

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2017

Pronounced on : 22-11-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1045 of 2015

Dr. M. Senthil .. Appellant

Versus

S. Bhooma .. Respondent

Appeal filed under Section 19 of The Family Courts Act, 1984 against the Judgment and Decree dated 10.02.2015 passed in HMOP No. 19 of 2014 on the file of Family Court, Erode

For Appellant : Mr.D.Selvam for
Mr. K.A. Mariappan

For Respondent : Mrs. Hema Sampath, Senior Advocate
for Ms. R. Meenal

JUDGMENT

R. SUBBIAH, J

The appellant herein has filed HMOP No. 19 of 2014 before the Family Court, Erode under Section 13 (1) (i) (i-a) of The Hindu Marriage Act seeking to dissolve the marriage solemnised between him and the respondent on 11.02.2008. The Family Court, by Judgment and decree dated 10.02.2015 dismissed the Original Petition against which the appellant has filed the present Civil Miscellaneous Appeal.

2. Originally, the appellant filed HMOP No. 2916 of 2010 on the file of Principal Family Court, Chennai for dissolution of the marriage. On notice, the respondent has filed Tr.C.M.P. No. 517 of 2010 before this Court to withdraw and transfer HMOP No. 2916 of 2010 from the file of Principal Family Court, Chennai to the file of Principal Sub Court, Erode. By order dated 16.11.2010, the Transfer Civil Miscellaneous Petition was allowed by this Court. Thereafter, HMOP No. 2916 of 2010 filed

by the appellant stood transferred to the file of Principal Sub Court, Erode and re-numbered as HMOP No. 10 of 2011 on the file of Principal Sub Court, Erode. Thereafter, for want of jurisdiction, HMOP No. 10 of 2011 stood transferred and re-numbered as HMOP No. 19 of 2014 on the file of Family Court, Erode.

3. (i) The appellant has filed HMOP No. 19 of 2014 (HMOP No. 2916 of 2010) contending that the marriage between him and the respondent was solemnised on 11.02.2008 at Sakthi Duraisamy Mandapam, Erode as per Hindu rites and customs. The marriage was an arranged marriage having been solemnised at the instance of elders of both sides. It was stated that the marriage expenses were shared by the appellant as well as by the parents of the respondent and the appellant did not demand any dowry at the time of marriage. Even at the time of marriage, the appellant had clearly informed the respondent and her parents that he had to appear for one examination to clear the DNB Course and that is the reason why he was working as Tutor in Meenakshi Medical College. The appellant also clearly disclosed to the respondent about the salary of Rs.25,000/- earned by him out of his employment and on his completion of DNB examination, he has the prospects of earning a sum of Rs.10,000/- more per month.

(ii) After the marriage, the appellant and the respondent have set up their matrimonial home at Kilpauk, Chennai in a rented house. Due to the wedlock between the appellant and the respondent, on 05.12.2009, a male child was born. According to the appellant, the respondent is a chronic deserter and she used to desert the matrimonial company of the appellant and stay at her parents house at Namakkal for indefinite period. It was further complained by the appellant that the respondent used to quarrel with him for no reasons and immediately after such quarrel, she used to leave Chennai and go to Namakkal. According to the appellant, the respondent had two mobile phones with her and she was talking to persons unknown to the appellant and when it was questioned, the respondent exhibited rude and harsh behaviour towards him. It was further complained that within a month of the marriage, when the appellant and the respondent were sleeping in the bed room, the respondent received a call from one Nandhu at about 10.00 p.m. and immediately, the respondent left the room and started chatting with him for hours together. Similarly, on another occasion, when the appellant was away from the matrimonial home, the respondent called one Dhamu and invited him for going out for a lunch and also to stay with her in the matrimonial home. Further, the respondent has also hidden the letters received through courier by her and also avoided attending the phone calls when the appellant was present. According to the appellant, the said Nandhu used to call the respondent often

during night hours and the respondent conversed with the said Nandhu for an indefinite period. On some occasion, when the appellant asked the respondent as to who called her, she refused to divulge the identity of the caller and shouted at the appellant for having questioned her.

(iii) During July 2008, the appellant reserved train tickets for himself and the respondent to go to their home town, but the respondent refused to accompany the appellant to his native town and therefore he was forced to cancel the train tickets on 26.07.2008 and went to Namakkal for his clinic practice. When the appellant returned to the matrimonial home, he could not find the respondent and he was informed that the respondent already left the matrimonial home on 29.07.2008. On 03.08.2008, the respondent's elder sister's husband and her parents came to the matrimonial home during which they quarrelled and insulted the appellant. Thereafter, Mr. Sathyamurthy, uncle of the respondent informed the appellant that he would bring the respondent back to the matrimonial home and that the respondent would behave properly and live with him as a dutiful house wife. Accordingly, the respondent came back to the matrimonial home on 22.09.2008, but the respondent did not behave properly and indulged in unnecessary quarrel with the appellant and continued to chat in her mobile phone for an unspecified period. When it was questioned by the appellant, the respondent had broken the mobile phone of the appellant. Further, during the short stay in the matrimonial home, the respondent asked the house owner's nephew to lend her various compact discs and books for her pleasure besides she called the nephew of the house owner for a lunch in the matrimonial home in the absence of the appellant. Whenever the appellant attempted to talk to the respondent and to pacify the differences that had cropped up between them, she threatened to throw away the sacred thali and was prepared to go to her parents house. According to the appellant, once the appellant returned home from Namakkal, he was informed by the respondent over phone that there was a big snake in the bed room which was killed by the house owner. However, on the next day, the respondent informed the appellant that the snake came from the bag of the appellant. A few weeks after such incident, during a conversation with the sister of the respondent, the appellant was informed that still bigger snakes will come to the house of the appellant if he did not treat the respondent properly. The appellant failed to understand as to how a snake could enter the bed room, who killed the snake at around 8.00 p.m. in the night and what business the so called male has in the matrimonial home in the absence of the appellant. Further, on 10.04.2009, the appellant was shocked to see the respondent in the company of an unknown male indulging in illicit relationship in Chennai. As the appellant questioned the respondent about her illicit acts, the

respondent attempted to strangle the appellant while he was sleeping on 02.06.2009 at about 3.30 am. Ultimately, on 14.07.2009, the respondent left the matrimonial home after quarrelling with appellant on a trivial matrimonial dispute and thereafter, she did not return. According to the appellant, after the marriage, the respondent stayed with him only for five months and the rest of the period were spent by her in her parents house at Namakkal. It was contended by the appellant that he had deep love and affection towards the respondent but it was the respondent who neglected him. The appellant made several attempts to bring the respondent back to the matrimonial home, but all the attempts failed. Therefore, the appellant was constrained to send a notice dated 18.03.2010 calling upon the respondent to return to the matrimonial home. On receipt of the said notice, the respondent had sent a reply notice dated 05.04.2010 in which she had made false and unwarranted allegations against the appellant. After the reply notice was issued, on 19.09.2010, the aunt of the respondent namely Mrs. Kamala Sathyamoorthy and other relatives of the respondent came to the house of the appellant at Namakkal and threatened the appellant with dire consequences if he did not take back the respondent in the matrimonial home. In connection with the said incident, the appellant has also given a complaint dated 10.10.2010 to the Inspector of Police, Namakkal Police Station based on which an enquiry was conducted however, no action was taken thereof. Therefore, the appellant has filed the Original Petitions seeking divorce on the grounds of cruelty and desertion.

4. (i) Resisting the Original Petition filed by the appellant, the respondent has filed a counter affidavit contending inter alia that as per the demand made by the appellant and his parents, at the time of marriage, their parents have given jewels, silver ware, utensils, furniture, LCD Television, Refrigerator, Air Conditioner, Water Heater etc., to ensure that the respondent will stay comfortably in the matrimonial home. The marriage expenses were fully borne by the family of the respondent and it is an utter falsehood to allege that the marriage expenses have been shared in equal proportion. At the time of marriage, it was not represented that the appellant was a tutor in Orthopedics in Meenakshi Medical College and was earning Rs.25,000/- per month. On the other hand, it was falsely represented that the appellant is earning a sum of Rs.1,00,000/- in the college knowing it to be false. Thus, the appellant and his parents have deliberately misrepresented regarding the employment and salary of the appellant.

(ii) According to the respondent, all was not well after the marriage and the expectation of the respondent to lead a happy and blissful matrimonial life with the appellant was

short lived. It was contended by the respondent that the appellant is suspicious in nature and he used to routinely monitor the movement and activities of the respondent. It was stated that the appellant was in the habit of cross-checking the activities of the respondent on a routine basis. According to the respondent, the appellant used to leave at 6.30 am in the morning to the College at Enathur and return only in the evening. There were occasion when the appellant would pretend as if he is leaving the house for college and inform the respondent that he had reached the college. Within a few minutes, the appellant would reach the house to see as to what the respondent is doing. Thus, according to the respondent, the appellant is a person of suspicious character and this had caused rift in the matrimonial relationship between the spouse. Further, the appellant never permitted the respondent to open the windows in the house and confined her in a room. The appellant also did not permit the respondent to speak to her relatives after the marriage and thereby caused mental harassment and cruelty to her.

(iii) According to the respondent, Dhamu, whom the appellant referred to, is none other than her uncle's son. Similarly, Nandu is none other than her cousin brother. Therefore, it is unreasonable on the part of the appellant to make sweeping allegations as if the respondent used to chat with them for an indefinite period even during night hours. Even the appellant is fully aware of the relationship between the respondent and the said Nandhu and Dhamu and therefore, the entire averments relating to the relationship between the respondent and the said Nandhu and Dhamu, as portrayed by the appellant, is unreasonable and condemnable. Further, on several occasion when the appellant harassed and humiliated the respondent, she used to seek the help of the house owner for her intervention and it cannot be portrayed by the appellant in such a fashion as if the appellant had some illicit relationship with the nephew of the house owner. Further, the respondent never conversed in her mobile phone with unknown person for unspecified period or had she hidden the letters received by her without disclosing it to the appellant.

(iv) The respondent would further contend in the counter affidavit that the appellant led a wayward life without caring for the welfare of the respondent. According to the respondent, even though the appellant was in receipt of a sum of Rs.25,000/- per month, he paid Rs.20,000/- as instalment for the car purchased by him, leaving no amount for the day to day maintenance in the family. In such circumstance, the respondent was left without any money even for her reasonable expenses and she was made to beg the appellant for petty expenses. Whenever the respondent required the appellant to give money for the day to day maintenance or house hold expenses, the appellant demanded the respondent to bring money from her father in the

form of dowry, which she refused. The appellant had spent almost all the week ends at Namakkal leaving the newly married spouse namely respondent at matrimonial home in Chennai. When this was questioned by the respondent on 27.07.2008, the appellant shouted at the respondent and even asked her to leave the matrimonial home. Further, the appellant behaved rudely towards the respondent whenever she asked the appellant about his normal acts and deeds. Even though the parents of the appellant were witness to these incidents, they remained as a mute spectator and only supported the acts of the appellant without any justification. Therefore, the respondent was constrained to call her parents who came to Chennai on 26.07.2008 and accompanied the respondent to their home at Namakkal. Therefore, the desertion of the respondent from the matrimonial home is not voluntary, but she was made to leave the matrimonial home by the appellant as he harassed the respondent in all forms and manifestations. After reaching Namakkal, the parents of the respondent met the appellant at Namakkal and at that time, the appellant insulted and abused the parents of the respondent. However, to make it look as if the appellant is attempting to patch up the difference, he met the uncle of the respondent Mr. Sathyamurthy for a re-union. Thereafter, on 22.09.2008, respondent returned to the matrimonial home. In all, the respondent stayed with the appellant in the matrimonial home from February 2006 to July 26 2008 for five months, again from September 2008 to December 2008 for three months and thereafter from February 5, 2009 to 15 July 209 for another five months, totalling 13 months. The respondent was driven out of the matrimonial home by the appellant by citing one reason or the other and it has become a routine for the respondent to take shelter at her parents house. Whenever the respondent was driven out of the matrimonial home, elders of both sides met and attempted to resolve the matrimonial dispute between the appellant and the respondent and there were several meetings which took place between the elders of both sides. In all such meetings, it was the appellant who disrespected the elders in the family of the respondent and abused them in filthy language.

(v) The respondent would further state in the counter affidavit that the appellant is an alcoholic and he had assaulted the respondent under the influence of alcohol on several occasion. Further, the respondent has disowned his paternity of the child and thereby subjected the respondent to acute mental agony and matrimonial cruelty. Further, on 14.07.2009, when the respondent was pregnant, she was driven out of the matrimonial home and assaulted cruelly and with the help of the house owner, her parents were informed and they came to Chennai and accompanied the respondent to Namakkal. Further, after the respondent left the matrimonial home, the appellant did not call the respondent even once or attended to the phone calls made by the respondent. Even though the birth of the

child was informed, the appellant did not bother to come and have a glimpse of the new born child. Thereafter, Mrs. Kamala Sathyamurthy, aunt of the respondent called upon the parents of the appellant and informed them about the birth of the child, but the parents of the appellant also did not come and see the new born child.

(vi) As regards the incident narrated by the appellant that there was a snake which peeped into the matrimonial home and it was killed by the house owner, the respondent would state that there was, in fact, a snake in the bag brought by the appellant from Namakkal and it was killed by the house owner along with others. Thereafter, the appellant himself gave the bag to the Watchman in the opposite house as he thought that the bag is not so lucky to be used thereafter. Thus, according to the respondent, there was an occasion in which a snake had surfaced from the bag brought by the appellant and the manner in which the said incident was portrayed by the appellant is in bad taste. The instant petition for dissolution of marriage was filed by the appellant to wriggle out of his matrimonial obligations some how or the other. For the notice dated 18.03.2010 sent by the appellant, the respondent had sent a reply dated 05.04.2010 denying the entire averments made therein. The respondent married the appellant with the hope of leading a happy and blissful matrimonial journey with him, but such hopes were shattered by the appellant due to his behavioural pattern and indifferent attitude. The respondent is now made to take shelter with her parents along with the minor child and she is wholly dependent on them even for petty expenses. It is the appellant who had subjected the respondent to matrimonial cruelty and thereby deprived the respondent to lead a normal life. In any event, the respondent did not leave the matrimonial home voluntarily but she was made to leave the matrimonial home by the respondent after quarrel for trivial reasons and after she was physically assaulted by him. Therefore, according to the respondent, the appellant is not entitled to the relief of dissolution of divorce on the ground of cruelty and desertion and she prayed for dismissal of the Original Petition.

5. For the counter affidavit filed by the respondent, the appellant has filed a reply statement contending inter alia that after he filed the Original Petition for dissolution of the marriage, the relatives of the respondent have caused threat to him to withdraw the Original Petition. Further, the appellant was not invited for the first birth anniversary of the minor child and he came to know about it later through a third person. The attempts made by the appellant for a re-union could not be fructified due to the adamant attitude of the respondent and she has no liking to join the appellant in the matrimonial home. The matrimonial relationship between the appellant and the

respondent had broken irretrievably and there is no scope for re-union. The appellant had suffered mental cruelty at the instance of the respondent and therefore, he prayed for allowing the Original Petition as prayed for.

6. In order to prove the averments in the Original Petition, the appellant examined himself as PW1 and Exs. P1 to P15 were marked. On behalf of the respondent, the respondent examined herself as RW1, her uncle Sathyamurthy was examined as RW2 and another witness Laxmanan was examined as RW3. The Family Court, after analysing the case putforward by the appellant and the respondent and upon considering the oral and documentary evidence felt that in the given facts and circumstances of the case, a decree for dissolution of marriage cannot be granted. The Family Court opined that the disputes between the appellant and the respondent are trivial in nature and they do not warrant dissolution of their marriage. The Family Court therefore concluded that time is still available for the appellant and the respondent to sit together and attempt to resolve the differences that have cropped up in their matrimonial life. On such conclusion, the Family Court refused to grant a decree of divorce as prayed for by the appellant and dismissed the Original Petition filed by him. As against the same, the present Civil Miscellaneous Appeal is filed.

7. The learned counsel appearing for the appellant would vehemently contend that the Family Court failed to see that the appellant was subjected to matrimonial cruelty inflicted on him by the respondent. Further, the appellant and the respondent are residing separately from 14.07.2009 and such long period of separation would only warrant a dissolution of the marriage. The family Court also failed to see that the matrimonial relationship had broken down irretrievably and there is no possibility for a re-union, while so, the Family Court ought to have granted a decree of divorce instead of dismissing the petition filed by the appellant.

8. The learned counsel for the appellant invited the attention of this Court to the inconsistency with regard to the date of leaving the matrimonial home by the respondent in the reply notice as well as the counter affidavit filed by the respondent before the Family Court and would contend that averments relating to the period of desertion and the fact that the respondent had voluntarily deserted the matrimonial company of the appellant have been proved by the appellant. Similarly, the learned counsel for the appellant has taken us through the deposition of RW1/ respondent herein and pointed out the inconsistency in her deposition with respect to extending invitation to the appellant by her parents to attend the Diwali function. Therefore, the learned counsel for appellant would

contend that the Family Court ought to have drawn an inference as regards the inconsistency in the plea of the respondent and granted a decree for dissolution of marriage.

9. Above all, the learned counsel for the appellant would contend that the respondent admitted that the appellant was not informed about the birth of the child and he was also not invited for the naming ceremony of the child and therefore it can be safely concluded as to the extent to which the appellant was subjected to matrimonial cruelty. Further, on 14.07.2009, when the respondent left the matrimonial home, due to a wordy quarrel, the respondent caused physical injury on the appellant with the hot iron box. Even during the course of examination before the Family Court, the appellant had shown the scar in his hand but it was not taken note of by the Family Court while dismissing the Original Petition.

10. The learned counsel for the appellant would further contend that the appellant and the respondent are residing separately from 14.07.2009 and such a long separation itself is sufficient to grant a decree of divorce. In this context, the learned counsel for the appellant relied on the decision in the case of (K. Srinivasa Rao vs. D.A. Deepa) reported in (2013) 5 Supreme Court Cases 226 wherein the Honourable Supreme Court held that when the spouses are residing separately for a considerable length of time such a long separation is one of the valuable grounds for granting a decree of divorce. In the present case, according to the learned counsel for the appellant, the appellant and the respondent are residing separately since 14.07.2009 and therefore he prayed for granting a decree of divorce by setting aside the order passed by the Court below.

11. Per contra, the learned counsel for the respondent would contend that the averments made by the appellant in the Original Petition would not, by any stretch of imagination, constitute 'mental cruelty' as well as desertion. In other words, the appellant has not proved that he was inflicted with matrimonial cruelty at the instance of the respondent. It was clearly pleaded and proved by the respondent that she deserted the matrimonial company of the appellant not to bring the matrimonial relationship to an end but she was compelled and made to leave the matrimonial home by the appellant himself. The word 'cruelty' cannot be defined precisely and it largely depends on the facts pleaded in the Petition for dissolution of the marriage. Further, the appellant did not prove the extra marital relationship of the respondent with other men and therefore, the Family Court has rightly discarded those averments. In any event, if the averments made in the Original Petition are read as a whole, it would only indicate that it was

the respondent who was subjected to matrimonial cruelty at the instance of the appellant and therefore, the Family Court is right in refusing to grant a decree of divorce. The Family Court, in Para No.57 of the Order, clearly stated that the respondent, during the pendency of matrimonial proceedings, has come up with an open mind to rejoin the matrimonial home, but it was the appellant who refused to take back the respondent.

12. The learned counsel appearing for the respondent also vehemently contended that Section 23 (1) (a) of The Hindu Marriage Act says that the appellant cannot take advantage of his own wrong. In support of such contention, the learned counsel for the respondent also relied on the decision of the Honourable Supreme Court in the case of (Chetan Dass vs. Kamla Devi) reported in (2001) 4 Supreme Court Cases 250 wherein it was held that the appellant-husband cannot be allowed to take advantage of his own wrong. In that case, the Honourable Supreme Court, taking note of the various averments made by the appellant-husband come to the conclusion that those averments have not been substantiated by acceptable evidence and thus, refused to grant the relief of divorce sought for by him. In the present case also, according to the counsel for the respondent, the allegation of adultery made by the appellant has not been proved by him and therefore he prayed for dismissal of the appeal.

13. We have given our anxious consideration to the rival submissions. We have perused the legal notice dated 18.03.2010 sent by the appellant, the reply notice dated 05.04.2010 sent by the respondent, the Original Petition filed by the appellant for dissolution of the marriage and the counter statement filed thereof by the respondent before the Family Court. We have also gone through the Petition in MP No. 1 of 2015 filed by the appellant to permit him to raise additional grounds in the above appeal.

14. As we have narrated the factual matrix in detail, we are of the view that they need not be reproduced any further. However, for the purpose of disposal of this appeal, it has to be examined as to whether the appellant has proved that he was subjected to matrimonial cruelty at the instance of the respondent and the respondent is guilty of deserting the matrimonial company of the appellant.

15. On perusal of the averments contained in the Original Petition, it is seen that the averments made by the appellant as regards the matrimonial cruelty inflicted on him by the respondent are largely vague, generic and bald. The various averments made by the appellant in the Original Petition for dissolution of marriage are without any substance. The

averments are in the nature of the respondent behaving indifferently towards the appellant, his father and mother; quarrelled with the appellant for no reasons; did not inform about the birth of the child or invited him to attend the birth anniversary of the child etc., Above all, the appellant alleged that the respondent is leading an adulterous life. In para No. 20 of the Original Petition, the appellant had stated that "on 10.04.2009 at around 4.15 p.m. the petitioner was very unfortunate to see the respondent with a male unknown to the petitioner indulging in an illicit relationship." Similarly, in para No.34, the appellant had alleged that "The respondent used to close all the windows and doors and when the petitioner asked the respondent about that, she had told to the petitioner as she was doing that for the fear of more theft in Chennai. But later only the petitioner realised that it was done for her convenience." Similarly, in para No.36 of the Original Petition, the appellant alleged that "The petitioner did not hide any of his activities to the respondent. In fact, the respondent and her parents only have hidden the truth to the petitioner about the respondent's pre-marital contacts. This was evidenced by the respondent's elder sister who had confessed to the petitioner over phone for around 20 minutes and told about the immorality done to the petitioner by the respondent and her parents." It was also alleged that the respondent had been conversing with one "Nandhu" and "Dhanu" over phone for an indefinite period during night hours but she did not reveal the identity of the callers to the appellant. However, we find that in the notice dated 19.03.2010 sent by the appellant, he has not whispered anything as regards the alleged extra marital relationship of the respondent with one Dhamu or Nandu. Even though in the original petition, the appellant had made such averments as if the respondent had conversed with the above said persons in his absence in mobile phone, at the outset, we find that merely because the respondent conversed with some unknown persons over mobile phone, it cannot not be construed that she was having extra marital relationship with any other person other than her spouse. This is more so that the respondent has clearly stated that Dhamu and Nandhu are her relatives and even the appellant is fully aware of the same. Even though in para No.20 of the Original Petition, the appellant had stated that he finds the respondent in the company of another man, such averments were not proved by any acceptable evidence. Similarly, several other averments made by the appellant to show that the respondent indulged in extra marital life has not been proved by the appellant. Even though the appellant alleged that the sister of the respondent had confessed to him about the so-called illicit relationship the respondent had before her marriage, to prove such averment, the appellant failed to examine the sister of the respondent on his side. While so, we are of the opinion that the appellant has not proved that the

respondent is guilty of having extra marital relationship with a person other than the appellant. The burden of proving the averments made in the Original Petition lies on the appellant and we are of the view, on appraisal of the entire materials made available, that the appellant failed to prove such averments made by him in a manner known to law. It is needless to mention that the charge of adultery is a serious charge and it casts aspersions on the character of the spouse and it also affects the reputation of the spouse in the society. The burden of proof of such averments is largely on the person who makes it. It has to be established beyond doubt in a manner known to law. However, in the present case, we find that the appellant failed to prove the allegations of adultery made against the respondent. The Family Court also in para No.126 of the Order held that even though the appellant suspected the morality of the respondent, it was largely not substantiated by him. We are in agreement with such a conclusion arrived at by the Family Court.

16. As regards the averments relating to desertion, the respondent, in her counter statement as well as the reply notice sent to the appellant, had clearly stated that she had no inclination to desert the matrimonial company of the appellant and that her desertion is not voluntary. In fact, it is the contention of the respondent that she was forced and compelled to leave the matrimonial company of the appellant as she was driven out of the matrimonial home by the appellant after subjecting her to harassment. In order to prove these averments made by the respondent in the counter, she examined herself as RW1 and her Uncle was examined as RW2. During the course of her examination, the respondent, as RW1, has narrated the manner in which she was made to desert the matrimonial home by the appellant and the efforts she had taken for joining the appellant. Similarly, RW2 also narrated the various efforts taken by him for a reunion of the couple. Even though the appellant had contended that the respondent, after marriage, had lived only for five months on various spells, the respondent rebutted it by furnishing the period during which she was present in the matrimonial home and the reason for leaving the matrimonial home. During the course of arguments, the learned counsel for the appellant brought to the notice of this Court the inconsistency in the date on which the respondent left the matrimonial home as well as the date on which she joined the appellant in the matrimonial home. Such inconsistency, in our opinion, will not be sufficient to hold that the respondent deserted the matrimonial company of the appellant voluntarily. The appellant also did not prove, by cogent evidence that the respondent deserted his matrimonial company wilfully without sufficient cause. Even otherwise, after leaving the matrimonial home, the respondent had taken various efforts on her own and

through her relatives to join the matrimonial home, which are not disputed by the appellant. Therefore, even assuming that the respondent deserted the matrimonial company on various occasion, such desertion is not with the intention of bringing the matrimonial journey to an end as the respondent had made attempts to keep the matrimonial relationship intact. The appellant also admitted that there were several mediations which took place at the behest of the elders of both sides. In such an event, it is difficult to hold that the respondent had voluntarily deserted the matrimonial company of the appellant without any just or sufficient cause.

17. The learned counsel for the respondent placed reliance on Section 23 (1) (a) of The Hindu Marriage Act to contended that for granting a decree of divorce on the grounds on which it was sought, the Court has to examine that while seeking such relief, any of the spouse do not take advantage of his or her own wrong or disability for the purpose of seeking such relief. In this context, useful reference can be made to the decision of the Honourable Supreme Court in Chetan Dass case mentioned supra, relied on by the learned counsel for the respondent, wherein, in para-19, it was held as follows:-

"19. The appellant would not be allowed to take advantage of his own wrong. Let the things be not misunderstood nor any permissiveness under the law be inferred, allowing an erring party who has been found to be so by recording of a finding of fact in judicial proceedings, that it would be quite easy to push and drive the spouse to a corner and then brazenly take a plea of desertion on the part of the party suffering so long at the hands of the wrong doer and walk away out of the matrimonial alliance on the ground that the marriage has broken down. Lest the institution of marriage and matrimonial bonds get fragile easily to be broken, which may serve the purpose most welcome to the wrongdoer, who, by heart wished such an outcome by passing on the burden of his wrongdoing to the other party by alleging her to be the deserter leading to the breaking point."

18. In the present case, we find from the various averments made by the appellant that it was the appellant who had taken advantage of his own wrong and sought the relief of dissolution of marriage on the grounds of desertion and cruelty. The various averments made by the appellant in the Original Petition have been satisfactorily disproved by the respondent which disentitle the appellant to seek for the relief of dissolution of marriage. As we have held above, the appellant failed to prove the plea of cruelty or desertion to the satisfaction of the Court. The Family Court also recorded very many reasons to

refuse the relief sought for by the appellant by scanning the entire materials placed on record. In our opinion, such a well considered order passed by the Family Court needs no interference.

19. In the result, we confirm the Judgment and Decree dated 10.02.2015 passed in HMOP No. 19 of 2014 on the file of Family Court, Erode. Consequently, the Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

rsh

To

The Presiding Officer
Family Court, Erode

+1cc to Mr.K.A.MARIAPPAN Advocate, S.R.No. 83753

+1cc to Mr.R.MEENAL Advocate, S.R.No. 83176

Pre-delivery Judgment in
CMA No. 1045 of 2015

LRS (CO)
TR(22/12/2017)

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