

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 07.08.2017

Judgment Pronounced on: 22.09.2017

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH
and

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 44 of 2017

R.Thangamani @ Mainavathy .. Appellant/Respondent

Versus

S.Sathishkumar .. Respondent/Petitioner

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Order and Decretal Order dated 14.11.2016 in H.M.O.P. No. 244 of 2014 passed by the Family Court, Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.K.Karthikeyan

JUDGMENT

(Judgment of the Court was delivered
by A.D.JAGADISH CHANDIRA, J)

The appellant is the wife who has filed this appeal, challenging the Order and Decretal Order passed by the Family Court, Erode, granting divorce under Section 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955.

2. Brief facts leading to the filing of the Hindu Marriage Original Petition by the respondent/husband seeking divorce in H.M.O.P. No. 244 of 2014 on the file of the Family Court, Erode, was that the marriage between the appellant and the respondent was solemnized on 30.04.2007 at Sri Amman Kalaiyarangam, Kompanaipudhur, Kolathupalayam Village, Kodumudi Taluk, Erode District, according to Hindu rites and custom; that the appellant lived with the respondent only for 3 months and in the meanwhile the appellant conceived and out of the wed lock, a female child was born on 10.04.2008; that the respondent went to the appellant's parent's home for visiting his wife and child

and at that time the appellant's brother picked up quarrel with the respondent, humiliated him and abused him with unparliamentary words; that the respondent asked the appellant to come to the matrimonial home for reunion, but the appellant refused to come forward to reunite with the respondent; that even though the respondent as well as the respondent's parents and relatives had made several attempts for the reunion of the appellant with the respondent, the appellant adamantly refused to come forward to matrimonial home; that the respondent filed H.M.O.P.No.72 of 2010 on the file of the II Additional Sub-Judge, Erode under section 9 of the Hindu Marriage Act, for Restitution of Conjugal Rights and the same was ordered on 13.12.2010 directing the appellant/wife to come forward for reunion within two months; that the appellant did not obey the order of the learned Sub-Judge, for Restitution of Conjugal Rights; that though the respondent had taken steps for reunion in the year 2011-2012, the brother of the appellant did not want to allow his sister to live with her husband, only with an intention to receive his sister's earning; that the respondent had given a police complaint on 10.05.2012 to advise the appellant to obey the order of Restitution of Conjugal Rights; that since the appellant was not even heeding the advice of the police officer, the respondent issued a legal notice dated 30.05.2012, calling upon the appellant for reunion with the respondent; that the appellant neither come forward to reunion nor send reply to the respondent. Hence, the respondent was constrained to file the petition for divorce.

3. The appellant/wife had filed a counter alleging that the respondent after the birth of the child did not take any steps to see the child; that the respondent had not shown any care towards the appellant and the child; that the maintenance proceedings initiated by the appellant in M.C.No.3 of 2014 on the file of the Family Court, Erode was disposed of only after 8 years and that the respondent/husband did not pay any maintenance amount towards the appellant and the minor child; that only after institution of the maintenance proceedings the respondent/husband had filed H.M.O.P.No.72 of 2010 and sought for restitution of conjugal rights and that the said application was allowed on 31.12.2010; that the respondent/husband had sought for divorce on the ground of cruelty and desertion in H.M.O.P.No.244 of 2014 before the Family Court Erode wherein the appellant/wife had filed her detailed objections; that there is no evidence to show what is the cruelty committed by the appellant/wife; that absolutely there is no pleadings and materials to show that the appellant/wife had committed cruelty on the respondent/husband; that the respondent/husband has filed the petition for restitution of conjugal rights only to defeat the maintenance proceedings and that he did not come forward to maintain the appellant/wife and child which he is legally bound to do; that the burden of proof always lies on the

respondent/husband to establish beyond reasonable doubt to the satisfaction of the court, the allegation of desertion throughout the entire period of two years before filing the petition. Hence, she prays for dismissal of the petition.

4. Before the trial Court, on the side of the respondent/husband he examined himself as PW1 and on the side of the appellant/wife, she had been examined as R.W.1. The respondent/husband on his side had marked the following documents:-Ex.P1 is the wedding invitation; Ex.P2 is the wedding photo; Ex.P3 is the Family Card; Ex.P4 is the order passed in H.M.O.P.No.72/2010 (Restitution of Conjugal Rights); Ex.P5 is the complaint given by the respondent/husband before the police station; Ex.P6 is the legal notice issued by the respondent/husband.

5. During the chief examination before the Family Court, the respondent/petitioner had stated that the marriage between him and his wife the appellant took place on 30.4.2007 at Pudur Sri Amman Kalai Arangam as per Hindu Rites and Customs and that the marriage expenses were borne by both side and thereafter they had lived as a joint family at the house of the respondent/husband and after 3 months the appellant/wife had insisted for a separate residence for which he had asked her to wait for sometime and whereas she had without minding it left to her parents house and that he had requested her to join him, for which she had stated that if only a separate residence was arranged she would join him and that thereafter on 10.4.2008 a girl child was born and when he had gone to see the child his wife and her brother had prevented him from seeing the child, and after 3 months he had called his wife and child to come home and she had agreed and come home on 15.7.2008 and that on the very same day she had returned back to her parents house and even after several conciliations through panchayatars she had been adamant and refused to join him in matrimony and stayed in her parents house. Thereafter again when he had gone to her house to see his wife and child the brother of the appellant had spilt coffee on him and had along with his sister/the appellant herein had abused him and humiliated him. Thereafter a mediation was arranged through panchayatars and she had refused to join him. Thereafter the appellant had filed M.C.No.59/2009 before the Chief Judicial Magistrate, Erode seeking maintenance and that even during the pendency of the M.C. Proceedings he had through relatives called her to join him for which the appellant had asked him to leave his native place and asked him to seek for a separate residence somewhere else and that as per her demand he had taken up a separate residence on 4.7.2010 near Balamarathagan Temple and after living there for 2 months she had again compelled him to leave her at her parents house. When he had called her again she had refused to join him and thereby had denied to render him marital and conjugal obligations and

had contended that thereby the wife had committed acts of mental and physical cruelty and had expressed that there was no chance to live with her and had filed the divorce petition. However, in the cross-examination, P.W.1 has stated that even if the wife was ready to join him he had expressed that he was not ready to take her back. He had admitted to have given a complaint to Kodumudi Police Station to advise his wife for reunion and that thereafter only he had given a legal notice to her for Restitution of Conjugal Rights. However, he had refused that the appellant/wife had sent a notice for reunion and that when she had come back to join him he had denied to take her back and had also denied that she can come to the matrimonial home only after withdrawing the maintenance case. Further he had also denied that he had not gone to see the female child which was born on 10.4.2008 and submitted that the reason for not going was that he was not informed about the birth of the child. He had denied that the relatives and the parents of the appellant/wife suggested for a reunion and had also denied that several steps had been taken by the appellant/wife and that he is the one who has refused to join her. He had also denied that he was the reason for the separation for six years. He had also further denied that since because the appellant/wife had filed the petition for maintenance, he had filed the petition for restitution of conjugal rights and that he denied that he had not paid any maintenance to the wife or child and had stated that he had paid Rs.50,000/- to them.

6. During the chief examination before the Family Court, the appellant/wife had stated that within three months of marriage she had demanded to have a separate residence and that the respondent/husband was having illegal relationship with several women and that he used to come back home late in the night in a drunken mood and committed cruelty on her. She had stated that the respondent/husband did not come to visit her child after delivery and that he never changed his habits and thereafter a panchayat was held and they were living together in a separate residence for two months and had denied that she had gone back to her parents home for two months and she had also denied that she refused to join him after the order passed in the restitution of conjugal rights petition by the Sub-Court, Erode; In the Cross-Examination she had stated that she had studied upto 10th Std., and that her father's name is Ramasamy, and he passed away before 12 years and that she has an elder brother and after the death of her father she had been taken care by her mother and elder brother. The respondent/petitioner was not her relative and that he was living in a joint family and after marriage she was in the joint family and that she left the matrimonial home within three months, due to cruelty. She had admitted that she had agreed to live with the husband and when the question was put to her whether she was prepared to join her husband she had told that he was living with another woman for

three months and that later the woman had left to her parent's house but however refused to join her husband. Further she had told that she is not aware of the name of the woman and that no steps were taken to know the name of the woman and no complaint was preferred to the police or no petition was filed before the court. She had denied that the story about the woman was an imagination. When she had been questioned why she did not join her husband after the order passed in the petition for restitution of conjugal rights she told that during the period her husband had married another woman and that was the reason she did not go and when she was asked if she was ready to join her husband, she had refused to join him and further had stated that her husband had committed sex torture on her and that if at all there comes a situation at a later point of time and that if the child asks for she would join her husband. Further she had admitted that they were living separately for the past four or five years and had admitted that there was dispute between her elder brother and her husband right from the beginning and that they are not in talking terms. She had admitted that the elders had agreed and arranged for a separate living on 4.7.2010.

7. The Family Court taking into consideration of the oral and documentary evidence had arrived at the conclusion and granted the relief sought for by the respondent/husband under Section 13(1)(i-a) on the ground that the wife had committed cruelty on him and also under Section 13(1)(i-b) that they have been living separately for more than 5 years and passed an order of divorce on the ground of cruelty and desertion. While considering the ground of cruelty the Family Court in paragraphs 17 and 18 of the judgment had observed that it is normal that there will be trivial issues between the spouses in a married life and when there is a child the trivial issues have to be adjusted between themselves and that they should take steps to run the family in a proper way. The Family Court also held that the petitioner/husband had taken several steps by filing petition before the Court and also before the Police Station for uniting him with his wife and had also taken steps through the elders to unite him with his wife and had also agreed for separate living. Whereas the wife had alleged that the husband was a alcoholic and that he was having affair with many women. The Family Court also observed that if the allegations against the husband are true, that he was an alcoholic and that he was having affairs with many women, the wife would have taken steps when especially they were being separated from the year 2010. The wife had filed a petition claiming maintenance in the year 2009 before the Chief Judicial Magistrate Court, but in that petition, no allegations had been made against the husband about his character that he was an alcoholic and having illicit relationship with many women and thereby refused to maintain her and the child, whereas the allegations of immorality were raised

in the counter. Thereby, based on the above observations the Family Court had held that the the false allegations against the husband has caused mental cruelty, if not physical cruelty to the husband. That apart, the Family Court had also given a finding that the wife had filed a separate petition for claiming maintenance and when the separate petition for maintenance was filed, the husband had taken several steps to join her with him which had ended in futility only due to the conduct of the wife. In fact, it has also been accepted by the wife in her cross-examination. The further findings of the Family Court is that when a wife had raised false allegations against the husband there is no chance of living together any further and also took note of the fact of the refusal of the wife to join the husband when a question was put to her. Thereby taking into consideration the documents and the evidence adduced by the wife and husband the Family Court had held that the wife had committed mental cruelty to her husband and granted divorce under Section 13(1) (i) (a) and 13(1) (i) (b) of the Hindu Marriage Act. The appeal has been filed against the finding and judgment of the Family Court.

8. The learned counsel for the appellant had assailed the order of the Family Court stating that it was the respondent/husband who had not taken any steps to see the child after the birth of the child and that he has not shown any care towards the appellant and her child and that only after the initiation of the maintenance proceedings by the wife, the husband had filed H.M.O.P.No.72 of 2010 under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights and submitted that the petition for restitution of conjugal rights had been filed only to circumvent the maintenance petition filed by the wife and the real intention was not to join with the wife. Further it was submitted by the learned counsel for the petitioner that there is no averment to show what was the cruelty committed by the wife and the Family Court without any legally acceptable evidence had erroneously granted divorce on the ground of cruelty when absolutely there are no pleadings and materials to show that the appellant/wife had committed cruelty on the respondent. Moreover, no legal evidence had been adduced by the respondent/husband to show that there was desertion throughout the entire period of two years before filing the petition for divorce and in such event, contended that the order of grant of divorce by the Family Court is neither legally nor factually sustainable and prayed for setting aside the order of the Family court.

9. On the contrary, the learned counsel for the respondent/husband submitted that the marriage between the appellant and the respondent took place on 30.04.2007 and that the appellant lived with the respondent only for a period of

three months after the marriage during which period she got conceived and thereafter, left to her parents home for delivery and a female child namely Vaishnavi was delivered on 10.04.2008. The learned counsel for the respondent further submitted that it is the categorical evidence of the husband that even the birth of the child was not intimated to him and that when he had gone there to see his child and wife, he was prevented to see the child and that he was ill treated and humiliated by the brother of the wife and that right from the day of marriage there was dispute between the brother of the wife and the respondent. It was further contended by the learned counsel for the respondent that though the respondent comes from a joint family in order to keep the appellant happy he had taken a separate house near Balamarathagan Temple, whereas from there also she went away without any reasonable cause and the further steps taken by the respondent/husband through his relatives and common friends for reunion also failed. The appellant had adamantly refused to join him in the matrimonial home and that the maintenance petition filed by her was still pending and that though he was willing for reunion right from the beginning she had refused to join him forcing him to file a petition for restitution of conjugal rights and the same was also ordered on 13.12.2010. Thereafter, the husband had also given a petition to the police to advise her to come and join him and also took various steps which had ended in futility. Further submitted that the intention of the appellant was only to harass him and submitted that though no the allegations of the appellant being an alcoholic or a person having illicit affair was raised in the M.C. Petition, false allegation was stated in the counter filed by the appellant in the divorce petition which has caused severe mental cruelty to the husband and thereby submitted that the Family Court had given a right finding that it was the conduct of the appellant which was the reason for separation and that when serious and false allegation had been raised against the husband that would not be conducive for the parties for reunion and that it would amount to cruelty. He also contended that admittedly it is the categoric evidence of the wife that they are living separately for more than about 5 years and that the bonding of marriage has been lost due to the long separation between the parties. It was further contended that the Family Court had rightly granted divorce relying on the Full Bench of the Apex Court in Samar Ghosh vs. Jaya Ghosh reported in 2007 4 SCC 511.

10. We have heard the learned counsels for both sides and perused the materials placed on record.

11. In the present case it is seen from the evidence that the appellant had left the matrimonial home within three months from the date of marriage and that the birth of the child was

not intimated to the husband and that when he had gone to the wife's house to see the child, he was prevented by the appellant and her brother. Further, it is the admitted case of the appellant that there was no cordial relationship between her brother and her husband from the beginning and it is the case of the respondent/husband that he was ill-treated by the brother of the appellant by pouring coffee on him. Further, the Family Court has also held that allegations against the husband being an alcoholic and a person of immoral character though have not been raised in the maintenance petition were raised in the counter filed by the appellant in the divorce petition, the Family Court had categorically given a finding that the serious and false allegations would always cause mental cruelty to the husband. Further, it is seen from the evidence that steps have been taken by the respondent/husband to have a separate living and that she had refused to live with him there. Thereafter the husband had filed a petition for restitution of conjugal rights which was ordered in his favour and that he had taken steps through relatives and common friends and had also taken steps by giving a petition to the police to advise the appellant to join him in matrimonial home.

12. In the judgment referred to above in *Samar Ghosh v. Jaya Ghosh* reported in 2007 4 SCC 511, the Honble Apex Court has enumerated the following principles which reads as follows:- (paragraphs 97 to 102)

"97. This Court in *Naveen Kohli v. Neelu Kohli* reported in (2006) 4 SCC 558 dealt with the similar issues in detail. Those observations incorporated in paragraphs 74 to 79 are reiterated in the succeeding paragraphs.

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been

wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory."

98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs,

traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

102. When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen and half years (since 27.8.1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent."

13. Further in the case reported in 2012 (2) MLJ 833 (U.Sree vs. U.Srinivas), at paragraph 88, it has been held as follows:-

"88. In short, it would be difficult for the parties to bury the past and to begin a new relationship of Husband and Wife. For the past 15 years both parties have remained separately. During these years, they developed their own life style, remained in isolation and grown in their own thoughts. Marriage tie between the parties has become emotionally dead and the same is beyond repair because of the emotionally dead relationship which is a positive act of oppressive mental cruelty, in our considered opinion. There is no chance for both parties to live together in future. In such a context, the decree of Divorce is the only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion."

14. The ratio in the above judgments had been further fortified by the later judgment of the Hon'ble Apex Court reported in (2013) 5 SCC 226 (K.Srinivasa Rao vs. D.A.Deepa), wherein it had been held as follows:- (paragraphs 29 to 35)

"29. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can

cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouses life miserable. This is what has happened in this case.

30. It is also to be noted that the appellant-husband and the respondent- wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the courts verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the courts decree.

32. In V. Bhagat this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind.

33. In Naveen Kohli, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and

interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.

35. In Vijay Kumar, it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same."

On consideration of the facts and the above decision it is seen that the Family Court had rightly held that the acts of the appellant/wife had constituted cruelty and had granted divorce. The Family Court had also held that reckless and false accusation against her husband, not supported by proof amounts to cruelty.

15. Further it is to be seen that the parties have been living separately for more than 10 years. On a perusal of the records and deposition of the appellant as well as the respondent coupled with the fact that the marriage between the appellant and the respondent took place on 03.04.2007 dispute arose between them within three months of marriage, M.C.No.58/2009 was filed on the file of the Judicial Magistrate, Erode on 8.10.2009 and during the pendency of the M.C.No.58/2009 and thereafter, steps had been taken by the respondent/husband to join to her in matrimonial home failed and that the appellant

had filed H.M.O.P.No.72 of 2010 on the file of the II Additional Sub-Judge, Erode under section 9 of the Hindu Marriage Act, for Restitution of Conjugal Rights on 9.3.2010 and the same was ordered on 13.12.2010 and H.M.O.P.No.224 of 2014 for divorce was filed on 25.07.2013, after six years of marriage and after completion of trial the Family Court has granted divorce on 14.11.2016 and the appeal has been filed on 02.01.2017 and till today the parties are living separately. The parties have been litigating for more than 10 years. In respect of cruelty the husband had let in evidence that he was illtreated and it is also admitted case of the wife that there was dispute between them within three months from the date of marriage. Hence, we find that there is no possibility for reunion between the appellant and the respondent due to the long period of separation and the matrimonial bond has broken beyond repair as evidenced and thus relying upon the judgment of Samar Ghosh, the Family Court had held that the husband had made out a case for divorce and had allowed the petition granting divorce dissolving the marriage between the appellant and the respondent dated 30.04.2007.

16. Further the Family Court has also held that in spite of several efforts taken by the respondent/husband for reunion and orders being passed by the Family Court allowing the petition for restitution of conjugal rights, the appellant/wife had refused to join with him. The respondent/ husband had also approached the police by giving a petition to the police to give effect to the said order wherein the police had advised the appellant/wife to join the respondent/husband and even then the appellant/wife had not joined the respondent/husband and thereby allowed the petition on the ground of desertion too.

17. We feel that there is no error in the finding of the Family Court, Erode granting the decree of divorce and we confirm the order and decreetal order passed by the Family Court, Erode, in H.M.O.P.No.244 of 2014 dated 14.11.2016. Accordingly, this appeal stands dismissed. No costs.

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Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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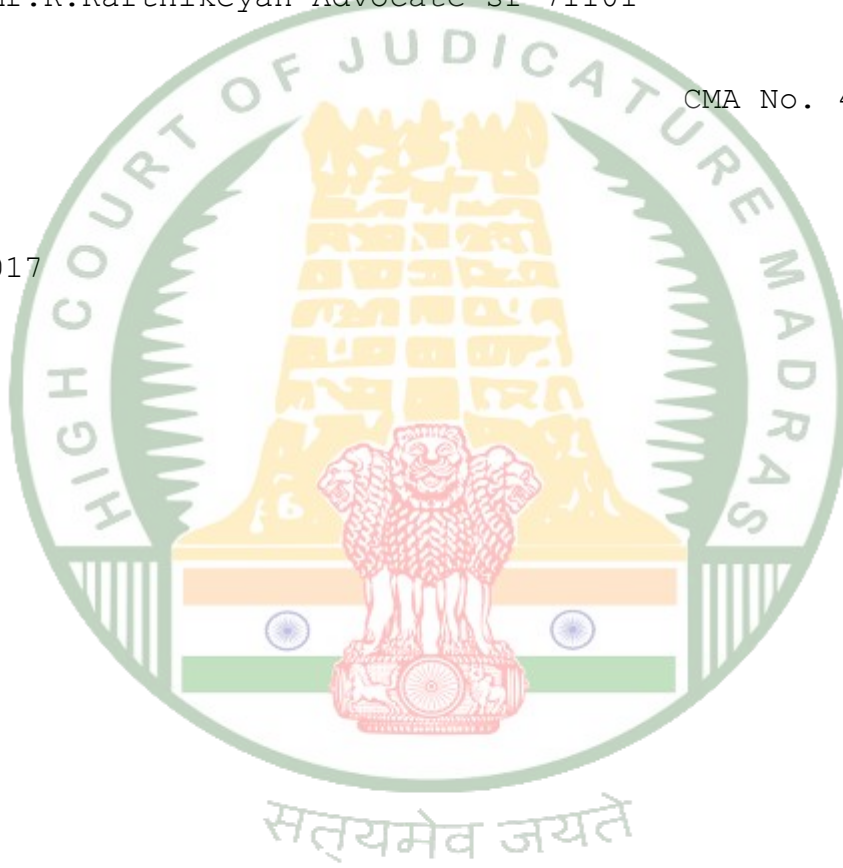
1.The Presiding Officer Family Court, Erode.

2.The Section Officer
VR Section High Court, Madras

+1 cc to Mr.M.Guruprasad Advocate sr 69764
+1 cc to Mr.K.Karthikeyan Advocate sr 71101

CMA No. 44 of 2017

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