

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.1168 of 2011

Y.Kingsley .. Appellant/Petitioner

Vs.

L.Beena Jabakumari ... Respondent/Respondent

Prayer:- Civil Miscellaneous Appeal preferred under Section 19 of the Family Court Act, against the judgment and decree of the Principal Judge, Family Court, Chennai dated 15.03.2011 passed in F.C.O.P.No.2407 of 2009.

For Appellant : Mr.V.Bhiman
For Respondent : No Appearance

JUDGMENT

[JUDGMENT OF THE COURT WAS DELIVERED BY C.T.SELVAM, J]

This Civil Miscellaneous Appeal arises against the against the judgment and decreetal order of the learned Principal Judge, Family Court, Chennai dated 15.03.2011 passed in F.C.O.P.No.2407 of 2009.

2. Appellant and respondent are husband and wife. Appellant/husband filed a petition in F.C.O.P.No.2231 of 2008 for restitution of conjugal rights under section 32 of Divorce Act, 1869 on 14.07.2008. Thereafter, the appellant/husband had withdrawn the said petition on 23.07.2009 allegedly due to the pressure exerted by the respondent and her family members. Hence, the appellant/husband moved F.C.O.P.No.2407 of 2009 on the file of learned Principal Judge, Family Court, Chennai, seeking dissolution of marriage on the ground of cruelty u/s.10 (1) (x) of Indian Divorce Act, 1869, within ten days of the date of withdrawal of petition for restitution of conjugal rights. Court below, under order dated 15.03.2011, dismissed the said petition. There against, the present appeal has been filed by appellant/husband.

3. Heard learned counsel for petitioner.

4. The averments made by the appellant in F.C.O.P.No.2407 of 2009 only indicates that they are not such that warrants dissolution of marriage solemnized between the spouses on 20.09.2004. The incidents cited by appellant as grounds for dissolution of marriage are mere trivials, which would not justify dissolution of marriage. The Family Court, upon appreciation of the oral and documentary evidence available on record, has given a specific finding that the appellant has filed the instant petition for divorce within ten days from the date of withdrawal of the earlier petition filed by him seeking restitution of conjugal rights in O.P.No.2231 of 2008. Respondent/wife in her counter has specifically expressed her willingness to join the appellant in the matrimonial home. This Court is of the view that the Family Court is right in refusing to grant a decree of divorce at the instance of the appellant. This Court finds no reason to interfere with the conclusion arrived at by the Family Court.

5. The Civil Miscellaneous Appeal is dismissed. The judgment and decree of learned Principal Judge, Family Court, Chennai dated 15.03.2011 passed in F.C.O.P.No.2407 of 2009 are confirmed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

kmi

To:

1. The Principal Judge,
Family Court, Chennai.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.V.Bhiman, Advocate SR.No.71967

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GJII(CO)

GN(06/03/2018)