



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.08.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.113 of 2017

Muppidathi : Appellant/Petitioner
Vs.

Muthumari : Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, praying this Court to set aside the fair and decretal order made in H.M.O.P.No.238 of 2014, dated 26.10.2015, on the file of Family Court, Tirunelveli and consequently to pass an order of divorce dissolving the marriage solemnized between the appellant and the respondent on 11.09.2006.

For Appellant :M/s.P.R.Prithiviraj
For Respondent :No appearance

JUDGMENT

[Judgment of the Court was made by **M.M.SUNDRESH, J.**]

This Civil Miscellaneous Appeal has been directed against the fair and decretal order made in H.M.O.P.No.238 of 2014, dated 26.10.2015, on the file of Family Court, Tirunelveli and consequently to pass an order of divorce dissolving the marriage solemnized between the appellant and the respondent on 11.09.2006.

2.Heard the learned counsel for the appellant. Despite notice being served on the respondent, none appears on behalf of the respondent.

3.The appellant being the husband, filed a Petition for divorce on the ground of cruelty and desertion. The learned counsel for the appellant would submit that despite the best efforts made, the respondent/wife was living separately. Even as per the finding of the trial Court, the parties are living separately for quite some time. She has not filed any petition for restitution of conjugal rights. She has given a complaint under the Domestic Violence Act. However, she did not appear for the subsequent hearings. Though she has given a complaint making allegations against the Petitioner and his mother, she did not



press it thereafter. Hence the Court below ought to have granted a decree of divorce on the ground of cruelty and desertion.

4. The facts as alleged in the Petition are not in dispute with respect to the proceedings initiated by the respondent. Despite, the above said proceedings, she did not pursue the complaint wherein, she has made serious allegations against the appellant and his mother. Inasmuch as she did not pursue the complaint thereafter, we are of the view that a case for divorce on the ground of cruelty is made out. Secondly, even the court below made a finding on the ground of desertion, it has recorded the fact that the respondent did not take any steps to live with the appellant/husband and the parties are living separately for quite number of years. The respondent despite service of notice, has not appeared before this Court. The learned counsel for the Petitioner has submitted that, that is for the reason, the respondent has settled thereafter with a third party. Though there is no material to substantiate the same, the fact remains that the respondent is not interested in contesting this matter. Hence looking from any perspective, the Civil Miscellaneous Appeal has to be allowed.

5. Accordingly, the Civil Miscellaneous Appeal stands allowed and the order made in H.M.O.P.No.238 of 2014, dated 26.10.2015, on the file of Family Court, Tirunelveli is set aside. Consequently, H.M.O.P.No.238 of 2014 filed by the appellant/husband is allowed and a decree of divorce is granted on the ground of cruelty and desertion. No costs.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

The Principal Judge, Family Court, Tirunelveli.

COPY TO:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.P.R.PRITHIVIRAJ, Advocate SR.No.73341

vsn

MAS/MR-KKR/SAR1:31.08.2017:2P-4C

JUDGMENT MADE IN
C.M.A. (MD) No.113 of 2017
21.08.2017