IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM :

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.148 of 2009

A.V.Nagaraj ... Appellant

Vs.

N.Thangamani ... Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19-A of the Family Court Act against the judgment and decree passed in H.M.O.P.No.621 of 2005 on the file of the Family Court, Coimbatore dated 10.04.2008 and to set aside the same.

For Appellant : Mr.S.S.Gunalan
For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH,J)

This appeal has been preferred by the appellant herein, the petitioner in HMOP.No.621 of 2005 on the file of the Family Court, Coimbatore. The petition in HMOP.No.621 of 2005 was filed under Section 13(1) (1a) and 13(1) (1b) of the Hindu Marriages Act on the ground of cruelty and desertion. The trial Court dismissed the petition filed and thus being an appellant before this Court has filed the present appeal.

2. Despite the notice having been served and name printed, the respondent have not chosen to appear before this Court.

3. The learned counsel appearing for the appellant submits that the Court below has not taken into consideration the relevant materials. The respondent/wife herself has stated about the facts that she is not living with the husband/appellant from the year 1995 onwards. She has not taken any steps for more than two decades for re-union. The marriage was conducted only in the year 1992. Despite evidence, that the appellant had visited her for the purpose of seeing his child, no attempt is being made for re-union. It is further

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submitted that the learned counsel incidentally made a submission that on facts both the appellant and the respondent are living very nearby, separated by only two streets. In support of his contention, reliance has been placed by the Apex Court in Durga Prasanna Tripathy Vs. Arundhati Tripathy reported in [CDJ 2005 SC 608].

4. Admittedly the marriage was conducted on 03.9.1992 between the respondent and the appellant and out of wedlock, a child was born and the records would indicate that the child is living with the respondent-wife. The respondent in her evidence has also admitted the fact that the appellant and herself have been living separately from the year 1995 onwards. Though it is a case of allegation, as against denial, the respondent on her own has not taken any steps towards re-union, despite the fact that the appellant has shown some interest to see her and the child. Therefore, considering the above, we are of the view that there is a denial on the part of the respondent, to join the matrimonial abode. In fact, even in her evidence, she has stated that she was not very much interested in conducting the case. Unfortunately, the lower Court has not considered the material available on records in its perspective. We are also of the view that it will be suited to dismiss the appeal, as the parties are not ready and willing towards re-union and that much water has flown under the bridge. The parties are living separately from the year 1995 onwards, their mind set also would have changed. It is suffice to state that they learnt to live without the company of each other. Perhaps it is the reason why the respondent has not chosen to appear before this Court, despite notice having been served.

5. In view of the above circumstances, we are constrained to allow this appeal on the ground of desertion alone as there was no sufficient materials to uphold the grounds raised towards cruelty.

6. In the result this appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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ds
To:

1.The Family Court,
Coimbatore.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.S.S.Gunalan, Advocate sr.833

CMA.No.148 of 2009

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