

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2017

Pronounced on : 07-11-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal No. 1799 and 1800 of 2016

ER.R. Frederick .. Appellant in both
appeals/Petitioner in O.P.2385/2006
& Respondent in O.P.2809/2007.

Versus

Dr.F.Malini .. Respondent in both
appeals/Respondent in O.P. No 2385/2006
& Petitioner in O.P. 2809/2007.

Appeals filed under Section 19 of The Family Courts Act, 1984 against the order and decreetal order dated 18.04.2015 passed in O.P. No. 2385 of 2006 and O.P. No. 2809 of 2007 on the file of II Additional Judge, Family Court, Chennai.

For Appellant : Mrs. Sheila Jayaprakash
in both appeals

For Respondents : Mr. S. Silambannan, Senior Advocate
in both the appeals for Mr. S. Kalimuthu

COMMON JUDGMENT

R. SUBBIAH, J

Both these appeals arise out of the common order dated 18.04.2015 passed in O.P. No. 2385 of 2006 and O.P. No. 2809 of 2006 on the file of II Additional Judge, Family Court, Chennai. By the said order dated 18.04.2015, the Family Court dismissed OP No. 2385 of 2006 filed by the husband/appellant under Section 10 (ix) & (x) of Indian Divorce Act for dissolution of the marriage dated 14.01.1988 and consequently OP No. 2809 of 2007 filed by the wife/respondent under Section 32 of the Indian Divorce Act for restitution of conjugal rights was allowed.

2. As both the appeals arise out of the common order dated 18.04.2015 passed by the II Additional Judge, Family Court, Chennai and common arguments have been advanced by counsel for both sides, they are taken up for hearing together and are disposed of by this common judgment.

3. (i) The appellant-husband has filed OP No. 2385 of 2006 under Section 10 (ix) (x) of The Indian Divorce Act, 1869 for dissolution of the marriage solemnised between him and the respondent. According to the appellant, he married the respondent on 14.01.1988 as per Christian rites and customs and the marriage was solemnised at St. George's Cathedral, Chennai in the presence of family members, relatives and friends of both sides. At the time of marriage, the appellant was working in Bangalore and therefore, after the marriage, the appellant and the respondent started the matrimonial life at Bangalore. At the time of marriage, the respondent had just finished medicine and she had to complete her term as a house surgeon.

(ii) It is the contention of the appellant that all was not well from the beginning of the marriage. The appellant attribute the hardships confronted in the matrimonial life due to the family background of the respondent. According to the appellant, the parents of the respondent had family disputes and they had given complaint before the Police against each other. After his marriage, the mother of the respondent separated from her husband and lived with the appellant and the respondent at Bangalore by stating that the differences between the parents of the respondent could be patched up if the mother of the respondent is permitted to reside with them in Bangalore.

(iii) Due to the wedlock between the appellant and the respondent, on 09.02.1990, a son - Michael Fredrick was born. Soon after the birth of the male child, the male child was left under the care of the mother of the respondent at Krishnagiri as they felt that he would be brought up well by the grand mother. During 1992, the father of the appellant died and therefore his mother stayed with him. Thereafter, in the year 1993, the appellant purchased a house in Hosur, which house is situate few meters away from the house where the mother of the respondent was living. The appellant, who is a Doctor by profession, attended to his work at a Primary Health Centre, Bangalore and came back to Hosur in frequent intervals. In the year 1995, the second son Daniel Fredrick was born. In the meantime, the mother of the respondent, under the guise of visiting the respondent in his house, ill-advised her which led to frequent quarrel between the appellant and the respondent. Above all, the respondent suspected the appellant as having an illicit affair with other women and ranked him as a womaniser. The respondent also informed the alleged illicit affair of the appellant with his colleagues and acquaintances to the sister,

brother and mother of the appellant. Furthermore, the respondent also accused the colleagues of the appellant and complained to his spouse as if the appellant/her husband is having illicit relationship with their wives. When the appellant joined a course to pursue Master of Business Administration in the evening, the respondent accused him of having illicit relationship with one of the females studying along with him. Hereagain, the respondent called upon the husband of the females studying with him and questioned them about their acquaintance with the appellant and this led to frequent trouble and thereby the appellant was put to constant embarrassment. It is the specific contention of the appellant that the respondent was in the habit of waking up the appellant in the midnight to question him about his illicit affair with his colleagues or co-workers. The appellant also cited certain incidents during which the respondent used to stand in front of the car and prevent him to even leave for the work by citing that he is leaving home to meet some of the girls with whom he is allegedly in a relationship. The appellant also stated that there were occasion when he was physically assaulted by the respondent without any rhyme or reason and he was left with the only option to defend such attacks. During September 1996, the respondent attacked the appellant with a spring tummy trimmer and fearing danger to his life, he locked himself in the bed room. However, the respondent broke the door with the gadget by hitting and banging the door repeatedly. The appellant also alleged that the respondent, on a couple of occasion, threatened to kill him with a knife. The respondent repeatedly accused the appellant by scolding him as a womaniser which led to the matrimonial life become a nightmare for the appellant. The respondent used to inform his sons, in-laws, friends and relatives as if the appellant was abusive and he is having illicit relationship with several women.

(iv) The appellant would contend that by abusing the appellant as a womaniser and an evil element, the respondent never allowed his own children to interact with him. The respondent never permitted the appellant to take them out for shopping or anything else. The elder son suffered from epilepsy, however, the respondent never permitted the appellant, a Doctor by profession, to treat his own son, but taken the son to another Doctor and administered tablets. In such circumstances, the appellant was forced to stay away from the matrimonial home from 28.06.1998 only to avoid unpleasantness and visited the matrimonial home only during Sunday evening to see the children for about 30 minutes, but even during such time, the appellant was not permitted to interact with his own children by developing a quarrel on trivial issues. The respondent never permitted the appellant to take the children out for a drive and the children were never sent to Bangalore to stay with him. According to the appellant, preventing his own sons to speak to him or interacting with him is nothing short of

cruelty. During the year 2006, the respondent left Hosur to Chennai to pursue a Post Graduate Degree in Psychiatry leaving the children at Hosur. Even though the appellant offered to keep the children in his custody, it was refused by the respondent. This has caused acute mental pain and suffering to the appellant. The appellant also made several attempts to rejoin the respondent through his friend but it was not successful. Even though the appellant was away from the matrimonial home, he has met the educational expenses for the children besides paid the instalment for the house to the Housing Board where the respondent and the children are staying. The appellant also provided all necessary amenities to the family such as Washing Machine, Refrigerator, 2 Television Sets, Microwave Oven, Computer, Printer, Digital camera, ipod, gameboy etc., The appellant also purchased a Maruti Car which is being used by the respondent for which the monthly instalment is being paid by the appellant. In effect, according to the appellant, inspite of providing all comforts as a dutiful husband, the respondent does not want to resume the matrimonial life with him and the repeated efforts made by the appellant went in vain. The respondent has no intention to resume the matrimonial life with the appellant and therefore, he has filed OP No. 2385 of 2016 for dissolution of the marriage.

4.(i) Opposing the Petition filed by the appellant for dissolution of the marriage, the respondent has filed a counter affidavit. According to the respondent, the dispute in the matrimonial life is largely attributable due to the intervention of the sister of the appellant in the family affairs. Further, the appellant had contacts with bad friends and he failed to discharge his matrimonial obligation as a dutiful husband. The appellant was always the decision maker in the family and he will not hear whatever said or accept whatever done by the respondent. After three months of birth of the first son, the respondent was compelled to join Government service at the instance of the appellant and she was posted in the Primary Health Centre at Hosur. Even though the father of the respondent brought a car for the respondent to attend to her employment, the respondent was made to travel in the bus and the car was merrily utilised by the appellant to go over to Bangalore for his employment.

(ii) According to the respondent, the appellant always chose to help his former secretary, her child and her family, but, left the respondent and the children in the lurch. The entire salary received by the respondent was utilised by the appellant leaving the respondent to beg the appellant to part with some amount even for her day to day expenses. During week ends, the respondent was compelled by the appellant to visit the house of his former Secretary and when it was refused, the respondent was abused verbally and assaulted mercilessly. The respondent never suspected the fidelity of the appellant, as

alleged, but she only cautioned the appellant that his Secretary is taking advantage of the manner in which the appellant moves with her. In other words, the respondent did not suspect the appellant as having illicit relationship with other women, but only wanted him to keep away from bad friendship, particularly, his Secretary who always chose to take advantage of her official relationship with the appellant which is mistaken as an 'affair' between them by others. The respondent never spoke ill about the appellant, particularly about his extra-marital relationship with any one, including the family members, as alleged. The only request the respondent made to the mother, brother and sister of the appellant is to save him from vanity.

(iii) According to the respondent, when she was pregnant for the second time, she was compelled by the appellant to accompany him to the house of his MBA classmate, who is pursuing the course along with him. When the respondent reached one of the classmates house, the couple, along with other family members and friends were taking alcoholic drink in their house which was not to the liking of the respondent. Thereafter, when once the couple visited the house of the appellant, they have handed over a video cassette containing obscene films and also compelled the appellant and the respondent to join a club called 'Round Table Club' where many unofficial parties will be conducted. In those circumstances, whenever the respondent was asked by the appellant to accompany him to the house of the couple, she refused to join him which resulted in frequent quarrel and the respondent was also severely beaten by the appellant. The appellant always chose to lead a wayward life, spending his free time with all kinds of parties and friends and that was the reason behind the separation of the appellant and the respondent. It is due to late night parties and other unnecessary meetings, the appellant could sleep only for three hours and not as alleged by him.

(iv) It is contended by the respondent that after the appellant left the family in lurch during the year 1998, she has no choice but to concentrate on her employment and also to nurture the two children. In fact, the allegation that the respondent assaulted the appellant is nothing but a falsehood. During September 1996, it was the appellant, who locked himself in a room by threatening to commit suicide and only in such circumstances, the respondent was compelled to break open the door with a tummy trimmer. The respondent never threatened the appellant to kill him with a knife as alleged. Even though the appellant asked the respondent to handover the custody of the children so that he will educate them, the respondent gladly accepted it and requested him to come home immediately, but the appellant refused to do so.

(iv) The respondent would contend that she has requested the brother of the appellant to arrange for a counselling to resolve the matrimonial disputes, but it was the appellant who kept himself away from the family. The respondent

still considers the appellant to lead the family, but it was his illegal intimacy with his former secretary that has strained the marital relationship. The respondent has made numerous attempts for re-union but it was the appellant who refused to come back to the matrimonial home. In fact, the appellant intended to join the respondent on condition she has to accept the appellant's widowed friend and her children in his family. It is not the respondent who deserted the appellant and it is he who deserted her. The respondent had been extremely patient with the hope that the appellant would join the respondent in the matrimonial life and still she is ready to condone all the cruelties perpetrated by the appellant against her. In such circumstances, the respondent prayed for dismissal of the petition for dissolution of the marriage.

5. The respondent, with the very same averments as made in the counter affidavit to the Petition filed by the appellant in OP No. 2385 of 2006, has filed O.P. No. 2809 of 2006 for restitution of conjugal rights in which the appellant has filed his counter affidavit reiterating the averments made by him in OP No. 2385 of 2006.

6. Before the Family Court, common evidence was let in OP Nos. 2385 and 2809 of 2006. The appellant examined himself as PW1 and marked Exs. P1 to P18. On behalf of the respondent, she examined herself as RW1 and the son of the appellant and the respondent - Michael Fredrick was examined as RW2 and Exs. R1 to R12 were marked. The Family Court, on analysing the oral and documentary evidence, has concluded that the averments made in the Petition for dissolution of marriage are not sufficient enough to grant a decree of divorce. It was also concluded that the appellant has not proved that the respondent had suspected his fidelity and consequently, he has not made out any ground to prove that he was subjected to cruelty at the hands of the respondent. By referring to the evidence of RW2, son of the appellant and the respondent, the Family Court concluded that the matrimonial quarrel between the appellant and the respondent is trivial and it is quite normal in each and every family. Therefore, the Family Court concluded that the dispute between the appellant and the respondent is not such that it warrants dissolution of the marriage. The Family Court, by quoting the evidence of the son/RW2 has stated that the son only wants the appellant and the respondent to join together and therefore, when there is abundant scope for reunion of the couple, dissolution of the marriage is unwarranted. Accordingly, the Family Court, while dismissing the Petition filed by the appellant for dissolution of marriage, allowed the Petition filed by the respondent for restitution of conjugal rights.

7. The leaned counsel appearing for the appellant would vehemently contend that the appellant was forced and compelled to leave the matrimonial home and was staying away from

28.06.1998 because he apprehended danger for his physical safety inasmuch as he was assaulted and cruelty treated by the respondent on several occasions. In fact, the evidence of the Son/RW2 clearly indicates the circumstances which forced the appellant to leave the matrimonial home and this would abundantly prove that the appellant was subjected to matrimonial cruelty by the respondent. The appellant is residing separately for the past 19 years while so, the Family Court ought not to have allowed the petition for restitution of conjugal rights. In fact, even though the appellant was staying away, he provided all the amenities and comforts to the respondent and children with the hope that the respondent would mend herself, however, the respondent harped upon by saying that the appellant is living an adulterous life and she suspected the fidelity of the appellant. The respondent also informed the mother, sister and brother of the appellant as though the appellant is leading an adulterous life with other women. This attitude of the respondent, which caused mental cruelty to the appellant, which resulted in the appellant staying away from the matrimonial home for about 19 years. The long separation from the matrimonial life, leaving the children in the custody of the respondent itself is a cruelty perpetrated on the appellant and therefore, the learned counsel for the appellant prayed for setting aside the order passed by the Family Court.

8. In support of his contentions, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in the case of (K. Srinivas Rao vs. D.A. Deepa) reported in 2013 (5) SCC 226 to contend that even though mental cruelty cannot be precisely defined, yet, making unfounded, indecent, defamatory allegations against the spouse or his or her relatives may have adverse impact on the business prospect or the job of the spouse and that would itself amount to cruelty. In the present case, even though the respondent contended that she had never suspected the fidelity of the appellant, in the counter filed in OP No. 2385 of 2006, in para No.7, she has clearly stated that the appellant is guilty of having illegal intimacy with his former secretary and that had strained the matrimonial relationship. Further, such an averment made by the respondent has not been substantiated before the Family Court by letting in any evidence. Therefore, it is contended by the learned counsel for the appellant that the respondent has repeatedly confronted the appellant by stating that he is a womaniser and is leading an adulterous relationship without any basis and this had caused mental cruelty to the appellant.

9. The learned counsel for the appellant has also relied on the decision of the Honourable Supreme Court in the case of (Durga Prasanna Tripathy vs. Arundathi Tripathy) reported in 2005 AIR SCW 4045 wherein it was noted that the parties to the appeal therein are living separately for atleast 14 years and

they cannot, at this stage, reconcile themselves and live together forgetting their past as a bad dream. Therefore, the Honourable Supreme Court has set aside the Judgment of the High Court and restored the Decree of Divorce granted by the Family Court. In the present case, the appellant and the respondent are residing separately for atleast 19 years and therefore, there is no scope for reunion among them.

10. On the contrary, the learned counsel for the wife/respondent would contend, pointing out the communications exchanged between the appellant and the respondent as also the e-mail correspondences between the son/PW2 and the appellant, that there are abundant scope for re-union. By pointing out the evidence of RW2, it is contended that RW2 has grown up and he has completed his graduation. He, in his evidence, has categorically stated that he needs the support of his father as well as his mother and he is desirable of leading a life with his parents together. Further, the respondent, in the counter affidavit filed in OP No. 2385 of 2006 has categorically narrated the efforts taken by her to bring back the appellant to lead a happy matrimonial life with her. In fact, it was clearly pleaded in the counter affidavit that she had even requested the brother of the appellant to arrange for a counselling to put an end to the separation. Such a request made by the respondent was also conveyed by the brother of the appellant over phone to the appellant and inspite of the same, the appellant has refused to come back to the matrimonial home. Above all, in para No.8 of the counter, it was clearly stated that the respondent is still ready to join the appellant in the matrimonial home. Having regard to the above pleadings and taking note of the over all facts and circumstances of the case as also the evidence adduced on either side, the Family Court has rightly held that the dispute between the appellant and the respondent is trivial and normal in all families and it is not a ground for dissolution of the marriage.

11. As regards averments relating to cruelty, the learned counsel for the respondent would contend that the respondent has clearly stated in the counter in OP No. 2385 of 2006 that she never suspected the appellant and she was not a person to be ranked as suspicious in nature. It was further stated that she never disclosed the friendly relationship the appellant had with his colleagues or others to any one, including his family member. Further, the respondent has clearly proved through the evidence of RW2, son of the appellant and the respondent that the appellant has taken the children along with him on several occasion, while so, the averment that the respondent denied access to the children and thereby caused him mental cruelty is without any basis. Even according to RW2, the appellant regularly met him and his brother intermittently and therefore, it cannot be said that the respondent prevented the appellant

from interacting with his children. Therefore, the averment that the respondent subjected the appellant to matrimonial cruelty by denying access to the children is disproved by the respondent through oral evidence of PW2.

12. In support of the above contention, the learned counsel for the respondent relied on the decision of the Honourable Supreme Court in the case of (Dr. N.S. Dastane vs. Mrs. S. Dastane) reported in (1975) 2 Supreme Court Cases 326 to contend that the burden to prove the allegations relating to cruelty rests on the appellant and he failed to prove the same in a manner known to law. The appellant, having failed to prove that the respondent has treated him with cruelty, within the meaning of Section 10 (1) (b) of The Hindu Marriage Act, 1955 (Act 22 of 1955) is not entitled to a decree of divorce. The Trial Court, upon considering the oral and documentary evidence, has rightly dismissed the petition filed by the appellant for dissolution of the marriage and allowed the petition filed by her for restitution of conjugal rights and it does not call for any interference by this Court.

13. Keeping the above submissions of the counsel for both sides, we have perused the materials placed on record. The marriage between the appellant and the respondent was solemnised on 14.01.1998. Due to such wedlock, two children were born to them and they have now attained majority. Admittedly, due to simmering differences of opinion that cropped up between the appellant and the respondent, the appellant stayed away from the respondent and his children from 28.06.1998. These facts are not in dispute.

14. It is the vehement contention of the appellant that the respondent is suspicious in nature. It is the specific contention of the respondent that the appellant is having an illicit intimacy with one Shubha, who is the former Secretary of the appellant. According to the respondent, the said Shubha is a married woman and she had two children and subsequently, she lost her husband. The said Shubha visited the matrimonial home often. That apart, the respondent also accused the appellant of having illicit relationship with one Bharathi, who did her MBA course with the appellant. Therefore, according to the respondent, it was due to the relationship of the appellant with the said Shubha and Bharathi, a rift was caused in the matrimonial life and it has ruined the matrimonial life. To be specific, in the counter filed by the respondent in OP No. 2385 of 2006, she has categorically averred in para No.7 that "It is not the parental interference but illegal intimacy of the petitioner with his former Secretary that has strained the marital relationship and her money in the family. Till now, the respondent had made numerous requests and pleadings to come back to their matrimonial home, but the petitioner is very firm and

clear in telling the respondent that unless the respondent accepted the petitioner's widowed friend and her children, she would be thrown out legally." Thus, it is evident that the respondent has in fact suspected the fidelity of the appellant with other woman and this had largely caused a rift and commotion in the family affairs.

15. On the other hand, the appellant would vehemently contend that when his colleague Bharathi along with her husband came to his house and handed over a video cassette player, the respondent, on the face, complained to the husband of Bharathi that his wife Bharathi is living an adulterous relationship with the appellant. Such an accusation made by the respondent in front of the said Bharathi and her husband has caused embarrassment not only to the appellant but also to the husband of the said Bharathi. According to the appellant, in discharge of his official duty, he moved closely with other woman and it cannot be ranked as an adulterous living. The appellant further contended that the respondent even suspected him of having an illicit relationship with her brother's wife when he occasionally went to the workshop run by her brother for repairing the car.

16. Now, it has to be seen whether such averments relating to adulterous relationship of the appellant with other woman has been proved to the satisfaction of the Court. This is more so because according to the appellant, it is because of the suspicious nature of the respondent that he is having illicit relationship with other women, he was subjected to matrimonial cruelty and had underwent sleepless night for several months.

17. First of all, the appellant, in his cross-examination, has clearly stated that the said Shubha was not his Secretary at any point of time and she was a colleague. Further, to prove the relationship between appellant and the said Shubha, the respondent filed two photographs, marked as Exs. R9 and R10. According to the appellant, the photographs were taken during their training in Singapore along with other co-worker one Poonam and these photographs would not make out a case for adulterous relationship of the appellant with Shubha. The fact remains that even though the respondent complained that the appellant was having illicit with other women, she has not chosen to examine any one of them. Nor the respondent has filed any documentary evidence to prove that the appellant was leading an adulterous life. The case of the appellant that in discharge of his official duties he moved with other women colleague only needs to be accepted especially when the respondent failed to prove the plea of adultery made against the appellant.

18. As regards the other allegations levelled by the appellant that the respondent has falsely made a propaganda to

the sister, brother and mother of the appellant as if the appellant is leading an adulterous life with other women or student studying with him while pursuing MBA Course, it is the vehement contention of the appellant that such an accusation made by the respondent has lowered his image in the midst of his colleagues and it had caused him acute mental agony and mental disturbance. On the other hand, the respondent would contend that she never informed the sister, brother or mother of the appellant about his illicit intimacy with other women. However, the fact remains that in the counter affidavit filed in OP No. 2385 of 2006, in para (3), the respondent has averred that "the only request that she made to the petitioner's mother, brother and sister to save her husband from vanity". Thus, it could be safely inferred that the respondent either directly or indirectly has complained about the attitude of the appellant, particularly about the alleged relationship with other women or colleague with whom he is working to the sister, mother and brother of the appellant. Further, in the cross-examination, the respondent admitted that "she spoke to the appellant's family about the relationship of the appellant with others only to seek their help". This portion of the evidence of the respondent would only fortify the claim of the appellant that the respondent has informed one and all in the family alleging that the appellant is having illicit relationship with other women and this would have certainly have a bearing and consequences on the appellant leading a peaceful life in the matrimonial home.

19. Even though mental cruelty cannot be defined precisely, yet, it can be inferred on the basis of the attendant facts and circumstances of the case. In this context, useful reference could be made to the decision of the Honourable Supreme Court in (K. Srinivas Rao vs. D.A. Deepa) reported in 2013 (5) SCC 226 wherein it was held as follows:-

"10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act (for short "the Act"). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling

false accusations against the other spouse would be an act of cruelty...

20. Thus, the plea of mental cruelty cannot be precisely defined, yet, making unfounded, indecent, defamatory allegations against the spouse or his or her relatives which may have adverse impact on the business prospect or the job of the spouse would itself amount to cruelty. In the present case, the respondent has harped upon by contending that the appellant led an adulterous life with one Shubha, Bharathi and other women, but such allegations are largely not substantiated either by examining the aforesaid persons or by any other proof to show that the appellant was in fact having illicit intimacy with them. Further, it was proved from the oral evidence as well as pleadings of the respondent that she has informed the sister, brother and mother of the appellant as though the appellant was living an adulterous relationship with other woman. When the respondent, without any substance, has informed the sister, brother and mother of the appellant as though the appellant is leading an adulterous life, definitely, it would be difficult, rather the appellant would be ashamed, to even interact or meet his own sister, brother and mother in the wake of such scandalous and disparaging remarks made against him by the respondent. Moreover, we are also of the opinion that if a suspicious nature of one of the spouse doubting the fidelity of the husband or wife as the case may be, becomes a perennial feature without any basis, leading to discord in the matrimonial life, it is only a reflection of cruelty inflicted by one of the spouse against the other. In such circumstances, we feel that the accusations made by the respondent against the appellant, which remain largely unsubstantiated, with respect to adulterous living, would have definitely caused him a scar, mental disturbance and mental cruelty to him. Therefore, we hold that the appellant has proved that he was inflicted with and subjected to matrimonial cruelty at the hands of the respondent.

21. Yet another allegation made by the appellant is that he was subjected to physical assault by the respondent. He quoted an incident that had taken place during September 1996 when the respondent, at the height of a quarrel, assaulted him with a tummy trimmer and apprehending danger, the appellant locked himself in the bed room. It was further contended that not content with such an act, the respondent broke open the door with the tummy trimmer - a metallic gadget. While meeting this averment, the respondent has stated that the appellant pressurised her to accompany him to the house of his Secretary and when it was refused, the appellant locked himself into the room with threat of committing suicide and this had necessitated the respondent to break open the lock with the metallic gadget. On analysing the evidence on record, the respondent admitted that such an incident had in fact taken place during September

1996 when she broke open the door of the room with the tummy trimmer and she has not denied the said incident. However, the respondent would only contend that as the appellant confined himself in the room with threat of committing suicide, she was forced and compelled to break open the door with the metallic gadget. Even though the appellant has stated that he was assaulted by the appellant with Tummy Trimmer and it was denied by the respondent, this incident would only show the extent to which the couple had matrimonial differences among them. Further, PW2, the son, during his examination has stated that there were frequent and constant quarrel between the appellant and the respondent and that the appellant left the matrimonial home on 28.06.1998.

22. As regards the plea of the appellant that he was prevented access to meet the children, RW2, son was examined, who in fact has stated that the appellant used to take him and his brother for a long drive more than once, however, he has stated that after 2002, the appellant did not visit the matrimonial home. In the cross-examination, RW2 has narrated about the exchange of e-mail between him and his father/appellant, the sum of Rs.6 lakhs paid by the appellant towards capitation fee for admission in the college and also the payment of Rs.75,000/- for each semester (for 8 semesters) to complete his studies. The fact remains that after 2002, the appellant did not visit the matrimonial home even for a short visit and RW2 has stated that he and his brother were interacting with the appellant through e-mail communication. When a question was posed to the RW2 as to whether he was prevented by the respondent from interacting with the appellant, he replied in the negative and stated that they were (RW2 and his brother) never prevented from interacting with the appellant. Further, RW2 has also stated that he did not stop meeting his father. At the same time, RW2 has stated that he preferred not to meet the appellant since it would be taken as if he is supporting the separation of the appellant. In effect, RW2 wanted to live both with the appellant and the respondent. Furthermore, now the children have become major and therefore the question of the respondent preventing the appellant to meet the children will not arise at this stage.

23. The next point for consideration is whether the long and separate living of the appellant and the respondent for about 19 years has practically made it impossible for a re-union. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (Durga Prasanna Tripathy vs. Arundathi Tripathy) reported in 2005 AIR SCW 4045 wherein it was held that the parties therein are residing separately for 14 years and therefore the Honourable Supreme Court granted a decree of divorce by finding that the matrimonial relationship has irretrievably broken leaving little

or no scope for re-union. In Para No.29 and 30, it was held as follows:-

"29. The facts and circumstances in the above three cases disclose that reunion is impossible. Our case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter on record that dislike for each other was burning hot.

30. Before parting with this case, we think it necessary to say the following. Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree of divorce. The Family Court has directed the appellant to pay a sum of Rs.50,000/- towards permanent alimony to the respondent and pursuant to such direction, the appellant had deposited the amount by way of bank draft. Considering the status of parties and the economic condition of the appellant who is facing criminal prosecution and out of job and also considering the status of the wife who is employed, we feel that a further sum of Rs.1 lakh by way of permanent alimony would meet the ends of justice. This shall be paid by the appellant within 3 months from today by an account payee demand draft in favour of the respondent-Arundhati Tripathy and the dissolution shall come into effect when the demand draft is drawn and furnished to the respondent."

24. In the present case, admittedly, the appellant and the respondent are residing separately for the past 19 years. The long separation between them would render the matrimonial life slipping to a stage beyond retrieval. The matrimonial life between the appellant and the respondent has irretrievably broken leaving little or no scope, practically, for re-union of the couple, at this stage. Thus, no useful purpose could be achieved by keeping the matrimonial tie alive when practically there is no possibility or chance for the couple to get re-union. Therefore, in the best interest of the appellant and the respondent, it is desirable that the matrimonial relationship

between them has to be snapped leaving the parties to decide their future course of living in the manner they wish.

25. For all the above reasons, the common order dated 18.04.2015 passed in O.P. No. 2385 of 2006 and O.P. No. 2809 of 2007 on the file of II Additional Judge, Family Court, Chennai are set aside. Consequently, both the Civil Miscellaneous Appeals are allowed. No costs. Resultantly, OP No. 2385 of 2006 filed by the appellant for dissolution of marriage is allowed granting a decree of divorce and OP No. 2809 of 2007 filed by the respondent for restitution of conjugal rights is dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rsh

To

1. The II Additional Judge
Family Court, Chennai
2. The Registrar
Family Court, Chennai.

+2 Ccs to Ms. Sheila Jayaprakash, Advocate sr 79046 & 79047.

CMA Nos. 1799 & 1800/2016

GR(CO)
SP(23/11/2017)

सत्यमेव जयते

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