

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2017
Delivered on : 06.11.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

C.M.A.No.1899 of 2016

Manikandababu ... Appellant/Petitioner

Vs

R.Geethagowri ...Respondent/Respondent

Civil Miscellaneous Appeal filed U/S. 19 of family court Act against the order dated 10.05.2016 made in H.M.O.P.No.522 of 2013, on the file of the Additional Family Court, Coimbatore.

For Appellant : Ms.Ramya
for Mr.N.Ramesh
For Respondent : Mr.M.Roshan Atiq

J U D G M E N T

[Judgment of the Court was delivered by A.SELVAM, J.]

This Civil Miscellaneous Appeal has been directed against the order dated 10.05.2016, passed in H.M.O.P.No.522 of 2013, by the Additional Family Court, Coimbatore.

2.The appellant herein, as petitioner, has filed H.M.O.P.No.522 of 2013, on the file of the trial Court under Sections 13[1][i-a] and [i-b] of the Hindu Marriage Act, 1955, praying to dissolve the marriage held between the petitioner and respondent on 27.11.2009.

3.The material averments made in the petition are that the petitioner has married the respondent on 27.11.2009 at Sri Saradambal Temple as per Hindu Rites and Custom. The petitioner has not demanded any dowry. The family of the respondent has changed her horoscope so as to get marriage. After marriage, both the petitioner and respondent have lived happily for a short span of one week. The respondent has refused to have

cohabitation with the petitioner. The petitioner has shown his love and affection towards the respondent. The respondent has used to threaten the petitioner by way of saying that she would prefer a police complaint. In the meanwhile, the respondent has become pregnant. On 29.04.2010, without sufficient reason, the respondent has left matrimonial home. The parents of the petitioner have met the respondent and asked her to come to marital abode. But, the parents of the respondent has given assurance to the effect that they would send respondent after delivery. The respondent has delivered a child and even the same has not been intimated to the petitioner. Further, the petitioner has not been invited for christening ceremony of the child. The petitioner has waited for a long time with a fond hope of expecting change in the attitude of the respondent. The respondent has also given a police complaint. The petitioner has given a notice dated 18.04.2013. After receipt of the same, she has not given any reply. Since the respondent has caused cruelty to the petitioner and also deserted him without sufficient cause, the present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, it is averred that most of the allegations mentioned in the petition are false. On 10.09.2010, the respondent has given birth to a female child. But, the petitioner has not seen the child. The petitioner has made arrangements for getting second marriage. It is false to aver that the respondent has caused mental cruelty to the petitioner and also deserted him without sufficient cause. There is no merit in the petition and the same deserves to be dismissed.

5. On the basis of the available rival evidence on record, the trial Court has dismissed the petition by way of passing the impugned order and the same is being challenged in the present Civil Miscellaneous Appeal.

6. The learned counsel appearing for the petitioner has repeatedly contended to the effect that the petitioner has married the respondent on 27.11.2009 as per Hindu Rites and Custom and after marriage, both of them have lived happily for a short span of seven days and subsequently, the respondent has shown her vulnerable attitude towards the petitioner and further, the respondent has threatened him by way of saying that she would give police complaint. On 29.04.2010, even without sufficient reason, she left matrimonial home and the petitioner has made several attempts so as to live with her and all his attempts have become futile and subsequently, the respondent has delivered a female child and even birth of the child has not been intimated to the petitioner and further, the respondent has

given a false complaint. Under the said circumstances, a legal notice has been issued and even after receipt of the same, the respondent has not changed her attitude and since the respondent has caused mental cruelty to the petitioner and also deserted him without sufficient cause, the present petition has been filed for getting the relief of divorce. But the trial Court, without considering the acceptable evidence available on the side of the petitioner, has erroneously dismissed the petition and therefore, the order passed by the trial Court is liable to be set aside and the petition filed by the petitioner is liable to be allowed.

7. Per contra, the learned counsel appearing for the respondent has contended that in the instant case, even though, it is stated on the side of the petitioner that the respondent has caused cruelty to the petitioner and also deserted him without sufficient cause, no acceptable/trustworthy evidence is available on the side of the petitioner and further, even in the police complaint, the respondent has expressed her willingness to live with the petitioner and the trial Court, after considering the rival evidence available on record, has rightly dismissed the petition and therefore, the order passed by the trial Court does not require any interference.

8. Before considering the rival submissions made on either side, the Court has to narrate the following admitted facts:

It is an admitted fact that the petitioner has married the respondent on 27.11.2009 as per Hindu Rites and Custom. It is also equally an admitted fact that on 29.04.2010, the respondent has left matrimonial abode and further, she has given birth to a female child on 10.09.2010.

9. The present petition has been filed on the basis of two grounds, namely, cruelty and desertion. Since the present petition has been filed on the basis of the grounds mentioned supra, the entire burden lies upon the petitioner to prove the same.

10. In fact, on the side of the petitioner, so many allegations have been made against the respondent. The first and foremost allegation is that the respondent is not having any intention to have cohabitation with the petitioner. Even in the petition, it has been specifically stated that the respondent has left matrimonial abode, at the stage of pregnancy and subsequently, on 10.09.2010, she delivered a female child. If really, such allegation is true, definitely the respondent would not have become pregnant and subsequently, delivered a female child on 10.09.2010. Therefore, the first and foremost allegation levelled on the side of the petitioner against the

respondent is totally false.

11.The second allegation levelled against the respondent is that the respondent has given a false police complaint against the petitioner.

12.The complaint alleged to have been given by the respondent has been marked as Ex.X1. In fact, this Court has perused the same, wherein, it is clearly stated that the respondent is always ready and willing to live with the petitioner along with her child. Therefore, it goes without saying that the respondent has always been longing for the company of the petitioner. Under the said circumstances, the second allegation levelled against the respondent also goes without merit.

13.Further, in so many places of the petition, it is averred to the effect that the petitioner has made several attempts for bringing the respondent to marital home and the respondent has refused to concede the demand made by the petitioner.

14.In fact, this Court has perused the entire evidence available on record and ultimately, found that the so called attempts made by the petitioner are nothing, but false. As stated earlier, even in Ex.X1, the respondent has expressed her clear willingness to live with the petitioner along with her child. Therefore, it is needless to say that in the petition filed on the side of the petitioner, so many baseless allegations have been levelled against the respondent. Since so many baseless allegations have been levelled against the respondent and since on the side of the respondent, it has been clearly established to the effect that she is always ready and willing to live with the petitioner, it is needless to say that the grounds mentioned in the petition are totally false.

15.The learned counsel appearing for the appellant/petitioner has relied upon the decision reported in CDJ 2017 MHC 700 [Suguna Vs Kubendiran], wherein, it is found that the wife has caused both physical and mental cruelty. Under the said circumstances, the order granting divorce by the trial Court has been confirmed.

16.In the instant case, as mentioned supra, all the allegations put forth on the side of the petitioner are totally false. Since all the allegations levelled against the respondent on the side of the petitioner are totally false. It is needless to say that the relief of divorce sought in the petition cannot be granted.

17.The trial Court, after considering the overall

evidence available on record, has rightly dismissed the petition. In view of the discussion made earlier, this Court does not find any force in the contention put forth on the side of the appellant/petitioner and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with cost. The order dated 10.05.2016, passed in H.M.O.P.No.522 of 2013, by the Additional Family Court, Coimbatore is confirmed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To
The Additional Family Court,
Coimbatore.

Copy to

the section officer, V.R. Section,
high court, madras 104.

+1cc to Mr.N.RAMESH, Advocate, S.R.No. 78433/17

Judgment in
C.M.A.No.1899 of 2016

SV (CO)
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