

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2017

Pronounced on : 27.07.2017

Coram :-

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.M.A.No.753 of 2012

Rajiv Mangal ... Appellant/Petitioner

vs.

Ritu Mangal ... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, against the order dated 23.01.2012 passed by the learned Principal Judge, Family Court, Chennai in F.C.O.P.No.1621 of 2007.

For Appellant : Mr. J.R.K. Bhavanantham
For Respondent : Ms. A. Arunmozhi

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH.J,)

By a common order dated 23.01.2012 passed in FCOP.No.1621 of 2007 and I.A.No.1935 of 2008 filed by the appellant/husband against his wife/respondent on the ground of Cruelty and Desertion under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955 and for the custody of his child Aditya Mangal under Section 26 of the Hindu Marriage Act, 1955 respectively, the learned Principal Judge, Family Court, Chennai had dismissed the main petition as well as interim application.

2.As against the interlocutory application, CMA.No.754 of 2008 came to be filed which was subsequently dismissed on 10.10.2014 since the child had attained majority and as against the order dismissing the husband/appellant's petition for divorce, the present appeal CMA.No.753 of 2012 is filed.

3.The brief facts of the case is as hereunder:

a)The appellant/husband had married the respondent/wife on 12.12.1994. Through the wedlock, a male child namely 'Aditya

Mangal' was born on 06.11.1995. During the course of matrimonial life, there arose certain misunderstandings among them, owing to which the appellant had filed O.P.No.1621 of 2007 before the learned Principal Judge, Family Court, Chennai alleging several incidents amounting to cruelty against the respondent. In the said petition, the appellant pleaded the following incidents involving the respondent, which according to him, amounted to cruelty:

1)The respondent had kept the cooking gas cylinder open in the kitchen with an intention to kill her mother-in-law.

2)The respondent had purposefully refrained herself from not removing the broken crockery from the kitchen floor with an intention that her mother-in-law will get hurt.

3)The respondent was not doing any household works and used to come out of the room late in the morning and all the household work was done by the appellant's mother and sister.

4)The respondent had prepared rice and dhal for dinner instead of Chappati.

5)The respondent had not returned the two sarees given by her mother-in-law.

6)The respondent always wanted to live in a separate residence away from the appellant's parents.

7)The respondent had threatened her mother-in-law during the Vidai Ceremony

8)The respondent used to frequently tell the appellant that she wants divorce.

9)The respondent used to frequently go away to her parent's house and return after few days.

10)The respondent refrained from preparing food whenever her mother-in-law and sister-in-law were in station and whenever food was prepared by her mother-in-law and sister-in-law, the respondent used to add extra salt or chilli powder to spoil the taste of the food.

11)The respondent and her parents had spread rumors in the community that her mother-in-law had beaten her through the servant maid.

12)The naming ceremony of their child was cancelled on two or three occasions since the respondent and her parents failed to give a convenient date.

13)The respondent used to spread false rumors about her sister-in-law in order to stop her getting good alliances for her marriage.

14)The respondent did not have any respect for the appellant/husband and during their honeymoon, she used to call him by kicking with her leg.

15)After the birth of his son Aditya Mangal, they did not have any sexual relationship at all.

16)On 01.04.1996, the respondent had told her husband that she wanted divorce and after that she left her matrimonial home and living with her parents for more than three months.

17)The respondent used to enter the pooja room during the menstrual period in order to annoy her mother-in-law and family members.

b)According to the appellant, the respondent had left the matrimonial house on February 2002 with a big suitcase stating that she wanted to celebrate Holi with her parents and brother. However, it was later noticed that she had taken all her belongings with an intention to leave the matrimonial house once for all. Since both the appellant/husband and the respondent/wife are living separately from February 2002 onwards, the petition for divorce was filed on the ground of cruelty and desertion.

c)The respondent/wife had filed a counter affidavit denying all the allegations of cruelty made by the appellant/husband. According to her, she wanted to live with a joint family i.e., with her in-laws but only later she realized that her mother-in-law and sister-in-law were ill-treating her and subjecting her to various abuses. The appellant was dishonouring her feelings and he had also ill treated her along with her in-laws. The low degree of respect and ill treatment given to her by her mother-in-law and sister-in-law were noticed by the servants. In one incident, a servant maid tried to hit her which was neither prevented by the appellant/husband nor by her in-laws. Thus, in these circumstances, she was constrained to temporarily leave the matrimonial house, with the permission of her mother-in-law, for two days. Thereafter, she was not permitted to enter into the matrimonial house. According to the respondent, she had neither caused cruelty to her husband nor deserted him and hence, she sought for dismissal of the original petition for divorce.

d)The appellant/husband had examined himself as P.W.1 on his side and had marked exhibits Ex.P1 to Ex.P6. The respondent/wife on the other hand had examined herself as R.W.1 and had marked Ex.R1. Their son Aditya Mangal was examined as Court witness No.1.

e)The learned Principal Judge, Family Court, Chennai had summarized the following points for consideration in the petition:-

1)Whether the incidents are within the purview of cruelty under Section 13(i) (a) of the Hindu Marriage Act?

2)Whether the petitioner/appellant is entitled to divorce on the ground of cruelty as alleged by the petitioner?

3)Whether the petitioner/appellant is entitled to divorce on the ground of desertion under Hindu Marriage Act?

4)To what other reliefs, the petitioner is entitled to?

f)After consideration of the evidences of the appellant/husband as well as the respondent/wife, the learned Principal Judge, Family Court, Chennai had come to the conclusion that the incidents alleged in the petition filed by the appellant was not within the purview of the definition of 'cruelty' and that the appellant had not established that the respondent had 'deserted' him and consequently, dismissed the petition for divorce.

g)Aggrieved over the same, the present appeal has been preferred by the appellant.

4.Heard the learned counsel for the appellant as well as the learned counsel for the respondent and we have also perused all the documents filed in the present appeal.

5.Mr.J.R.K.Bhavanantham, the learned counsel appearing for the appellant elaborately drew our attention to the various incidents of cruelty alleged by the appellant and submitted that the respondent had subjected the appellant to cruelty and that she voluntarily deserted the appellant. The learned counsel further submitted that after February 2002, the respondent had changed the permanent address of her son in the school records indicating that she would never reconcile with the appellant again. She had not filed a petition for restitution of conjugal rights and there was no communication from her to show that she intended to come back and reconcile with the appellant. Though the appellant had asked her to give consent for divorce on many occasions, she had refused it and consequently, they have been living separately for more than 5 years, which according to him, is mental cruelty. The learned counsel further submitted that all the incidents set forth in his petition goes to show that the respondent had treated him with utmost cruelty. The learned counsel for the appellant also argued that since the parties are living separately for more than five years, the marriage has irretrievably broken down and since there was no possibility for reconciliation, he sought for allowing the present appeal.

6.The learned counsel for the appellant also relied upon the judgment in Malathi Ravi, M.D. Vs. B.V.Ravi, M.D., reported in 2014 (7) SCC 640 wherein the Hon'ble Supreme Court, while pointing out the illustrative examples pointed out in the case of Samar Ghosh Vs. Jaya Ghosh [2007 (4) SCC 511], held that inference of mental cruelty can be drawn therefrom and submitted that some of the examples referred therein are identical to that of the case in hand and hence, the evidence set forth in the divorce petition should be taken as incidents of cruelty.

7.The learned counsel for the appellant also submitted that the marriage had irretrievably broken down in view of the

cruelty meted out by the respondent to the appellant/husband. That since the appellant and the respondent have been living separately for a long period, irreconcilable distance between the two has occurred and therefore, submitted that since the marriage had irretrievably broken down, the appeal should be allowed.

8. Ms. A. Arunmozhi, learned counsel for the respondent argued and submitted that all the allegations of cruelty raised in the petition were vague and trivial. According to the learned counsel, the respondent had left her matrimonial house after seeking permission from her mother-in-law and that when she attempted to come back, she was prevented from entering the house and therefore, there was no desertion from her side. The learned counsel also submitted that the respondent intends to reconcile with the appellant and hence, sought for dismissal of the present appeal.

9. The learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of *Gurbux Singh Vs. Harminder Kaur* reported in 2010 (14) SCC 301 and submitted that a few isolated incidents over certain period of time will not amount to 'cruelty'.

10. The learned counsel for the respondent also relied upon a judgment of the Hon'ble Supreme Court in *Chetan Dass Vs. Kamla Devi* reported in AIR (2001) SCC 1709 wherein it has held that the relief of divorce cannot be granted merely on the ground that the marriage has irretrievably broken down in a case.

11. We have given careful consideration to the submissions made by the respective counsels and also perused the oral and documentary evidences as well as the pleadings filed in the petition.

12. The crucial point for determination in the present appeal is as to whether the averments as well as the incidents made in the appellant's petition for divorce amounted to cruelty and/or desertion, in the light of the pleadings, as well as the oral and documentary evidences adduced on either side. Before dealing with the evidence/averments, it would be appropriate to refer to the case in *Gurbux Singh Vs. Harminder Kaur* reported in 2010 (14) SCC 301 wherein the Hon'ble Supreme Court while relying upon the judgment in *Samar Ghosh Vs. Jaya Ghosh* reported in 2007 (4) SCC 511 enunciated certain guidelines for the purpose of consideration as to whether the ground of cruelty is made out or not. The relevant portion of the said judgment reads as follows:

"12. In *Samar Ghosh vs. Jaya Ghosh*, (2007) 4 SCC 511, a three-Judge Bench of this Court while considering Section 13(1)(i-a) of the Act laid down certain guidelines. The analysis and ultimate conclusion are relevant which reads as under:-

"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 straitjacket 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, discommode 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 sterilisation 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."

13) A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified therein. We have already pointed out that in the petition for dissolution of marriage, the appellant has merely mentioned Section 13 of the Act and in the body of the petition he highlighted certain instances amounting to cruelty by the respondent-wife.

14) Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change of various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular part of conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-à-vis the other party. The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty.

15) It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. Persistence in inordinate sexual demands or malpractices by either spouse can be cruelty if it injures the other spouse. There is no such complaint by the appellant. In the case on hand, as stated earlier, the appellant has projected few instances in which, according to him, the respondent abused his parents. We have verified all the averments in the petitions, reply statement, written submissions as well as the evidence of both parties. We are satisfied that on the basis of such instances, marriage cannot be dissolved."

13. With the above guidelines in mind, we shall now analyse the grounds raised by the appellant alleging the aforesaid incidents which according to him amounted to cruelty. As rightly pointed out by the learned counsel for the respondent, on a perusal of the aforesaid incidents, it can be seen that most of them are trivial which occur in day-to-day life of any married couple. Curiously in all the incidents alleged by the appellant, it is seen that except 2 or 3, the rest of the allegations are involving the mother-in-law and sister-in-law of

the respondent. From the counter affidavit filed by the respondent, it is also seen that her grievance were not mainly on the appellant/husband but only on her in-laws. Even the evidence adduced by the appellant (P.W.1) as well as the respondent (R.W.1) also discloses that frequent misunderstanding and quarrel arose between them in which the respondent's mother-in-law and sister-in-law were involved and it cannot be said these problems could be termed as cruelty meted out by the respondent on the appellant. Nevertheless, two incidents namely leaving the gas cylinder open in the kitchen and failing to remove the broken crockery with an intention to endanger the life of the mother-in-law could be viewed as serious in nature. On perusal of the evidence, it is seen that the appellant in his proof affidavit has stated that on one occasion, after the marriage, the respondent had kept the cooking gas cylinder open with an intention to kill her mother-in-law. However, no specific date of the incident has been given either in the petition or during the examination of P.W.1. In the cross examination of P.W.1, the appellant had stated that his sister was residing along with them in the year 2002 and in his evidence, he had stated that he along with his mother and sister had ordered food from the hotel on the date of incident and that the respondent alone was cooking in the kitchen. A specific suggestion was put to the appellant that since the respondent alone was cooking in the kitchen, there would have been a possibility that the mother-in-law could have opened the gas cylinder in order to endanger the life of the respondent, which was denied by the appellant. Apart from the evidence of the appellant (P.W.1), there is no other oral evidence to corroborate his statement. It is seen that the appellant's mother as well as his sister were involved in the incident and the appellant has not chosen to examine them as a witness. On the other hand, the respondent (R.W.1) in her cross examination had specifically denied about the incident. Though the respondent had denied any act of cruelty meted out on her part, the appellant has not put any suggestion with regard to this incident during her cross examination.

14. Likewise, the incident alleging failure on the part of the respondent to remove the broken parts of the crockery in the floor is concerned, the appellant in his proof affidavit had stated that it was his sister who had seen the broken pieces of crockery lying on the floor and it is he who had removed the glass. However, during the cross examination, the appellant (P.W.1) has stated that the glass tumbler was broken and pieces were lying on the floor and he did not know who had broken it. He further deposed that it was he who had seen the broken glass pieces and removed the broken pieces. The trial Court while dealing with this aspect had come to the conclusion that based on the averments and testimony of the appellant, the incidents

could not have happened. In view of the contradictory statements of the appellant, the incident itself is doubtful.

15. We are also of the considered view that the appellant having failed to establish the aforesaid two incidents by not examining his mother or sister and the contradiction in the incidents had failed to establish the ground of 'cruelty'. Insofar as the other incidents alleged by the appellant are concerned, we do not find that those incidents are so serious in nature so as to attract the ground of cruelty for the purpose of granting a decree of divorce.

16. Coming to the ground of desertion, it is the appellant's case that the respondent had left her matrimonial house in February 2002 with a suitcase stating that she wanted to celebrate Holi with her family members and after that she has not returned to her matrimonial house. On the other hand, the respondent in her counter statement has stated that during the said incident she informed her mother-in-law while leaving to her parents' house for celebrating Holi, with an intention of returning back. However, when she returned back, the appellant and her in-laws prevented her from entering the matrimonial house. The respondent had also categorically stated that after two days from the date she left for her parents house, her mother-in-law called her and asked not to come back without assigning any reason. If the statement of the appellant that the wife had gone to her parents house while going they have the impression that she will return back is taken to be true, the appellant would have naturally made attempts to bring back the respondent/wife to his house. On the contrary, there is no pleading or evidence to that effect that the appellant had attempted at least once to call his wife back or gone to visit his son. In these circumstances, the statement of the respondent that the appellant and her in-laws had prevented her from entering the house seems to be true. Even in his oral evidence, the appellant has not established that he had made attempts to bring the respondent back to his house. On the other hand, the respondent had categorically denied in her cross examination that she had voluntarily left the matrimonial house in February 2002 and that in the absence of any other evidence to show that the respondent had voluntarily deserted the matrimonial house, it can only be held that the appellant has not proved the ground of desertion also. The non examination of the appellant's mother and sister to establish the ground of desertion is also fatal to the appellant.

17. Incidentally, the other grounds raised by the appellant/ husband in trying to establish the ground of cruelty, it is seen

that in most of the incidents set forth in the petition, either the mother or the sister of the appellant were involved. It can only be derived that the atmosphere at the residence of the appellant was not conducive and admittedly, the in-laws of the respondent have been involving themselves in the incidents and also contributed to the cause of actions. Some of such incidents stated in the petition are that the respondent cooked rice and dhal instead of chapatti, the respondent did not return the mother-in-laws two sarees, the respondent wanted to establish separate residence away from her in-laws, the respondent had threatened the appellant's mother during Vidai Ceremony, the respondent refused to prepare food when her mother-in-law and sister-in-law were in station, the respondent spread rumors that her mother-in-law had beaten her, the respondent's father had not given convenient dates to her in-laws for conducting the naming ceremony of their child, the respondent spread wrong news about her sister-in-law in order to spoil her marriage alliances and that the respondent had entered the pooja room during her menstrual periods. On the basis of the incidents alleged and the overt act attributed against the respondent, we are of the view that they are not so serious as to attract the ground of cruelty for the purpose of granting divorce.

18. It would be pertinent to mention here in the aforesaid incidents where though the appellant involved his mother and sister, he has not chosen to examine them as witnesses in order to establish such incidents. Apart from his oral evidence, there is nothing on record to show that such incidents occurred. There is also no documentary proof in support of the same. On the other hand, the respondent had categorically denied all these incidents in her counter statement as well as in her oral evidence.

19. With regard to the other incidents namely, that the wife insisted to have their marriage dissolved and that she used to kick him during their honeymoon for the purpose of calling him are trivial in nature to constitute cruelty for the purpose of granting divorce.

20. The learned counsel for the appellant also raised the ground that the marriage between the appellant and the respondent has irretrievably broken down. In this regard, the Hon'ble Supreme Court of India in the judgment reported in Chetan Dass Vs. Kamla Devi reported in AIR (2001) SCC 1709 has held that the relief of divorce cannot be granted merely on the ground that the marriage has irretrievably broken down. The relevant portion of the order reads as hereunder:

"14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by Statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well knit, healthy and not a disturbed and porous society. Institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of irretrievably broken marriage as a straight jacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

As such, taking into consideration the veracity of the various incidents alleged by the appellant in amounting to 'cruelty', the marriage between the appellant and the respondent cannot be said to have irretrievably broken down.

21. In fine, we are of the considered view, that the appellant had miserably failed to prove the ground of cruelty and desertion before the trial Court and the findings of the learned Principal Judge, Family Court, Chennai do not suffer from any infirmity or illegality. Consequently, the Civil Miscellaneous Appeal stands dismissed. No costs.

22. Before parting with this case, we find it necessary to remark that the indifferences between the appellant and the respondent can be sorted out with a little bit of give and take from the side of the appellant's family members. There could be circumstances in which the mother-in-law could be dissatisfied with the conduct of her daughter-in-law or vice versa. Nevertheless, it has to be borne in mind that in view of these indifferences has resulted in an estranged matrimonial life of

the appellant and the respondent. It is needless to point out that their son Mr.Aditya Mangal, who had absolutely no role in the problem between his parents, is now being deprived of the love and affection of his father and parental grand mother. We only wish that good sense prevails and the elders of both the families should intervene and try to amicably resolve the issue in order to reconstitute the conjugal rights of the parties.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

DP

To

The Principal Judge,
Family Court, Chennai.

+2cc to Mr.P.B.Ramanujam, Advocate Sr. 53422,53861

+1cc to Mr.A.Arunmozhi, Advocate Sr. 53593

JUDGMENT MADE in
CMA.No.753 of 2012

SSI (CO)
VR(11/09/2017)

सत्यमेव जयते

WEB COPY