prove the alleged incidences of cruelty by any sufficient oral and documentary evidence. Making vague allegations about the behaviour is not sufficient for accepting the prayer for divorce. The evidence is scanty and in no way established mental cruelty. Expatiating his arguments, learned counsel submitted that even if there are some stray incidents of discord, they are normal in any marriage and such normal wear and tear in relationship cannot be a ground for seeking divorce. It is submitted that even if it is accepted, for the sake of argument, that marriage has broken down, that cannot be a ground

to grant a decree for divorce. He further submitted that the Family Court has rightly refused to grant divorce and the same requires no interference.

18. Since the learned Family Judge has discussed the points extensively based on the guidelines and decisions of the Hon'ble Supreme Court, including the cases relied on by the learned counsel for the petitioner, we are not repeating the same.

19. However, for easy understanding of the case, we would like to refer to the observations made by the Hon'ble Apex Court on "Cruelty" in Samar Ghosh Case (cited supra), which was relied on by the learned counsel for the petitioner / wife, and the relevant passage is extracted hereunder:-

"Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration."

20. Indisputably, the marriage between the petitioner and respondent was solemnised on 18.09.1995 according to Hindu rites and customs and out of wedlock, Mathana Gopal and Hari Hara Sudhan were born. Admittedly, the respondent / husband is a Doctor and they lived together as husband and wife till 26.6.2000.

21. The incidences of cruelty alleged by the petitioner / wife are as under:

- (i) The respondent / husband did not provide for any wedding gift or birthday gift and took her out.
- (ii) The respondent / husband had taken her jewels from the bank locker without her consent.
- (iii) The respondent did not provide her any telephone, gas connection, colour T.V. and also did not permit her to listen to radio.
- (iv) The respondent did not take care of her health.
- (v) The respondent did not care for her son's education and school admission and also did not care for her sons' health.

22. As far as the first allegation of not providing wedding gift or birthday gift is concerned, the Family Court, in paragraph 36 of the order, has negatived the same based on Ex. R.6 cash memo dated 21.6.1995 under which he has purchased a Titan Wrist Watch as a token of his love.

23. As regards the second allegation, as rightly found by the Family Judge, it is only a vague allegation as there is no details about the same.

24. With regard to the allegation of not providing her telephone connection, it is pertinent to note that the respondent, while deposing as R.W.1, has produced Ex. R.2 series, which are telephone bills standing in his name. It is also the specific admission of the petitioner that the respondent had separate telephone connection when they lived in the joint family. The respondent has also produced Ex. R.2 cash memo issued for gas connection in his name. In this regard, the petitioner has also admitted during her cross-examination that she was provided with a gas stove and a cylinder. The learned Family Judge has categorically mentioned in paragraph 42 of the order that her only grievance is that she has not been provided with one more empty cylinder. As such, the third allegation is also baseless.

25. The fourth allegation against the respondent that he did not take care of the petitioner is also to be rejected in view of Ex.R.8 certificate issued by Dr. Poun Grace, M.B.B.S., D.G.O., in Sivakasi, which proves that the respondent used to take the petitioner for regular medical check up and vaccination.

26. To prove that the respondent took care of the education of his son, he has produced Ex. R.5 series, which are receipts for the school fees paid. Likewise, he has also produced Ex. R.7 certificate given by Dr. Kathiravan, Paediatrician in Sivakasi. In this regard, even during her cross-examination, she has admitted that as an MBBS Doctor, the respondent also treated her sons and only when it did not respond well, they used to take the children to Paediatrician.

27. Above all, the main allegation of the petitioner throughout the petition is that the respondent used to come late and eat his food at late hours. It is common knowledge that the respondent, who is a Doctor, which profession is to serve the public, cannot be expected to come home at regular time. In the cross-examination, the petitioner herself has admitted that since he is a Doctor, that too, Ortho Specialist, he cannot come home at the specific time for lunch. She has also stated that because of his devotion to duty, he cannot indulge himself in certain family matters.

28. Yet another major charge against the respondent by the petitioner is that he was uncommunicative and used to keep silence. In this regard, the petitioner herself in her deposition, while describing his nature, has stated that he does not have more friends and he is not talkative.

29. There can be no denial that burden of proof lies only on the petitioner to establish her case and that mere trivial irritations, quarrels and normal wear and tear of married life, which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty. What amounts to cruelty has been dealt with, time and again, by the Hon'ble Supreme Court in a series of decisions.

30. As far as the allegation of mental cruelty in the instant case is concerned, the acts alleged against the respondent, which, according to the appellant, amounts to causing mental cruelty, have not been pleaded with material particulars like the date and month. Also, no specific acts which amounted to causing mental cruelty have been pleaded with material particulars. Only general allegations have been made against the respondent by the petitioner.

31. In this context, it would not be out of place for this Court to refer to the decision of the Hon'ble Apex Court in V. Bhagat vs. D. Bhagat [(1994) 1 SCC 337] wherein it has been observed that merely because there are allegations and counter allegations, a decree for dissolution cannot follow. That apart, it has already been set at rest that pleadings of the wife and the questions in cross-examination are bound to cause immense mental pain and anguish to the husband. In the given

case, the petitioner wants divorce without any rhyme or reason. The entire evidence led by the petitioner, in the considered opinion of this Court, did not even emit smell of cruelty. On the otherhand, the evidence on record leaves no doubt in our minds that, in the present case, as rightly opined by the learned Family Judge, the bald, baseless and containing trivial allegations, which is nothing but a normal wear and tear that happens in an ordinary family, has been blown out of proportion seeking for decree for divorce. As such, in our opinion, it is only magnifying the happenings of everyday family life. The instances of cruelty relied upon by the petitioner are vague and in any case, they are not sufficient to constitute cruelty for granting divorce to the petitioner.

32. It is not in dispute that the petitioner and the respondent are staying apart from June 2000. Though this separation has created an unbridgeable distance between the two, since the respondent / husband is not guilty of cruelty as alleged by the petitioner, we are disinclined to sever the tie as the allegations of cruelty by the wife at the hands of the husband, appear to be tissues of lies.

33. From the materials available on record, it is also seen that the petitioner has removed the "thali" (Mangalsutra) and it is also her own admission that she has kept the same in Bank locker. It is known fact that no Hindu married woman would remove the "thali" at any point of time during the lifetime of her husband. "Thali" around the neck of a wife is a sacred thing which symbolises the continuance of married life and it is removed only after the death of husband. Therefore, the removal of "thali" by the petitioner / wife can be said to be an act which reflected mental cruelty of highest order as it could have caused agony and hurt the sentiments of the respondent.

34. Adjustment is the underlying principle of matrimony and the petty squabbles cannot be taken as amounting to cruelty in any event, to seek a decree of divorce, even though the rising rate of divorce is a reality. The courts cannot overlook that when there is still hope to salvage the union that they say is made in heaven and accede to the demand of dissolution of marriage relying on other cases, as each case is different from the other and especially so, in the domain of Marriage Laws.

35. From the above discussion, we are of the view that the petitioner / wife has not proved the alleged incidences of cruelty by her husband by adducing reliable evidence and the Family Court, after carefully analysing the entire evidence and following the dicta laid down by the Hon'ble Supreme Court, has dismissed the petition. We find no illegality, infirmity or any kind of perversity in the findings arrived at by the learned

Family Judge and, therefore, the same does not call for any interference by this Court.

36. Accordingly, the Civil Miscellaneous Appeal stands dismissed as having no merits but without costs in view of the relationship between the parties.

We are also of the considered view that the petitioner / wife is not entitled to any amount as permanent alimony since the petition filed by the petitioner / wife for divorce is not maintainable as already discussed in earlier paragraphs. Therefore, the petitioner is not entitled for permanent alimony as prayed for in the petition and the same has also been rightly dismissed by the trial Court.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Judge
Family Court, Chennai

+1 cc to Mr.N.Jayabalan Advocate sr 65041

+2 cc to M/s.Geetha Ramaseshan Advocate sr 64231 dt 11/01

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