

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2017

Coram:

THE HON'BLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No.1172 of 2017

C.Arul Manikandan ... Appellant/Petitioner

Versus

T.Archana Respondent/Respondent

Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act, 1984, against the Order and Decretal order dated 17.11.2016 made in F.C.HMO.P.No. 203 of 2016 by the learned Family Court, Dharmapuri.

For Appellant ... Mr.Syed Izzath

For Respondent ... No Appearance

JUDGMENT

(Judgment of the Court was delivered by A.D.JAGADISH CHANDIRA, J)

This Civil Miscellaneous Appeal has been filed by the husband against the order of the Family Judge, Dharmapuri, dismissing the petition filed under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 for dissolution of marriage.

2.Brief facts leading to filing of this Civil Miscellaneous Appeal are as follows:- The marriage between the Appellant and the Respondent was solemnized on 22.05.2015. According to the appellant the Respondent from the day one of the marriage refused to consummate the marriage. The Respondent used to chat with her paramour in a cell phone and she openly confessed her intimacy and made her intention clear that she would not live with the petitioner. A panchayat was held on 16.06.2015 in which the Respondent entered into Muchalicka with the petitioner for getting the decree of divorce. But the Respondent did not come forward to file the petition for divorce on mutual consent. The petitioner had been subject to great mental agony and torture because of her indifferent attitude. There is no scope for reunion. Hence the petition is filed for the decree of divorce on the ground of cruelty. The Respondent remained ex parte.

3. The learned Family Court, Dharmapuri, after examining the appellant as P.W.1, marked 3 documents as Ex.P1 to P3 viz; the marriage invitation, copy of the voter's ID and the Divorce Muchlicka Document and after considering the material available on record, has dismissed the petition on the ground that the averments made out by the appellant/husband do not constitute cruelty and that though the wife had not appeared before the Court, no other person had been examined by the appellant/petitioner to prove his case and that too in respect of the allegations of extra marital affairs against the wife. Further the Family Court had held that merely that there was a Panchayat Muchalicka, the decree of divorce would not be automatically granted and had concluded saying that as per Sec 23(1) of the Hindu Marriage Act, even in uncontested matters the court has to satisfy itself with regard to the averments made and pass orders only if the ingredients of the grounds for divorce are strictly made out and had dismissed the petition for divorce.

4. Challenging the above order, the present appeal has been filed by the husband.

5. Heard Mr.Syed Izzath, learned counsel for the appellant. There is no representation for the Respondent.

6. The learned counsel for the appellant vehemently contended that when the wife had willfully remained absent, the Family Court ought to have allowed the petition for divorce relying on the Divorce Muchalicka document which was marked as Ex.P3 on the side of the appellant/petitioner, which is a deed of agreement for divorce wherein the parties have agreed to live separately and had also agreed to get divorce by applying through the proper legal forum and that the Court below ought to have believed that and allowed the petition for divorce. Further, it was also contended by the learned counsel that the Court below ought to have believed the contention of the husband that the wife had refused to willfully consummate the marriage and thereby caused cruelty to him.

7. We have gone through the oral and documentary evidence filed by the appellant. The Respondent/wife had remained ex parte. The Family Court after taking note of the oral evidence and the divorce Muchalicka document which has been marked as Ex.P3, refused to grant divorce on the ground stating that, to the grant of a decree of divorce under Section 23(1) of the Hindu Marriage Act what is required is that the Court must satisfy itself and has to come to the conclusion that the party seeking divorce satisfies the Court with regard to the allegations and the grounds in which the divorce is sought for. The Court having considered the above had arrived at a

conclusion that the averments made out by the appellant/husband do not constitute cruelty and has dismissed the petition for divorce. The Court below had rightly given a finding that if the wife had subscribed her signature in EX P3 she would have come to the court along with the petitioner for seeking divorce under mutual consent and had also refused to take note of the Muchalicka stating that none of the attestors to the Muchalicka had been examined and thereby refused to accept it.

8. It is to be seen that a petition for divorce is not like any other commercial suit. Section 23 of the Hindu Marriage Act mandates that the court before granting decree for divorce, whether defended or not has to satisfy itself in respect of several factors mentioned in sub-section (1). It is to be seen that even in cases of petition for divorce filed under Sec 13-B of the Hindu Marriage Act 1955, the grant of Divorce is not automatic though both parties jointly present the petition for divorce on mutual consent. In the decision reported in (1991) 2 SCC 25 Smt.Sureshtadevi v. Om Prakash, in the matter of Divorce by mutual consent, the Honble Apex Court has held:

"The mere filing of the petition with mutual consent does not authorise the court to pass a decree for divorce. The parties are required to take a further step. Under sub-section (2) of Section 13-B the parties are required to make a joint motion not later than six months after the date of presentation of the petition and not later than 18 months after the said date. This motion enables the court to proceed with the case in order to satisfy itself about the genuineness of the averments in the petition and also to find out whether the consent was not obtained by force, fraud or undue influence. The court may make such inquiry as it thinks fit including the hearing or examination of the parties for the purpose of satisfying itself whether the averments in the petition are true. If the court is satisfied that the consent of parties was not obtained by force, fraud or undue influence and they have mutually agreed that the marriage should be dissolved, it must then pass a decree of divorce." (Paras 13 and 10)

9. When such is the case, the practice of seeking divorce and grant of divorce based on Panchayat Muchalicka if accepted by courts will lead to development of extra constitutional bodies attempting to usurp the powers of courts in matrimonial matters which will be against public policy and the spirit of the Family Laws in India where several safeguards have been made to protect the institution of marriage.

10. Taking note of the above, we are of the considered opinion that the Family Court below had rightly concluded that though the wife had not appeared before the Court, no other person had been examined by the appellant/petitioner to prove his case and that too in respect of the allegations of extra marital affairs against the wife and has held that the appellant/petitioner had failed to satisfy the court on the grounds raised and had dismissed the petition for divorce.

11. We find no infirmity in the order passed by the Family Court Court. We confirm the order passed by the Family Court and dismiss the appeal. No costs. Consequently, C.M.P.No.896 of 2017 is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

gr.

To

The Judge, Family Court, Dharmapuri.

+ 2 ccs to Mr. Syed Izzath, Advocate SR.55398

C.M.A.No.1172 of 2017

BR(CO)
EU(21/12/2017)

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