

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.988 of 2014

Simon Radjou ... Appellant/Petitioner

Vs

1.Arokaiamary Philomina

2.The Registrar,
Pondicherry Municipality,
Dumas Street,
Pondicherry - 11.

... Respondents/Respondents

Civil Miscellaneous Appeal filed u/s.19 of the Family Courts Act, 1984, to set aside the order dated 30.12.2013 passed in M.O.P.No.168 of 2006 on the file of learned Judge, Family Court, Puducherry.

For Appellant : Mr.V.Balamurugan
For Respondents : No appearance [R1]
Ex parte [R2]

J U D G M E N T

[Judgment of the Court was made by C.T.SELVAM, J.]

This Civil Miscellaneous Appeal arises against the order of learned Judge, Family Court, Pondicherry, passed in M.O.P.No.168 of 2006 on 30.12.2013.

2. Appellant and first respondent are husband and wife. Appellant moved M.O.P.No.168 of 2006 on the file of Family Court, Pondicherry, seeking dissolution of marriage on the ground of cruelty under Article 242 of French Code Civil. Court below, under orders dated 30.12.2013, dismissed such petition. There against, the present appeal has been filed.

3. Heard learned counsel for appellant. Repeatedly, there is no representation for first respondent.

4. Learned counsel for appellant submitted that soon after marriage between parties on 27.06.2002, i.e. in August 2002, first respondent left the matrimonial home and later, returned. Again, she left in October. First respondent frequently preferred complaints against appellant and his parents and assaulted appellant in February 2003. Hence, appellant lodged a complaint before Grand Baazar Police Station, Chennai, but the same was forwarded to All Women Police Station as first respondent lodged a complaint against appellant at such police station. On 13.02.2003, appellant caused a legal notice calling upon first respondent to lead a happy married life and the same was evaded by her. Hence, appellant moved a petition in M.O.P.No.198 of 2005 before learned Family Judge, Pondicherry, seeking divorce and as compromise was entered into between both parties, the said petition was dismissed as not pressed on 28.02.2006. Thereafter, appellant had a chat with first respondent towards compromise but she preferred a complaint on 25.06.2006 before "D" Nagar Police Station against appellant. Appellant preferred complaint on 26.06.2006 at the same Police Station. Thereupon, appellant was called to the police station as was first respondent, who failed to show up. In such circumstances, appellant, having no alternative remedy, filed a petition in M.O.P.No.168 of 2006 on the file of Family Court, Pondicherry, seeking dissolution of marriage and the same was dismissed on 30.12.2013. Aggrieved, appellant filed the present appeal.

5. Learned counsel for appellant submitted that Court below dismissed the petition on erroneous reasoning and in the facts and circumstances of the case, it is to be held that the marriage between appellant and first respondent irretrievably has broken down.

6. Despite service of notice and repeated adjournments, there was no representation and today also there is no representation on behalf of first respondent. The same is indicative of her not being interested in contesting the appeal.

7. As admitted by both sides, both parties have been at loggerheads from 2002. Amidst other acts of cruelty, appellant has also alleged that owing to complaint preferred to police by first respondent informing that he was suffering from AIDS, he had been required to undergo a medical test. The negative test report is to be found in the Court records though the same has not been marked as an exhibit. In the course of cross-examination, respondent had admitted to having preferred such a complaint. Thus, it is found that the marriage between

petitioner and respondent of 27.06.2002 is to be dissolved both on the ground of irretrievable break down of marriage as also of commission of acts of cruelty by respondent. The accusation of one spouse against another of the other suffering from AIDS cannot be taken lightly and must be seen as a serious act of cruelty.

The Civil Miscellaneous Appeal shall stand allowed. The order of learned Judge, Family Court, Chennai, passed in M.O.P.No.168 of 2006 on 30.12.2013, shall stand set aside. The marriage solemnized between appellant and first respondent on 27.06.2002 is hereby dissolved by granting a decree of divorce. No costs.

Sd/-
Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

cla/gm

To
The Family Judge,
Puducherry.

Copy to:
The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

Civil Miscellaneous Appeal No.988 of 2014

sr (CO)
TR(09/02/2018)

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