

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.2448 of 2016

K.C.Allwyn John ..Appellant / Petitioner

Vs.

A.Arokia Ruby ..Respondent / Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, against the Judgment and Decree, dated 29.02.2016 made in D.O.P.No.603 of 2010 on the file of the Principal Judge, Family Court at Coimbatore.

For Appellant : Mr.I.Abrar Md. Abdulla

For Respondent : Mrs.A.Arokia Ruby
(Party-in-person)

JUDGMENT

(Judgement of the Court was delivered by P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal has been filed by the husband against the order of dismissal, dated 29.02.2016 in D.O.P.No.603 of 2010 by the Principal Family Court, Coimbatore, which was filed by him against his wife for dissolution of marriage on the ground of cruelty, i.e., under Section 10 (1) (x) of the Divorce Act, 1869.

2. The appellant / husband as petitioner averred that marriage between him and the respondent took place on 18.01.2008 at Coimbatore as per the Christian rites and rituals. The respondent was running a garment unit under the name 'Ruby Garments' in Tiruppur, that the unit was also looked after by her brother. At her request, the appellant / petitioner availed personal loans from the private banks and also arranged money through credit cards and gave to the respondent and to her brother, nearly to the tune of Rs.15,00,000/-. Though it was assured to be repaid within a month, it was not done. The garment unit was closed within a month. The respondent was not showing any interest in family life and she had told the petitioner that she is not interested in married life and only to help her brother she married the petitioner. The take home salary of the petitioner became almost nill, as he had to repay the borrowed amounts. The respondent went missing on 13.05.2009 and on 16.05.2009 a complaint was preferred before the Commissioner of Police. On

30.05.2009, the respondent herself came to the petitioner's house and began to abuse the petitioner and his family members. After a year she left the matrimonial house, she forcibly entered into the petitioner's house on 16.05.2010 and attacked the petitioner's mother and a complaint was preferred. She also lodged a false dowry complaint against the petitioner. She had vowed to disintegrate the family of the petitioner and the appellant / petitioner is at the apprehension that his life is in danger at the hands of the respondent.

3. The respondent in her counter admits the marriage between the appellant / petitioner and the respondent as per Christian rites. Ruby Garments belonged to the respondent's brother. Only due to the compulsion of the petitioner, it was transferred to the respondent's name and the appellant only caused the loss and closed the unit. Only the appellant / petitioner, his mother and sister treated the respondent cruelly and due to mental agony she suffered, the respondent went to Salakudi Prayer hall to purchase peace and utilizing the same, the appellant / petitioner lodged the complaint of missing. The respondent lodged a complaint against the petitioner only with an intention to join with the appellant / petitioner.

4. From the date of marriage for about 6 months, the spouses were happy and afterwards the appellant with her mother and sister treated her cruelly and even attacked her. Out of the wedlock, the respondent conceived and as per the medical advice, she got aborted. The appellant, his mother and sister abused saying that the respondent caused loss to the tune of Rs.6,50,000/- and the same is to be paid with interest and left her to be in her parental home. After panchayat the appellant set up a separate residence in September 2008, but they have been demanding the amount from the respondent and on 03.03.2009 they beat the respondent and pushed her out from the house by forcibly snatching away the mangalyam. She complained the same to the Church and compromise attempt became futile. The appellant / petitioner alone gave false complaint against the respondent. The respondent also filed a case under Domestic Violence Act, seeking the right to residence and protection. She also filed O.P.No.1136 of 2011 for restitution of conjugal rights.

5. On the side of the appellant / petitioner, 3 witnesses were examined and 8 Exhibits marked. The respondent examined herself as R.W.1 and on her side, 10 Exhibits were marked. The learned trial Judge, after analysing the oral and documentary evidence of both sides dismissed the Divorce O.P filed by the husband and allowed the petition filed by wife for restitution of conjugal rights. Against the dismissal of the Divorce O.P, the husband has preferred this Civil Miscellaneous Appeal.

6. The learned counsel appearing for the appellant argued that the appellant / petitioner substantiated the ground of cruelty and there is a reasonable apprehension of harmfulness

in living together through acceptable evidence; that even as per the evidence adduced on the side of the respondent, loan was obtained by the appellant for the purpose of funding the respondent business; that the respondent attacked the mother of the appellant and the same has been substantiated through the complaint lodged by the mother and therefore, the cruelty meted out by the appellant in the hands of the respondent has been established and therefore the order of the trial Court is liable to be interfered with.

7. The respondent, who argued the case in person contends that the business run by her went in loss and the dispute between the appellant and the respondent is only due to the financial problem that arose in the business; that she alone was subjected to cruelty by the appellant and his family members; that cheque bounce case is pending only against her and not against the appellant and the trial Court after analysing the evidence has rightly dismissed the petition filed by the appellant / petitioner and the same does not warrant any interference.

8. There is no dispute that the marriage between the appellant and the respondent was solemnised on 18.01.2008 as per Christian rites in Coimbatore. Both the spouses had happy married life and out of the wedlock, the respondent also conceived. As per the medical advice, she got aborted and the Medical report has been marked as Ex.P.7. The report depicts the defect in the womb.

9. The appellant / petitioner examined as P.W.1 also admits during cross-examination that the respondent conceived and got aborted due to the defect in the womb. According to the respondent, the appellant / petitioner set up a separate residence at Olambus in Coimbatore in September 2008. The appellant / husband also admits the same during his cross-examination.

10. The respondent / wife during her cross-examination said that after setting up separate residence in September 2008, they have been living happily for about six months and from the date of marriage, they were happy for about 1 1/2 years. She further says that even after that, the appellant / husband used to visit her in her parental home. The above fact is acceptable in view of the admissions made by the appellant / petitioner in his evidence and the medical report, Ex.P.7.

11. The main allegation of cruelty in the matrimonial relationship as against the respondent is that the respondent abused the appellant / husband and his family members and she also attacked his mother by forcibly entering into the house. Yet another allegation of cruelty is that the respondent was missing and a complaint was also lodged by the appellant.

12. The allegation of abuse are made against each other and the same cannot be given much weight. The mother of the appellant / petitioner is alleged to have been assaulted by

the respondent on 18.05.2010. A complaint was also lodged with the police on 18.05.2010 by the mother-in-law as could be seen from Ex.P.3. But one day prior to the complaint, the respondent gave complaint against the appellant / husband, her mother-in-law and sister-in-law as to the dowry harassment, i.e., on 17.05.2010 and the copy of the same is marked as Ex.P.5. Therefore, the complaint of mother-in-law as to the alleged incident on 18.05.2010 may be a counter blast to the complaint given by the respondent and the same has to be brushed aside. Regarding the allegation of missing of the respondent, she says that she had been to Salakudi Prayer Hall to purchase peace due to mental agony suffered by her in the hands of the appellant / petitioner and his family members. The appellant / petitioner does not deny the fact that she had been to Salakudi Prayer Hall when he was questioned about the same during cross-examination. Therefore the alleged cruelty has not been established.

13. The real dispute between the spouses is only the financial issues. Admittedly Ruby Garments was run by the respondent and the same was closed due to loss. The appellant / husband helped his wife in running the business by availing loans. Even prior to the marriage, the appellant / husband was in the habit of availing loans and repaying them by using credit cards of more than one bank as admitted by him in his evidence. The respondent / wife is facing cheque bounce cases. Thus the core issue between the spouses is that the loan amount availed by the husband for the purpose of the business run by the wife could not be repaid. This cannot be construed as a cruelty that has arisen between the spouses in the matrimonial relationship. That apart the husband having been a party in running the business by his wife helped her by availing loan, cannot turn around and say that she had not repaid and such non-payment led him to financial problems and the same is an act of cruelty.

14. As per Section 10 (1) (x) of the Divorce Act, 1869, the dissolution can be granted if the respondent treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

15. The loss in the business and non-payment of the loan availed by the husband for the business run by the respondent / wife cannot be construed as cruelty causing a reasonable apprehension of harmful or injurious to live with the respondent. Therefore the appellant / husband has not substantiated his case as to cruelty as against the respondent and the trial Court has rightly dismissed the petition filed by him. This Court does not see any reason to interfere with the order passed by the trial Court.

In fine, this Civil Miscellaneous Appeal is dismissed, confirming the order, dated 29.02.2016 passed in D.O.P.No.603 of 2010 on the file of the Principal Family Court, Coimbatore. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsvn

To

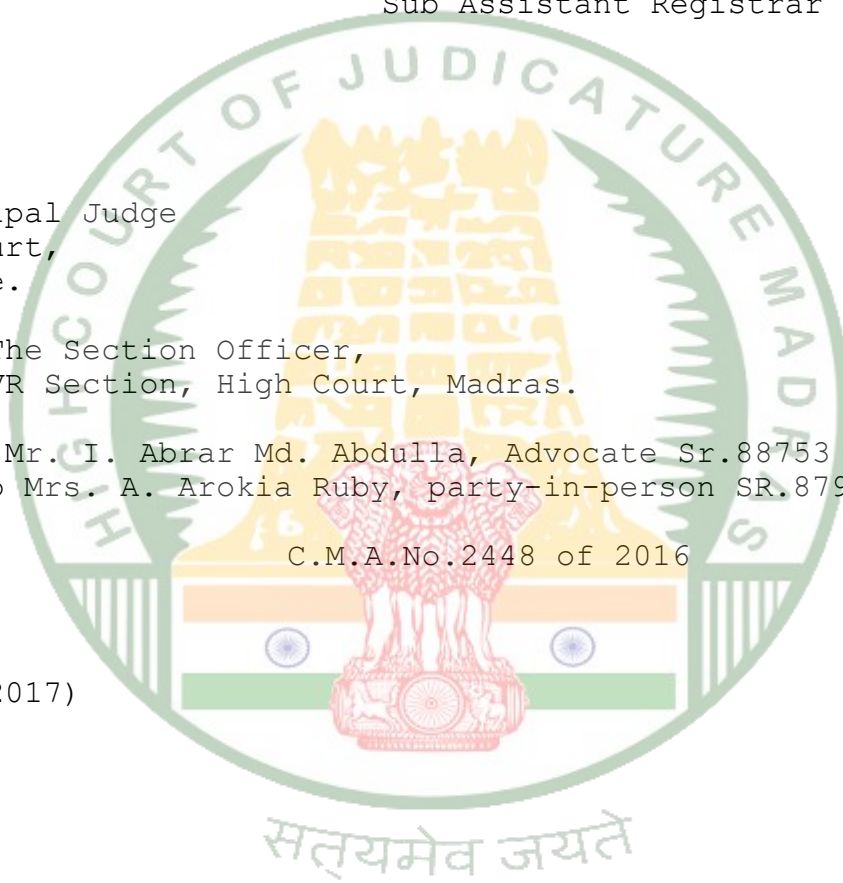
The Principal Judge
Family Court,
Coimbatore.

Copy to: The Section Officer,
VR Section, High Court, Madras.

+ 1 cc to Mr. I. Abrar Md. Abdulla, Advocate Sr.88753
+ 2 ccs to Mrs. A. Arokia Ruby, party-in-person SR.87979

C.M.A.No.2448 of 2016

PA(CO)
EU(22/12/2017)



WEB COPY