

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.11.2017

Delivered on: 30.11.2017

Coram

The Hon'ble Mr. Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

C.M.A.No.2377 of 2015

G.Kavitha ... Appellant

Vs

M.Ganesan ... Respondent

Civil Miscellaneous Appeal preferred against the order dated 21.07.2015, passed in H.M.O.P.No.1134 of 2010, on the file of the Principal Family Court, Coimbatore.

For Appellant ... Mr.V.Sivakumar

For Respondent ... Mr.S.Vinothkumar

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.)

This Civil Miscellaneous Appeal has been directed against the order dated 21.07.2015, passed in H.M.O.P.No.1134 of 2010, by the Principal Family Court, Coimbatore.

2.The appellant herein, as petitioner, has filed H.M.O.P.No.1134 of 2010, on the file of the trial Court, under Section 13(1-A)(ii) of the Hindu Marriage Act, 1955, praying to dissolve the marriage solemnized on 26.2.2001 between the petitioner and respondent.

3.It is averred in the petition that the respondent has married the petitioner on 26.02.2001 at 'Sheshathiri Swamigal Mahal Thirumana Mandapam', as per Hindu Rites and Custom and the same has been registered in Sub-Registrar Office, Gandhipuram, Coimbatore. Both the petitioner and respondent have been blessed with a male child on 14.11.2002. At the time of marriage, the respondent has served at Singapore and after sometime, the respondent has taken the petitioner, on tourist Visa, to Singapore. After expiry of Visa, the petitioner has

returned to India during May 2001. The respondent has given assurance to get back the petitioner to Singapore, after making proper arrangements. But the respondent has not taken effective steps to take the petitioner to Singapore. During September 2001, the respondent has left the petitioner in her matrimonial abode. The respondent has lost his job in Singapore. After coming from Singapore, the respondent has not attended any job. The respondent has not at all cared to maintain the petitioner and the child. The respondent has left to Malaysia during January 2004 and promised that he would take the petitioner and child, after making necessary arrangements. But the respondent has failed to fulfill his promise. The petitioner has filed H.M.O.P.No.28 of 2008 for getting restitution of conjugal rights and also M.C.No.10 of 2008 for getting maintenance. Even after disposal of those proceedings, the respondent has not taken any steps to maintain the petitioner. The petitioner has issued a legal notice dated 07.12.2009, whereby called upon the respondent to resume matrimonial life. Even after receipt of the same, the respondent has not taken any steps. The respondent has caused mental cruelty to the petitioner. Under such circumstances, 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 except some few facts, the remaining facts mentioned in the petition are false. It is false to aver that the respondent has failed to maintain the petitioner. The respondent has gone to Singapore as a coolie and during his stay at Singapore, he obtained tourist visa for the petitioner and as per the said Visa, she has stayed there for some time. The respondent has lost his job at Singapore and during the year 2004, the respondent has gone to Malaysia as daily wage earner. After passing of orders in H.M.O.P.No.28 of 2008 and M.C.No.10 of 2008, the respondent has made several attempts to bring the petitioner to matrimonial abode. The petitioner has failed to concede the demands made by the respondent and there is no merit in the petition and the same deserves to be dismissed.

5. On the basis of divergent submissions made on either side, the trial Court has found that the ground mentioned in the petition for getting divorce is nothing but false and ultimately dismissed the petition by way of passing the impugned order.

6. The learned counsel appearing for the appellant/petitioner has repeatedly contended to the effect that even after passing the order in H.M.O.P.No.28 of 2008, the respondent has failed to live with the appellant/petitioner and on so many occasions, the respondent has caused mental cruelty to her. Under the said circumstances, the present petition has been filed for getting divorce. But the trial Court, without considering the abundant evidence available on record 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.

7.Per contra, the learned counsel appearing for the respondent has contended that the respondent has always tried to live with the petitioner. Since the respondent has served as a daily wage earner in Malaysia, he has not been able to take the petitioner to Malaysia and even after passing of the order in H.M.O.P.No.28 of 2008, the respondent has made several attempts to live with the petitioner, but the petitioner has vehemently refused to live with the respondent and the trial Court, after considering the overall evidence available on record, has rightly dismissed the petition and even now the respondent is ready and willing to live with the petitioner and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

8.On the basis of the rival submissions made on either side, the Court has to analyse as to whether the respondent has really caused mental cruelty to the petitioner.

9.In fact, this Court has perused the entire averments made in both the petition and counter and ultimately found that the main grievance expressed on the side of the petitioner is that the respondent has failed to take her to Malaysia and even after passing of the order in H.M.O.P.No.28 of 2008, the respondent has not cared to obey the same.

10.On the side of the petitioner, the petitioner has been examined as P.W.1. During the course of cross-examination, she admitted to the effect that after passing of the order in H.M.O.P.No.28 of 2008, on 05.10.2009, the respondent has sent a letter dated 16.11.2009, wherein, he asked the petitioner to come and live with him and during that period he lived in Malaysia. Further she admitted to the effect that she has not sent any reply letter. Further, she admitted that on 14.12.2009, the respondent has sent another letter, whereby he expressed his willingness to live with the petitioner.

11.Considering the clear admission made by the petitioner in cross-examination, the Court can very well come to a conclusion that the respondent has made several attempts to live with the petitioner, but the petitioner has refused to live with him.

12.As pointed out earlier, the main grievance expressed on the side of the petitioner is that the respondent has not taken her to Malaysia.

13.Considering the fact that the respondent has served in Malaysia as a daily wage earner, it is not easily possible on the part of the respondent to take the petitioner to Malaysia as early as possible. But after passing of the order in H.M.O.P.No.28 of 2008, on 05.10.2009, he sent two letters to the petitioner to come and live with him. But the petitioner has not given any reply letter nor joined the respondent. Therefore, it is quite clear that the petitioner has caused mental cruelty to the respondent and even now, the respondent is ready to live with the petitioner. But the petitioner has refused to live with him.

14.Considering the clear admission made by the petitioner and also considering her conduct, it is needless to say that the ground mentioned in the petition is not genuine and only to harass the respondent, the petitioner has filed the present petition.

15.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 has not found any error nor illegality in the order passed by the trial Court and therefore, the present Civil Miscellaneous Appeal deserves to be dismissed.

In fine, this Civil Miscellaneous Appeal is dismissed with costs. The order passed in H.M.O.P.No.1134 of 2010, by the trial Court, is confirmed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Principal Family Court,
Coimbatore

2.The Record Keeper,
VR Section,
High Court, Madras.

+2cc to Mr.V.Sivakumar, Advocate sr.no.85278
+1cc to Mr.Govi Ganesan, Advocate sr.no.85360

C.M.A.No.2377 of 2015

ppa(co)
nr 13/03/2018