

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2017
PRONOUNCED ON : 31-08-2017

CORAM:

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

Civil Miscellaneous Appeal No. 2408 and 2409 of 2016
and
C.M.P. No. 16764 of 2016

Dr. Anusha ...Appellant in both the appeals/
Petitioner in both the petitions

Versus

Dr. Arjun ..Respondent in both the appeals/
Respondent in both the petitions

CMA No. 2408 of 2016:- Appeal filed under Section 19 of the Family Courts Act, 1984 against the Decree and Judgment dated 07.12.2015 made in I.A. No. 863 of 2015 in O.P. No. 1119 of 2012 on the file of II Additional Family Court, Chennai

CMA No. 2409 of 2016:- Appeal filed under Section 19 of the Family Courts Act, 1984 against the Decree and Judgment dated 07.12.2015 made in O.P. No. 1119 of 2012 on the file of II Additional Family Court, Chennai

For Appellant : Mr. V. Vaithiyalingam
in both the appeals
For Respondent : Mrs. R. Maheswari
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

CMA No. 2408 of 2016 is filed by the appellant questioning the correctness of the order dated 07.12.2015 passed by the learned II Additional Family Court, Chennai in I.A. No. 863 of 2015 in O.P. No. 1119 of 2012. By the said order dated 07.12.2015, the Family Court, while dismissing the Interlocutory Application filed by the appellant for maintenance, directed the respondent to pay a sum of Rs.20,000/- per month as maintenance to the minor son Anirudh.

2. CMA No. 2409 of 2016 is filed by the appellant against the Judgment and Decree dated 07.12.2015 passed in O.P. No. 1119 of 2012 by the II Additional Family Judge, Chennai. In and by the said Judgment dated 07.12.2015, the Original petition filed by the respondent for dissolution of the marriage dated 26.04.2010 on the grounds of cruelty and desertion was decreed.

3. Since the issues involved in both the appeals are inter-connected with each other, they are taken up together and are disposed of by this common judgment.

4.(i) The respondent/husband has filed O.P. No. 1119 of 2012 before the Family Court, Chennai for dissolution of the marriage solemnised between him and the appellant/wife on 26.04.2010 on the grounds of cruelty and desertion. According to the respondent, the marriage between him and the appellant was solemnised on 26.04.2010 as per Hindu rites and customs at AVM Rajeswari Kalyana Mandapam, Chennai and registered with the office of the Sub-Registrar, Mylapore on the same day. Earlier, the respondent has rejected the alliance with the appellant for the reason that he wanted only a home-maker as wife, who can help him in raising the family, inasmuch as the respondent is the only son to his parents, however, the appellant only wanted to practice as a Doctor and was unwilling to give up her profession. In view of the above, earlier, the proposal for the marriage between the appellant and the respondent did not materialise. Subsequently, according to the respondent, the appellant, some how or the other befriended his sister and slowly convinced her that she would not go for a job after marriage and would remain as a home-maker as per the wishes of the respondent. The appellant went to the extent of going to Sai Baba Temple on the day when the mother of the respondent makes a visit and made a promise in front of the deity that she would even tear the degree certificates to prove her bonafides. Moved by such an act of the appellant towards the respondent and his family, the mother of the respondent convinced the respondent and his father to solemnise the marriage between the appellant and the respondent. Accordingly, the marriage was solemnised between him and the appellant on 26.04.2010. After the marriage, the respondent and the appellant started their matrimonial home at the residence of the respondent at Radhakrishnan Salai, Chennai. Due to the wedlock, on 23.03.2011, the couple were blessed with a male child - Anirudh. सत्यमेव जयते

(ii) According to the respondent, the appellant was very cordial, respectful and affectionate towards him and his parents between the period of betrothal until the date of the marriage. After marriage, the respondent and appellant went for a honeymoon on May 4, 2010 to Newzealand and Malaysia, where there was a sudden change in the attitude and behavioural pattern of the appellant. Further, the appellant stayed for a very short period in the matrimonial home from the date of marriage and she always wanted to be in her parents house on the pretext that she had to take care of her mother who had undergone knee replacement surgery, besides her father is aged and retired from service. Thus, the appellant stayed intermittently in the matrimonial home. Even during such intermittent stay, the appellant always developed quarrel with the respondent and his mother. The appellant used to be very harsh and rude towards the mother, father and sister-in-laws of the respondent for no reason. The appellant used to make wild and untrue allegations about the respondent and his family

which had caused great mental agony to the respondent. The appellant also threatened the respondent that she would commit suicide if her commands are not heeded to. Such threat and hostile behaviour of the appellant has multiplied day by day that it has become impossible for the respondent to tolerate it anymore besides it had an impact on the respondent to concentrate on his career. The appellant's reckless behaviour towards the respondent and his family turned into hatred and the appellant used to become hysterical and shout at the respondent when she was in the matrimonial home. The appellant also used to call the respondent at midnight through phone and shout at him with all filthy language accusing him and his parents. The respondent and his family members ignored the attitude of the appellant since she was pregnant at that time and the respondent and his family members treated the appellant with all care and compassion. On the other hand, the appellant treated the respondent with maximum cruelty, subjected him to torture in all forms and manifestations and made his life miserable.

(iii) It is contended by the respondent in the Original Petition that due to the sudden demise of his father and also because of the death of his grand mother within a period of three weeks thereafter, the respondent was greatly depressed. The appellant who had to be a moral support to the grieved husband and his family only added fuel to the fire and her behaviour became erratic and intolerable. According to the respondent, the appellant left the matrimonial home on 21.02.2011, after the demise of his father. Subsequently, neither the appellant nor her parents have come to the death of the grand mother of the respondent who was living in the matrimonial home along with the respondent. Further, after leaving the matrimonial home, the appellant never bothered to even make a visit to the matrimonial home during her health check up at a clinic situate on the same road where the matrimonial home is situated. On 23.03.2011, the appellant gave birth to the minor son Anirudh and in all the four days of her hospitalisation, she locked her room and refused to allow the respondent or his mother to see the just born child. This attitude of the appellant has shocked the respondent and his family. Further, even after discharge from the hospital, when the respondent, his mother and sisters visited the parents house of the appellant they were stopped at the door saying that the appellant is not willing to see them and will not show the child. Since the attitude of the appellant become unbearable, the respondent convened a meeting in the presence of elders of both the family, including the father of the appellant during July 2011 in which one Ms. Sujatha, their next friend and who was a Psychologist whom the appellant used to confide in personal matters, also participated. According to the respondent, even after the family meeting held during July 2011, the attitude of the appellant never changed and therefore another meeting was held on 27.08.2011 since the appellant refused to come back to the matrimonial home after the child birth and no naming ceremony was performed for the child. On 27.08.2011, all the problems confronted between the appellant

and the respondent were openly discussed in front of the elders of both sides and atlast the appellant admitted her mistake and asked apology to the respondent, his mother and sister and promised to change her behaviour. However, the appellant refused to go to the matrimonial home along with the new born child and to live with the respondent. In spite of the refusal of the appellant to join the respondent in the matrimonial home, the respondent visited the appellant at her parents house during her pregnancy and after child birth out of love and affection he had towards the appellant with an intention to keep the matrimonial tie between the appellant and respondent intact. Whenever the respondent visited the appellant at her parents house, he was humiliated and insulted in many ways, however the respondent tolerated all those attitudes of the appellant and her family. While so, on 13.10.2011, for no reason, the appellant and her father caught hold of the respondent by his shirt collar and manhandled him and also warned him of dire consequences if he visits the appellant under the pretext of seeing his son. This incident, according to the respondent, has irretrievably broken the matrimonial relationship between the appellant and the respondent. However, as a last resort, the respondent had spoken to the brother of the appellant and arranged for a conciliation talk for the third time. The respondent, appellant, her brother Surrender and their common friend met on 22.12.2011 to sort out the issues and to ensure that the appellant returns to the matrimonial home. The meeting lasted for four hours, however, the appellant refused and remained adamant to come back to the matrimonial home to join the respondent.

(iv) It is the case of the respondent/husband that even though the appellant refused to return to the matrimonial home, she continuously caused mental torture to the respondent over telephone, by sending sms and by visiting the working place of the respondent. On 12.03.2012, the appellant visited the office of the respondent and behaved in an erratic and harsh manner and also physically assaulted the respondent, pulled his spectacles and crushed the same by stamping with her legs in front of the entire office staff. Further, the appellant had resiled from her promise and started going for job without the knowledge of the respondent. According to the respondent, the appellant conducted herself in a wilful and unjustifiable manner in refusing to join the matrimonial home besides caused mental agony, physical discomfort and peacelessness to him which had strained the matrimonial relationship between the respondent and the appellant. In spite of his best efforts in arranging for conciliation meeting in the presence of common friends, relatives and well wishers, the appellant refused to return to the matrimonial home without any justifiable cause. That apart the appellant restricted the visit of the respondent, his mother and sister to meet her and the new born child at her parents house. In such circumstances, the respondent has filed the Original Petition before the court below for dissolution of the marriage dated 26.04.2010 on the grounds of desertion and cruelty.

5. (i) The Original Petition was resisted by the appellant/wife by filing a detailed counter affidavit in which she had denied all the averments made by the respondent/husband in the Original Petition as false and incorrect. According to the appellant/wife, the marriage between the appellant and the respondent was solemnised on 26.04.2010 at A.V.M. Rajeswari Kalyana Mandapam as per Hindu rites and customs. The marriage is an arranged marriage having been arranged by elders of both sides. The respondent is a Post Graduate and has done his doctorate in Finance and the appellant has done her M.S. General Surgery and is currently employed as a Senior Resident in the Department of General Surgery in ESIC Hospital, K.K. Nagar, Chennai. According to the appellant, the conduct of the respondent in rushing to the Court seeking for dissolution of the marriage within two years of completion of marriage and within one year of birth of male child without making any efforts to save the future of the appellant and the minor child speaks for themselves. The appellant does not know anything about the respondent rejecting her alliance, for, his wish is to get married to a home-maker wife. On the contrary, the appellant, at the time of bride seeing ceremony, expressed her wishes to continue her profession as a Doctor and would not give up her profession. Therefore, the appellant denied that she had befriended the sister of the respondent, convinced her to marry the respondent and that she would not go for job after marriage. The appellant never offered to tear the educational testimonials in front of the deity Sai Baba to prove her bonafide that she will not go for a job after marriage.

(ii) According to the appellant, after marriage, during their honey-moon to Newzealand and Malaysia, it was the respondent who ill treated her. Further, it is false to state that the appellant's stay in the matrimonial home was very short and she always wanted to be in her parents house under some pretext or the other. Even though the mother of the appellant requires to be taken care of and her brother is living abroad, her father is taking care of her mother and she used to visit occassionally her parents house, which has not in any way affected the matrimonial life between the appellant and the respondent. Further, the appellant visited her parents house only after getting permission from the respondent and her in-laws. When the appellant was pregnant, as she was not getting enough care in the matrimonial house and the respondent does not know how to take care of a pregnant lady, the appellant used to shuttle between the two houses very often. Therefore, it is false to state that the appellant developed quarrel with the respondent and her in-laws. In fact, it is the mother and sister of the respondent who have made the life of the appellant miserable by interfering into the day to day life of the appellant. The appellant never used any abusive language nor did she conduct herself rudely at any point of time. The respondent, who initially chided his mother and sister for not allowing them to have privacy, later become accustomed to their behaviour and did not have any courage to defy their instructions for fear of being deprived of the family property. However, the appellant has nothing against

her in-laws and gave them due respect except for their intrusion in the family life of the appellant and their intention of dominating the respondent/husband.

(iii) The appellant denied as false the claim of the respondent that she threatened to commit suicide if the respondent does not heed to her commands. The appellant never exhibited hysterical attitude and in fact, she was tortured by the family members of the respondent in the name of tradition and made sure that the elder daughter and her family are made happy. The appellant also denied as false that she made phone calls at mid night to the respondent and shouted at him. When there was a demise in the family of the respondent, it is the mother-in-law and sister-in-law who have advised her not to visit the matrimonial home during her pregnancy as it may hurt the baby in the womb. While so, it is false to allege that the appellant and her family members did not attend the funeral and other ceremonies. On 23.03.2011, the appellant gave birth to a male child. After the birth of the child, as per medical advice, the child was put in quarantine, which barred visitors and members of both the families and therefore, the question of preventing or refusing the respondent and his family members to see the new born child does not arise.

(iv) According to the appellant, she intended to return to the matrimonial home after her grievances were addressed by the members of the family. On 27.08.2011, a meeting was in fact arranged in which all the family members discussed the issues between the appellant and the respondent in the presence of Psychologist, however, no decision was taken at the end of the meeting since the real issues were relegated to the background. As the appellant did not commit any mistake, she has not sought apology from the respondent, his mother and sister or has she promised the respondent and her family members that she will not hysterically behave in future, as alleged. Further, it is false to allege that on 30.09.2011, when the respondent visited her parents house, he was held by his shirt collar and manhandled. It was only a verbal quarrel when both the respondent and father of the appellant expressed their common grievance. During such conversation, the respondent insisted for permanent separation which irked the appellant and her family members. On 22.12.2011 when a meeting was held, it was the respondent and his family members who have refused to hear the genuine grievance of the appellant only with an intention to drive away her from the family. On 11.02.2012, a newspaper publication was made by the respondent and his family members on the eve of anniversary of the death of the father of the respondent in which all the family members name were prominently mentioned, including the name of the minor son Anirudh, but the name of the appellant was conspicuously absent and omitted. The appellant made several phone calls and sent sms to the respondent but the respondent never attended to the phone calls or replied to the messages sent through the mobile phone. The respondent stopped visiting the matrimonial home from 30.09.2011 and the respondent had left the appellant in the lurch. Therefore, on 12.03.2012, the

appellant visited the office of the respondent. At that time, the respondent uttered most provoking words of insults and when she unwittingly touched his sunglasses, it fell to the ground and got damaged. Such an incident has happened without any motive

(v) The respondent and his family members did not even attend the first anniversary celebration of the minor son on 23.03.2012. The conduct of the respondent in ignoring the appellant has inflicted untold mental torture and agony to her. The difference of opinion between the appellant and the respondent is not such that it warrants dissolution of marriage and it can be resolved by mutual discussion. According to the appellant, technical and hypersensitive approach will be counter-productive in saving the matrimonial life and the appellant could not imagine a life without the respondent. The appellant even tried to talk to the respondent during May 2011 but the respondent was prevented by her mother-in-law from talking to her. The appellant only intends to get reunion and is willing to join the matrimonial company of the respondent and therefore, she prayed for dismissal of the Original petition for divorce filed by the respondent.

6. During the pendency of the Original Petition, the appellant/wife has filed I.A. No. 863 of 2015 in OP No. 1119 of 2012 under Section 25 of The Hindu Marriage Act praying for a direction to direct the respondent to pay permanent alimony and maintenance amount of Rs.2 lakhs per month to her from the date of petition till her life time and the minor son Anirudh at the rate of Rs.1 lakh each. In the affidavit filed in support of the application in I.A. No. 863 of 2015, it was stated by the appellant that she has already filed I.A. No. 3338 of 2012 for grant of pendente lite maintenance under Section 24 of The Hindu Marriage Act and it is pending for enquiry. It was also stated that the respondent is already sending a sum of Rs.10,000/- every month towards the maintenance of the appellant and her minor son and it is too deficient compared to their needs. It was stated that the respondent and his family are owning properties worth Rs.700 crores and the respondent holds 40% of share in those properties and the remaining 60% will go to the share of appellant's mother-in-law. It was further stated that she is not earning Rs.61,000/- per month as alleged in the Original Petition by the respondent and she is only getting temporary jobs through which she is earning around Rs.45,000/- per month. Therefore, she has prayed for allowing the application seeking permanent alimony and maintenance.

7. The application in I.A. No. 863 of 2015 in OP No. 1119 of 2012 was resisted by the respondent/husband by filing a counter affidavit contending inter alia that the appellant is working as Senior Resident in the Department of General Surgery, ESIC Hospital, Chennai and drawing a sum of Rs.61,000/- per month which is sufficient to maintain herself and the minor child. That apart, the respondent is depositing a sum of Rs.10,000/- per month for maintenance of the minor son. The amount of Rs.2 lakhs claimed by the appellant is

without any basis. The appellant is living with her father and she is not spending anything towards accommodation, food or other expenses, which are largely taken care of by her father. The appellant and her father are using the minor child as a scape-goat for extracting money from him by abusing the due process of law and claiming maintenance, properties, alimony etc., Therefore, the appellant prayed for dismissal of the application.

8. Before the trial Court, in OP No. 1119 of 2012, the husband/ respondent herein examined himself as PW1, one R. Sundar, a common friend of the appellant and respondent was examined as PW2 and Exs. P1 to P5 were marked. On behalf of the appellant, she examined herself as RW1 and marked Exs. R1 and R2 on her side. The Family Court, on analysing the oral and documentary evidence concluded that there is no scope for reunion among the couple and the matrimonial life between them have irretrievably broken. Therefore, the Family Court granted a decree of divorce dissolving the marriage solemnised between the appellant and the respondent on 26.04.2010. As far as the application in I.A. No. 863 of 2015 filed by the appellant under Section 25 of The Hindu Marriage Act, the Family Court refused to grant any permanent alimony to the appellant, but however, directed the husband/respondent to pay a sum of Rs.20,000/- for the maintenance of the minor son Anirudh.

9. The learned counsel appearing for the wife/appellant would contend that the Family Court is not justified in granting a decree of divorce in the absence of any concrete evidence to prove that the appellant was guilty of desertion. Further, it is vehemently contended by the learned counsel for the appellant that the appellant delivered the minor child Anirudh on 23.03.2011 but within a year of the child birth and within two years of the marriage, the Original Petition was filed by the husband/respondent herein on 26.03.2012 seeking a decree of divorce on the grounds of desertion and cruelty. The case of the respondent is that the appellant deserted him on 21.02.2011, but he has chosen to file the petition for dissolution of the marriage on 26.03.2012 i.e., within two years of the alleged period of desertion and hence, the petition under Section 13 (1) (i-b) of the Hindu Marriage Act is not at all maintainable. On the other hand, on 03.03.2011, the father of the appellant had taken her to his home with the permission of the respondent when she was in her advanced stage of pregnancy. Thus, the respondent rushed to the Court seeking a decree of divorce without even waiting for the mandatory period of two years to complete.

10. As regards the findings of desertion, in para No.22 and 23 of the order passed by the Family Court, it was stated that "it is not known to the Court that the respondent/wife deserted herself from the matrimonial home. Even if the statutory period of two years has not been elapsed from the date of desertion from the matrimonial home, the petitioner intended to file on the ground also that respondent failed to return back to matrimonial home. The respondent has not filed

any petition for restitution of conjugal rights. She has not intended to join with her husband." Once it is found that the statutory period could not be waived, the Family Court ought to have held that the petition for divorce is not maintainable on the ground of desertion. The Family Court, without giving any specific findings as regards maintainability of the petition, especially when the statutory period of two years has to precede before filing the petition for divorce, has erroneously granted the decree of divorce.

11. The learned counsel for the appellant further contended that the trial Court has not taken into consideration the statutory period of two years that has to lapse between the date of desertion and the date of filing the petition for divorce. In the present case, the petition was filed within one year and 35 days of the alleged date of desertion by the appellant. According to the husband/respondent, the appellant deserted him on 21.02.2011. The appellant gave birth to the male child on 23.03.2011. Therefore, within one month before delivery of the child, while in an advanced stage of pregnancy, no woman would think of deserting the husband or to bring to an end to cohabitation between the spouses. This aspect of the matter was not properly considered by the trial Court. In this context, the learned counsel for the appellant relied on the decision of the Division Bench of this Court in the case of (P. Premavathy vs. J. Venkatesan) passed in CMA No. 1045 of 2009 dated 20.02.2012 wherein the Division Bench of this Court held that heavy burden lies on the petitioner who seeks the relief of divorce on the ground of desertion to prove four essential conditions namely (i) factum of separation (ii) animus deserendi (iii) absence of any of her consent and (iv) absence of his or her conduct giving reasonable cause to desert the spouse to leave the matrimonial home. Relying upon the above decision, the learned counsel for the appellant would contend that the burden is on the respondent/husband to prove that the appellant has left his matrimonial company without any sufficient or justifiable cause. On the other hand, it was clearly pleaded and proved by the appellant that she left the matrimonial home only for deliverance of the child. Therefore, the question of desertion will not arise in the present case, especially when the two years statutory period for filing the petition for divorce did not lapse in this case. Therefore, the learned counsel for the appellant would contend that the decree of divorce granted by the court below on the ground of desertion is legally not sustainable.

12. With regard to the allegations relating to cruelty raised by the respondent/husband, the learned counsel for the appellant would contend that the burden of proving the allegations relating to cruelty largely lies on the respondent especially when those averments were denied by the appellant. In para-6 of the petition for divorce, the respondent has alleged that "the petitioner who was waiting for a happy married life with the respondent was shocked by the sudden change and rude attitude in the behaviour of the respondent on his honeymoon on May 4, 2010 to Newzealand and Malaysia. The

respondent's attitude changed completely after the marriage.". A reading of this averment would indicate that it is bald and vague. It is not clearly stated by the respondent as to what happened during their trip and what was the change witnessed by the respondent in the behavioural pattern of the appellant. Similarly, in para-8 of the Petition, it was stated that "she had always developed quarrel with the petitioner and her in-laws. The respondent used to be very harsh and rude to the mother and father of the petitioner and also 3her sister-in-law. The respondent used to make wild and untrue allegations about the petitioner and his family members causing great mental agony to the petitioner. Not only that the respondent used to threaten the petitioner that she would commit suicide if he does not heed to the commands of the respondent. Therefore, the threat, conduct and behaviour of the respondent day to day become so horrible that it is impossible for the petitioner to tolerate any more and concentrate on his business career." Here again, the averments made by the respondent are so vague that there is no clarity in it. Similar averments were made by the respondent in para-9 of the Petition for divorce to the effect that the appellant's reckless behaviour towards the respondent and his family turned into hatred such that the appellant used to become hysterical and shout at the respondent when she was in the matrimonial home. This averment was specifically denied by the appellant in her counter by stating that she never used to shout at the respondent or she has called the respondent through phone at odd hours. In any event, these allegations were made to make it as if the appellant cruelly treated the respondent. The averments as such are vague and bald. Further, the respondent, while attempting to narrate the cruel treatment allegedly meted out to him at the hands of the appellant, has stated in para No.11 of the petition that "the respondent has treated the petitioner with maximum cruelty and torture and made the life of the petitioner miserable.". Here again, the respondent did not specifically pin point the nature of cruelty inflicted on him, the date, time, reason or circumstances during which he was subjected to cruelty.

13. The learned counsel for the appellant further submitted that on 13.10.2011, there was an oral conversation between the father of the appellant and the respondent at the parents house of the appellant. It was alleged that during such conversation, the father of the appellant held the respondent by his shirt collar and manhandled him and also warned of dire consequences if he visit his house on the pretext of seeing the minor child. This allegation was specifically denied by the appellant in her counter by stating that on that date, there was an oral argument during which the respondent talked of permanent separation which irked the family of the appellant and they vowed not to allow such a thing to happen. The yet another incident narrated by the respondent in the petition for divorce to constitute cruelty is that on 12.03.2012, the appellant visited the office of the respondent, behaved in an erratic and harsh manner and also

physically assaulted the respondent, pulled his sunglasses and crushed the same by stamping with her legs in front of the entire staff in the office. While countering this allegation, the appellant has clearly stated that since the respondent remained incognito, she was compelled to go to his office. At that time, the respondent uttered most provoking words of insults when she unwittingly touched his sunglasses and it fell down and was damaged. Such an incident has happened without any motive. In fact, in connection with the said incident, the appellant had sent an e-mail expressing her apology. When the respondent had cast aspersion on the appellant, she, without any premeditation and intention, touched his sunglasses and it accidentally fell on the ground. It was not out of provocation for the kind of remarks the respondent has passed against the appellant. Therefore, according to the learned counsel for the appellant, this incident would not amount to cruelly treating the appellant warranting dissolution of the marriage. Further, in order to prove this incident, the respondent has not examined any person from his office as witness before the Family Court, who was said to have witnessed the incident and which incident had put him into shame and humiliation in front of the staff of the office. All these allegations have been essentially made against the behavioural pattern of the appellant, which she denied. In this context, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in (Narayan Ganesh Dastane vs. Sucheta Narayan Dastane) reported in AIR 1975 SC 1534 wherein it was held that that simple trivialities, which can truly be described as the reasonable wear and tear of married life have to be ignored. In many marriages, each party can, if it can so wills, discover many a cause for complaint but such grievance's arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish for the dissolution of the marriage. Therefore, regard must be had only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas." By placing reliance on the above decision, it is submitted by the learned counsel for the appellant that if a cumulative conduct, taking into consideration the circumstances and background of the parties in this case is examined, it would only indicate that the respondent has miserably failed to prove the elements that constitutes 'cruelty' and consequently, the Decree of divorce passed by the Family Court has to be set aside.

14. The learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of (Suman Singh vs. Sanjay Singh) 2017 (2) CTC 635 in which it was held that a petition seeking Divorce on some isolated incidents alleged to have occurred 8 to 10 years prior to filing of the date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such incidents. The incidents alleged should be of recurring nature or continuing one and they should be in near proximity with the filing of the petition. Placing reliance on this decision, the learned counsel for the appellant would contend that the

incidents said to have taken place in the present case before six years need not be given credence to affirm the decree of divorce granted by the Family Court.

15. The learned counsel for the appellant also placed reliance on the decision of the Honourable Supreme Court in (Gurbux Singh vs. Harmindar Kaur) (Civil Appeal No. 5010 of 2017 dated 08.10.2010 wherein it was held that "marriage life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty.

16. Relying upon the above decisions, it is submitted by the learned counsel for the appellant that trivial instances or differences between the couple should not be stretched too much to hold that such instances or circumstances which led to difference of opinion between the couple constituted cruelty on one of the spouses.

17. The learned counsel for the appellant referred to the allegations made by the respondent that the appellant sent him messages (sms) in his mobile phone threatening to commit suicide and this had created reasonable apprehension in the mind of the respondent which led to cruelty. According to the learned counsel for the appellant, none of the so-called sms messages sent by her have been produced or marked as document before the Family Court and therefore, those allegations ought not to have been looked into by the Family Court while granting the decree of divorce.

18. In effect, the learned counsel for the appellant submitted that the respondent has not made out any case, either on the ground of cruelty or desertion against the appellant. Even though several averments have been raised by the respondent, they were not established in a manner known to law. The Family Court failed to properly appreciate the materials made available on record to conclude that the matrimonial tie between the appellant and the respondent had irretrievably broken without considering the fact that there are sufficient scope for reunion between the couple. Therefore, the learned counsel for the appellant prayed for setting aside the Decree of divorce granted by the Family Court.

19. As regards the application filed by the appellant claiming permanent alimony and maintenance, as contemplated under Section 25 of The Hindu Marriage Act, it is submitted that the grant of permanent alimony depends on the status of the parties, their respective social needs, financial capacity of the husband and other obligations. In the present case, so far as the appellant/wife is concerned, she is employed on pay for service methods in available institutions and the income is not permanent. The income of the appellant wife would range

anywhere from Rs.5,000/- per month to Rs.40,000/- per month which is grossly insufficient for her to maintain herself and the minor son. The salary received by the appellant is grossly disproportionate to the needs of the appellant and the minor son. Therefore, the petition was filed praying permanent maintenance of Rs.2,00,000/- for the appellant and minor son which the respondent could very well afford. But the trial court has awarded only Rs.20,000/- per month for the minor son depriving the appellant of any maintenance. Thus, it is contended by the learned counsel for the appellant that the Family Court failed to award sufficient amount as maintenance as claimed especially when the respondent is the only male heir to the Rs.700 to Rs.1000 crore financial empire owned by his monther and gravely erred in assuming permanent income to the appellant. The respondent is having atleast 40% share in the property left by his family and the balance 60% will go to the mother. Taking note of the properties owned by the family of the respondent and the wherewithal of the respondent, the trial Court ought to have awarded appropriate amount as maintenance to the appellant and her minor son, but it failed to do so. Therefore, the learned counsel appearing for the appellant prayed for allowing the I.A. No. 863 of 2015 in OP No. 1119 of 2012 as prayed for.

20. Countering the submissions made by the learned counsel for the wife /appellant, the learned counsel for the husband/respondent would submit that prior to the marriage, the appellant assured that she will not go for any job and would remain as a home-maker as desired by the respondent. However, the appellant, contrary to such assurance, is employed as a Senior Resident in the Department of General Surgery in ESIC Hospital, K.K. Nagar, Chennai, which was also admitted by her in her chief examination. Further, after marriage, the appellant left the matrimonial home on 21.02.2011, however, till date, she has not returned to the matrimonial home. It is not the case of the appellant that she was not permitted to step into the matrimonial home either by the respondent or her mother. On the contrary, the appellant admitted that she offered to come back to the matrimonial home only after her grievances were addressed by the respondent. Thus, the appellant imposes certain pre-conditions for returning to the matrimonial home. This clearly amounts to desertion and establishes animus deserendi on the part of the appellant whereby she intentionally left the matrimonial company of the respondent and started staying at her parents house. Even according to the appellant, she has not made any attempts to return to the matrimonial home. The appellant also admitted that the respondent has arranged for three reconciliation meetings during July 2011, 27.08.2011 and 22.12.2011 and attempted to bring the appellant back to the matrimonial home and this was also admitted by the apellant. However, for the reasons best known, the appellant is staying in her parents house leaving the matrimonial company of the respondent from 21.02.2011 for over four years. The Family Court, on analysing the evidence of both sides, has rightly pointed out that the appellant did not take any steps to join the respondent in the

matrimonial home and she has also not filed any Petition for restitution of conjugal rights. If the intention of the appellant is to join the matrimonial company of the respondent, she ought to have filed a Petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, rather, the appellant only contested the Original Petition filed by the respondent for dissolution of marriage. Even though the contention of the appellant that she had left the matrimonial home on 21.02.2011 only for deliverance of the child is admitted, within a reasonable time after birth of the child on 23.03.2011, the appellant did not return back to the matrimonial home. In fact, after the birth of the child, in order to resolve the differences, it is the respondent who had arranged for reconciliation meeting thrice during July 2011, 27.08.2011 and 22.12.2011 and in all the meetings, the appellant participated. Having participated in those meetings, it is incumbent on the part of the appellant to return to the matrimonial home notwithstanding any dispute or differences with the respondent and his parents. Therefore, it is submitted by the counsel for the respondent that the respondent has proved that the desertion of the appellant from the matrimonial company of the respondent is voluntary and without any justifiable cause. Thus, the failure on the part of the appellant to return to the matrimonial home within a reasonable time amounts to desertion. In this context, the learned counsel for the respondent relied on the decision of the Apex Court in (Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi) reported in (2002) 1 SCC 308 wherein it was held that failure on the part of any of the spouse to substantiate the alleged reason (s) for staying away and omission to demonstrate readiness and willingness to discharge the continuing obligation to return to the matrimonial home taken together, would be sufficient to establish animus deserendi necessary to prove legal desertion by the wife.

21. As regards the grounds relating to cruelty raised by the husband/respondent, the learned counsel for the respondent would contend that several instances were quoted by the respondent in the Original Petition before the Family Court which would constitute acts of cruelty on the part of the appellant/wife. One of the incidents narrated by the husband/respondent is that on 12.03.2012, the appellant/wife visited the office of the respondent where she exhibited erratic and harsh behaviour. During the course of conversation, when the respondent attempted to pacify the respondent, she exhibited wild behaviour and physically assaulted the respondent by pulling his spectacles. Notwithstanding the same, when the spectacles fell down in the ground, she crushed the same by stamping it with her legs in front of the entire office staff purportedly to give vent to her anguish. While countering these averments, in para No.19 of the counter affidavit, the appellant has admitted the incident that had happened on 12.03.2012 when she visited the office of the respondent and crushing of the spectacles of the respondent in front of his office staff. In Para No.19, it was stated by the appellant that "In one of such occasions, not knowing what to

do, since the petitioner remained in cognito, the respondent went to the office of the petitioner on 12.03.2012, where the petitioner uttered most provoking words of insults, when she unwittingly touched his glasses and which were damaged, was a sole incident happened without any motive. But to allege physical assault by the respondent is brazenly false. And narration of another incident of physical assault also is not true. It is true that the respondent had a grievance with the petitioner that he had not taken even minimal care on the health condition of his wife." Thus, it is evident that the appellant admitted she was instrumental in pulling the spectacles of the respondent when he was at his office and behaved violently in front of the staff. This incident had cast a deep scar in the mind of the respondent and he was put to shame and degradation in front of his office staff.

22. Yet another incident narrated by the respondent in the Petition for divorce, to prove cruelty, is that on 30.09.2011, when the respondent visited the parents house of the appellant with an intention to see the appellant as well as the minor child, both the appellant and her father, during a wordy conversation, have caught hold of the respondent by his shirt collar and manhandled him. Not content with, they have warned the respondent not to visit the parents house of the appellant under the pretext of seeing the minor son. While countering these averments, the appellant, in her counter affidavit filed before the Family Court, has stated in para No.14 that "It is shockingly false to allege that the respondent's father caught the petitioner by his collar and man handled him on 30.09.2011, when the petitioner paid his last visit to the respondent's father's house. It was only a verbal dual in which both argued their respective grievances and when emotion lurks in sense took back seat and the petitioner also talked of permanent separation which irked the family of the respondent and vowed not to allow such thing to happen. To term the marriage as irretrievably broken is a misnomer and wishful thinking on the part of the petitioner. A reading of the statement made in the counter, as a whole, would indicate that the appellant admitted that there was a verbal dual and it resulted in some altercation and the senses of the wrangling party took a backseat. In other words, the appellant had indirectly admitted that the respondent was manhandled and insulted by her and her father. Therefore, the learned counsel for the respondent would contend that the respondent has proved, by oral and documentary evidence, the acts of cruelty inflicted on him by the appellant and the trial court also, on consideration of those evidence, rightly granted a decree of divorce and it calls for no interference by this Court.

23. As regards the appeal arising out of the order passed I.A. No. 863 of 2015 in OP No. 1119 of 2012, the learned counsel for the husband/respondent would contend that the appellant is presently working as Senior Resident in the Department of General Surgery in ESIC Hospital, K.K. Nagar, Chennai besides she is a visiting Doctor as a specialist in Oncologist, in Kauvery Hospital, SIMS and several other

hospitals. The appellant performs numerous surgeries and earning substantially. However, the appellant falsely claimed that she is employed on pay for service basis in available institutions and the income she is earning is not permanent. Further, it is falsely claimed that the income of the appellant would range anywhere from Rs.5,000/- per month to Rs.40,000/- per month which is grossly insufficient for her to maintain herself and the minor son. The learned counsel for the respondent, denying the averments relating to the earning capacity of the appellant, would contend that the fact remains that the appellant is employed and receiving amount by way of salary. Therefore, granting permanent alimony to the appellant wife does not arise and she cannot also expect the respondent/husband to pay for her maintenance. In such circumstances, the Family Court has rightly concluded that the appellant is not entitled for maintenance and directed the respondent to pay maintenance only for the minor son Anirudh. The learned counsel for the respondent therefore prayed for dismissal of both the appeals.

24. We have heard the learned counsel for both sides and perused the materials placed on record. First, let us take up CMA No. 2409 of 2016 filed by the appellant challenging the decree of divorce granted by the Family Court.

25. The Original Petition No. 1119 of 2012 was filed by the husband/ respondent seeking to dissolve the marriage solemnised between him and the respondent. In the petition filed before the Family Court, Chennai the respondent has stated that when his parents were looking for an alliance for his marriage, he has categorically stated that he only wanted a spouse as a home maker and did not want a career woman as his wife. Further, it is stated that he has made it clear that he wanted a spouse to be at home when he is at home, for which, the appellant wife, at the first instance of bride seeing ceremony said that she is looking forward to go to Trichy for surgical training. In view of such statement made by the appellant, the respondent initially rejected the alliance. Subsequently, it was the father of the appellant who voluntarily came for a meeting between the appellant on two occasion during which also the respondent reiterated his demand to have an unemployed spouse. Thereafter, the appellant has appeased and cajoled the mother and sister of the respondent with an assurance that she will not go over for employment after marriage. In view of such promise, the marriage was arranged between the appellant and the respondent. Even in the proof affidavit filed by the appellant, she admitted that she would not go for a job, if it was not desired by the family of the respondent. However, contrary to such promise, after the marriage, the attitude of the appellant changed and she exhibited rude and violent behaviour towards the respondent and his family members. According to the respondent, on 21.02.2011, the appellant abandoned his matrimonial company, left the matrimonial home and inspite of arranging three reconciliation meetings, the appellant did not return to the matrimonial home, without just and sufficient cause. Further,

the respondent also narrated in his petition before the Family Court two incidents in which he was humiliated and put to shame and degradation by the appellant, which according to the respondent amounts to cruelty.

26. According to the wife/appellant, the difference or dispute cropped up between the appellant and the respondent is trivial and it does not warrant dissolution of marriage solemnised between them. The learned counsel for the appellant would vehemently contend that the haste with which the respondent has filed Original Petition within two years of the marriage, even without waiting for the mandatory period to lapse, deserves consideration by this Court. According to the learned counsel for the appellant, the appellant was and is ready and willing to join the matrimonial company of the respondent. Further, the findings relating to desertion given by the Family Court are legally not tenable inasmuch as the appellant left the matrimonial home with the permission of the respondent and her mother-in-law, when she was pregnant. When the appellant, as RW1, was cross-examined before the Family Court, she has categorically stated that three months after the child birth, she had taken lot of efforts to join the matrimonial company of the respondent, however, it is the mother-in-law and sister-in-law who have objected to it. In the course of cross-examination, the appellant has further stated that during the last conciliation meeting held at Gymkhana Club, she agreed to return to the matrimonial home, however, she was not allowed by the respondent and he only wanted the minor son to be brought to the matrimonial home. Therefore, the appellant did not return to the matrimonial home. By placing reliance on the above evidence of RW1/appellant, the learned counsel for the appellant would contend that inspite of best efforts taken by the appellant, she was prevented from joining the matrimonial company of the respondent. Further, in the counter affidavit filed before the Family Court, it was clearly mentioned by the appellant that she cannot imagine a life without the respondent and she only intends to join the matrimonial home. Thus, according to the counsel for the appellant, in clear terms, the appellant had expressed her intention to join the matrimonial home, while so, it cannot be said that the appellant had voluntarily deserted the respondent from the matrimonial home. The learned counsel for the appellant further submits that the essence of desertion, as judicially understood, is a total repudiation of marriage or an abandonment of the deserted spouse with an intention to bring cohabitation permanently to an end. If a spouse abandons the other in a state of temporary passion, anger or disgust, without intending to cease cohabitation permanently, it will not amount to desertion. Further, the respondent, who has filed the Original Petition, has to prove that during the alleged period of desertion by the appellant/wife, he was ready and willing to resume the married life. In the present case, there is no evidence to show that the appellant had intended to permanently abandon the matrimonial home or to put an end to cohabitation, while so,

the order passed by the Family Court, granting decree of divorce, on the ground of desertion has to be set aside.

27. As regards cruelty, the appellant, in the counter affidavit filed before the Family Court, has denied that she ever behaved rudely or violently towards the respondent or her mother-in-law or at any time treated the respondent cruelly. For the instance that had happened on 12.03.2012 when the appellant visited the office of the respondent, she had sent an e-mail tendering her apology. In any event, trivial incidents that had taken place out of a sudden provocation, will not be a ground for dissolution of the marriage.

28. The respondent, in his petition for Divorce, has stated that inspite of his best efforts to bring the appellant back to the matrimonial home, the appellant refused to return to the matrimonial home and he has made out a clear case of desertion against the appellant. The respondent also stated in the petition that he had arranged for three reconciliation meetings during July 2011, 27.08.2011 and 22.12.2011 and attempted to bring the appellant back to the matrimonial home and this was also admitted by the appellant. However, for the reasons best known, the appellant did not join the matrimonial company of the respondent from 21.02.2011 for over four years without any justifiable cause and therefore, the appellant has made out a case for desertion.

29. It is an admitted fact that the appellant left the matrimonial home with the permission of the respondent and his mother for deliverance of the child. However, we find that after delivery of the child, within a reasonable period, the appellant could have returned to the matrimonial home. But, for the reasons best known, the appellant stayed at her parents house for which no justifiable reason is forthcoming from the appellant. Even the offer made by the appellant to return to the matrimonial home is not unconditional. In this context, we find from the evidence of the appellant, as RW1, wherein she has stated that she intended to return to the matrimonial home after her grievances were addressed by the members of the family. Therefore, it could be reasonably inferred that only if her grievances were redressed, she will be in a position to return to the matrimonial home. Assuming that her grievances continued unaddressed, the appellant could have filed a Petition for restitution of conjugal rights. However, for the reasons best known, the appellant did not do so.

30. Before the Family Court, the husband/respondent examined himself as PW1 and one Mr. Sundar, a common friend of the appellant and the respondent was examined as PW2. PW2 has filed a proof affidavit wherein he has stated several instances of his interaction with the appellant and advised her to understand the necessity to join the matrimonial company of

the respondent, but she has chosen to live according to her own ideas of life. In essence, in the proof affidavit, PW2 has stated that he has advised her on several occasion on the following:-

"a. The fact that in a family, members are all different and one needs to understand and adjust in order to have a peaceful family life.

b. One need not try hard to change anything in anyone unless the other person is doing something ethically or morally wrong.

c. Family does not always mean only husband & wife, it also means other persons (e.g., In-laws)

d. In situations where she does not hear what she likes, she should rely on husband to fix-up things rather than jumping into hasty conclusion like 'things will be like this always'. For this to happen, she needed to give sometime to the petitioner, Dr. Arjun. I had a difficult time in making the respondent understand that Rome was not built in a day and similarly family ties cannot be built in few days/months.

e. One needs to look at positive things in family and life and not always complain about negative. She has built up a big negative wall around her within few months of marriage and refused to break it down.

31. When PW2 was cross-examined, he has clearly stated as follows:-

"On 21.07.2011, myself along with my wife met petitioner and the respondent at Radisson Blu Hotel for conciliation, of course, the petitioner told the respondent we should look into the future and not talk about insignificant things of the past. The idea of meeting was not met with.....

I deny the suggestion that the respondent was ready to join the petitioner and he is not ready to take her. I requested her to specify date of her returning to her matrimonial home. But she did not respond. I did not mention this in my proof affidavit.

32. From the evidence of PW2, it is seen that he has pointed out certain instances to drive home the point that the appellant is guilty of desertion. Notwithstanding the evidence of PW2, we find that soon after the child birth, the appellant could have returned to the matrimonial home, without regard to the redressal of her grievances. The failure on the part of the appellant to return to the matrimonial home within a reasonable time can only be construed as a desertion on the part of the appellant without reasonable or justifiable cause.

In this context, the learned counsel for the husband/respondent relied on the decision of the Honourable Supreme Court in (Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi) reported in (2002) 1 Supreme Court Cases 308 wherein it was held that failure to substantiate the alleged reason for staying away and omission to demonstrate readiness and willingness to discharge continuing obligation to return to matrimonial were sufficient to establish animus deserendi necessary to prove legal desertion by wife. In Para No.11 of the said judgment, it was held as follows:-

"11. This Court in the case of Sarat Kumar Agarwal vs. Nandini Agarwal (1990) 1 CC 475 considering a case under Section 13 (1) (ib) of the Act held that it is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both anterior and subsequent to the actual act of separation.

13. Coming to the case on hand, it is revealed from the evidence on record, as discussed in the judgments of the trial court and the High Court, that the respondent had gone to her parents house for birth of the child, which apparently cannot be construed as an expression of her desire to forsake her husband permanently, but after the birth of her child when attempts were made by the appellant, his parents and relations, she laid down a condition that the appellant should live in a separate house from his parents taking the plea that her father-in-law had attempted to molest her, which explanation she signally failed to establish. In the meantime, the father of the appellant expired sometime in 1988, putting an end to the so-called reason of misbehaviour of her father-in-law. There is nothing on record that thereafter she expressed her desire to join her husband at the matrimonial home. It is relevant to state here that the appellant is the only son of his parents and as expected, he was not willing to establish a separate residence leaving his parents to live alone in their old age. The cumulative effect of the circumstances and the conduct of the respondent is that she had given expression of animus deserendi. Thus, the two ingredients of the matrimonial offence of desertion i.e., separation in fact and animus deserendi have been established by the appellant.....

33. The ratio laid down in the above decision squarely applies to the facts of this case. In this case also, after delivery of the minor child, inspite of the efforts taken by the husband/respondent to bring the appellant back to the matrimonial home by convening three reconciliating meetings, for the reasons best known, the appellant failed and neglected

to join the matrimonial company of the husband/ respondent. Thus, we are of the opinion that the husband/respondent has successfully proved that the appellant is guilty of desertion without just and sufficient cause and such desertion warrants a decree of divorce.

34. As regards cruelty, even though several instances were narrated in the Petition for divorce, which were denied by the appellant in the counter affidavit filed before the Family Court, we find that two instances quoted by the respondent in the Petition for Divorce can be examined. The first instance quoted is that on 30.09.2011, when the respondent visited the parents house of the appellant with an intention to see the appellant as well as the minor child. At that time, both the appellant and her father, during a wordy conversation, have caught hold of the respondent by his shirt collar and manhandled him. It is also contended that not content with such behaviour, they have warned the respondent not to visit the parents house of the appellant under the pretext of seeing the minor son. While repudiating these averments, the appellant, in her counter affidavit filed before the Family Court, has stated in para No.14 that "It is shockingly false to allege that the respondent's father caught the petitioner by his collar and man handled him on 30.09.2011, when the petitioner paid his last visit to the respondent's father's house. It was only a verbal dual in which both argued their respective grievances and when emotion lurks in, sense took back seat and the petitioner also talked of permanent separation which irked the family of the respondent and vowed not to allow such thing to happen. To term the marriage as irretrievably broken is a misnomer and wishful thinking on the part of the petitioner. Even though the appellant denied having pulled the respondent by his short collar along with her father, the appellant did not examine her father to disprove the allegations raised by the respondent. Further, a reading of the statement made in the counter would only show that the appellant has by and large admitted that there was a verbal quarrel when the respondent visited his house and at that time the senses of the wrangling party took a backseat. In other words, the appellant did not directly deny having pulled the respondent by his shirt collar along with her father. Thus, indirectly, the appellant had admitted that the respondent was manhandled and insulted by her and her father. We also find that when the respondent came to the house of the appellant, by and large to see the minor son, he should not have been treated by the appellant and her father in this fashion. In any event, the appellant has not denied in toto about the above said incident quoted by the respondent in the Original Petition and it shall be construed that there was an incident in which the respondent was insulted by the appellant and her father. It is also pertinent to mention that from that date, the respondent stopped visiting the house of the appellant and this is also admitted by the appellant herself in the counter.

35. The other incident quoted by the respondent in the Original Petition to prove that he was cruelly treated by the appellant is that on 12.03.2012, the appellant/wife visited the office of the respondent and during that time, according to the respondent, she exhibited erratic and harsh behaviour. During the course of conversion, it is stated that when the respondent attempted to pacify the appellant, she exhibited wild behaviour and physically assaulted the respondent by pulling his spectacles. Notwithstanding the same, when the spectacles fell down in the ground, she crushed the same by stamping it with her legs in front of the entire office staff purportedly to give vent to her anguish. While denying the averments in the counter, in para No.19, the appellant has admitted the such an incident that had happened on 12.03.2012 when she visited the office of the respondent by stating that "In one of such occasions, not knowing what to do, since the petitioner remained incognito, the respondent went to the office of the petitioner on 12.03.2012, where the petitioner uttered most provoking words of insults, when she unwittingly touched his glasses and which were damaged, was a sole incident happened without any motive. But to allege physical assault by the respondent is brazenly false. And narration of another incident of physical assault also is not true. It is true that the respondent had a grievance with the petitioner that he had not taken even minimal care on the health condition of his wife." It is not the case of the appellant that she did not visit the office of the respondent at all. It is also not the case of the appellant that such an incident did not happen at all. However, it is stated that the incident had occurred without any motive or provocation. In fact, the appellant also sent an e-mail to the respondent in which she tendered her apology for the aforesaid incident that took place in his office. Thus, it could be inferred that this incident would have caused a deep scar, humiliation, shame and degradation to the respondent especially when such an incident happened at the office of the respondent in front of the staff with whom he is working. The respondent is admittedly holding a dignified post and such an incident in front of his staff would have caused untold mental agony and physical discomfort to him. When the appellant herself admitted that such an incident had taken place when she visited the office of the respondent, the contention that none of the staff of the respondent were examined to prove the incident does not arise. It is needless to mention that facts which are admitted need not be proved by the other side.

36. The learned counsel for the husband/respondent relied on the decision rendered in (Anindi Mukherjee vs. Shraboni) reported in 2016 SCC Online Chh 1251 wherein the High Court of Chattisgarh at Bilaspur, by referring to the decision of the Honourable Supreme Court, held that assaulting the wife in a state of intoxication and creating nuisance at her work place would amount to cruelty. In Para No.24, it was held as follows:-

"24. In the considered opinion of this Court, assaulting the wife in a state of intoxication and creating nuisance at her work place would amount to cruelty for obtaining decree of divorce, therefore, the trial court has not committed any illegality in granting decree of divorce in favour of the respondent wife. The impugned judgment is just and proper, warranting no interference of this Court."

37. In the present case, admittedly, the appellant went to the work place of the respondent and caused commotion and chaos in the midst of the staff working with the respondent. During the conversation, according to the respondent, the appellant pulled his spectacles and when it had fallen on the ground, she stamped it with her legs. Of course, such a statement was denied by the appellant. However, the fact remains that the appellant went to the work place of the respondent on the relevant day and she also apologised for what has happened by way of an e-mail to the respondent. This incident, undoubtedly, would have developed a deep scar in the mind of the respondent. While that be so, we hold that the respondent has established that he was subjected to cruelty at the hands of the appellant.

38. As regards CMA No. 2408 of 2016 which arise out of the Decree and Judgment dated 07.12.2015 made in I.A. No. 863 of 2015 in O.P. No. 1119 of 2012, it is submitted by the learned counsel for the appellant that the Family Court did not properly analyse the evidence on record, particularly the evidence relating to her monthly earnings and refused to direct the respondent to pay maintenance to her. The Family Court also failed to take note of the fact that the respondent is the only male heir in his family and is entitled to a huge share in the family properties. That apart, the respondent is having permanent income and earning substantially. On the other hand, the appellant is employed on pay for service basis in available institutions and her income is not permanent and the income she earns ranges from Rs.5,000/- to Rs.40,000/- per month. The Family Court, without properly considering the above aspects, has erroneously refused to direct the respondent to pay maintenance to her and directed the respondent to pay maintenance of Rs.20,000/- only to the minor son.

39. Countering the above submission, the learned counsel for the husband/respondent would contend that it is not the case of the appellant that she is not earning any money and entirely depending on her parents for her day to day expenses. Admittedly, the appellant is employed and receiving salary. While so, the appellant cannot expect the respondent to support her financially to meet her day to day expenses. The appellant is residing along with her parents and she need not spend any amount towards food, rent or other expenses, which are largely

taken care of by her parents. At any rate, the Family Court is wholly justified in refusing to grant maintenance to the appellant considering the fact that she is also employed and earning amount.

40. In order to determine the claim of maintenance, either by the wife or husband, as the case may be, this Court is required to examine the resourcefulness, wherewithal or financial capacity of wife or husband as the case may be and it cannot be awarded mechanically without examining the financial capacity of the husband or wife. In other words, if either the husband or the wife is financially capable of maintaining himself or herself with the availability of resources, either by way of employment or otherwise, which is proved to the satisfaction of the Court, then the Court has to restrain itself from awarding maintenance amount. In the present case, admittedly, the appellant is employed and is earning an amount. However, it is contended by the appellant that she is not in permanent employment and the salary which she receives ranges from Rs.5,000 to Rs.40,000/-. This is disputed by the respondent by stating that the appellant is employed as Senior Resident in the Department of General Surgery in ESIC Hospital, K.K. Nagar, Chennai besides she is a visiting Doctor as a specialist in Oncology, in Kauvery Hospital, SIMS and several other hospitals. It is further contended that the appellant performs numerous surgeries and is earning substantially. Thus, it is not the case of the appellant that she is not resourceful enough to maintain herself or she finds it difficult to maintain herself or she has no independent income to support herself. What she pleaded is that her salary is lesser than the salary received by the respondent/husband and therefore, if the maintenance amount is awarded, her financial resourcefulness would match the status of the respondent/husband. Therefore, it is clear that the appellant is having independent income to support herself and in such circumstances, her claim for interim maintenance need not be considered. The object of Section 24 or 25 of the Hindu Marriage Act is not to elevate the status or standard of the husband or wife as the case may be to be on par with each other. The purpose of awarding pendente lite or permanent maintenance, as the case may be, is to ensure that adequate financial support is provided for the husband or wife when there is no independent income to maintain himself or herself. The financial status of the husband or wife can be taken note of by the Court only for fixation of quantum of maintenance and it is not a criteria for matching the financial status of the wife or husband with the other.

41. In this context, the learned counsel for respondent relied on the decision of the Honourable Supreme Court in the case of (Padmja Sharma vs. Ratan Lal Sharma) reported in (2000) 4 SCC 266 to contend that the mother equally has an obligation to maintain the minor child if it is shown that she is also gainfully employed. In Para No. 10 and 12 of this judgment, it was held as follows:-

"10. Maintenance has not been defined in the Act or between the parents whose duty it is to maintain the children. The Hindu Marriage Act, 1955, the Hindu Minority and Guardianship Act, 1956, the Hindu Adoptions and Maintenance Act, 1956 and the Hindu Succession Act, 1956 constitute a law in a coded form for the Hindus. Unless there is anything repugnant to the context definition of a particular word could be lifted from any of the four Acts constituting the law to interpret a certain provision. All these Act are to be read in conjunction with one another and interpreted accordingly....

Under Section 18 of the Maintenance Act, a Hindu wife shall be entitled to be maintained by her husband during her life time. This is of course subject to certain conditions with which we are not concerned. Section 20 provides for maintenance of children and aged parents. Under this section a Hindu is bound, during his or her lifetime, to maintain his or her children. A minor child so long as he is a minor can claim maintenance from his or her father or mother. Section 20 is, therefore, to be contrasted with Section 18. Under this section it is as much the obligatoin of the father to maintain a minor child as that of the mother. It is not the law that how (sic., howsoever) affluent the mother may be it is the obligation of the father to maintain the minor.

12. Considering the overall picture in the present case, we are of the view that a sum of Rs.3000 per month for each of the children would be sufficient to maintain them which shall be born by both the parents in the proportion of 2 : 1. We, therefore, direct that the respondent shall pay a sum of Rs.2000 per month for each of the two children aforementioned from 04.10.1997, the date of the order of the Family Court. For the earlier period the respondent shall pay Rs.500 per month for each of the children from the date of the application i.e., 02.08.1991 and @ Rs.1000 per month from the date of the second application, which is 27.10.1995 and @ Rs.1500 per month from the date of the third application, which is 26.08.1997. These amounts shall be apart from the amount which the respondent has already been paying to the children @ Rs.250 per month under Section 125 of the Code. The respondent shall be entitled to make adjustment of the amounts which he has already paid under orders of the Family Court, the High Court or the interim order of this Court."

their financial status. In the present case, the evidence on record clearly shows that the appellant is employed and she is in a position to maintain herself and therefore she is not entitled for maintenance from the respondent. Further, the appellant also owes an obligation to maintain the child and it is not the respondent, who alone has to maintain the minor child Anirudh. Having regard to the above legal position, we are of the view that the court below has rightly refused to award any maintenance amount to the appellant but only directed the respondent/husband to pay a sum of Rs.20,000/- per month to the minor son Anirudh. While so, we hesitate to interfere with the order passed by the Family Court in I.A. No. 863 of 2015 in O.P. No. 1119 of 2012 and consequently, CMA No. 2408 of 2016 has to be dismissed. However, we are of the view that as against the sum of Rs.20,000/- ordered by the Family Court towards maintenance for the minor son Anirudh, taking note of the financial capability of the respondent and the increase in the cost of living, we feel that a sum of Rs.30,000/- shall be directed to be paid by the respondent to the minor son Anirudh.

43. In the result,

(i) CMA No. 2408 of 2016 is partly allowed modifying the Decree and Judgment dated 07.12.2015 made in I.A. No. 863 of 2015 in O.P. No. 1119 of 2012 on the file of II Additional Family Court, Chennai with a direction to the respondent to pay a sum of Rs.30,000/- per month as monthly maintenance to the minor son Anirudh.

(ii) CMA No. 2409 of 2016 is dismissed confirming the Decree and Judgment dated 07.12.2015 made in O.P. No. 1119 of 2012 on the file of II Additional Family Court, Chennai.

(iii) No costs. Consequently, connected C.M.P. No. 16764 of 2016 are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Family Court, Chennai.
2. The Section Officer, VR Section, High Court, Madras.

+ 2 ccs to Mr.V. Vaithiyalingam, Advocate Sr.63423 & 63422
+ 1 cc to M/s. R. Maheswari, Advocate Sr.63204

CMA Nos. 2408 & 2409/2016

SKV(CO)

EU(04/10/2017)

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