



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1130 of 2015

Bacilia Katherine

... Appellant/Respondent

Vs.

Joe Kishore

.. Respondent/Respondent

Prayer: Appeal filed under Section 55 of the Indian Divorce Act, to set aside the judgment and decree dated 04.07.2011 passed in I.D.O.P.No.95 of 2010 on the file of the Principal District Judge, Dindigul.

For Appellant : Mr.S.Pon Senthil Kumaran

For Respondent : Mr.A.Anandan

JUDGMENT

Heard the learned counsel on either side.

2. The appellant got married to the respondent on 03.09.2007 at Madurai. The appellant is working in Axis Bank. The respondent is running a cell phone shop along with his partners. A girl child was born to the parties on 04.06.2008. The appellant had left the marital home even before the delivery. The appellant had been staying away for more than two years. Therefore, on 14.09.2010 the respondent herein filed I.D.O.P.No.95 of 2010 on the file of the Principal District Judge, Dindigul. The petition was filed on the ground of desertion as well as cruelty.

3. The respondent herein examined himself as P.W.1. He was not even cross examined. The evidence of the respondent/husband went unchallenged. The appellant did not get into the witness box. Therefore, the Trial Court was satisfied that the case projected by the husband was made out. The divorce was granted on the ground of cruelty. The decree of dissolving the marriage was passed on 04.07.2011. The appellant wife did not challenge the same immediately. She filed the present Civil Miscellaneous Appeal only on 06.07.2015. There was a clear gap of full four years between the date of passing of the decree and filing the present Civil Miscellaneous Appeal.



4. In the meanwhile, it appears that the respondent herein got remarried. Even though the Trial Court chose to grant divorce on the ground of cruelty alone, I am of the view that the case of desertion is also made out. As already noted, the appellant wife virtually did not contest the proceedings before the Court below. There is a long delay in filing the present appeal also. Admittedly, she left the marital home in the year 2007 itself. That is why, the respondent herein filed his divorce petition not only on the ground of cruelty but, also on the ground of desertion. The facts on record clearly show that the relationship between the parties had reached a point of no return. The decree passed by the Trial Court does not warrant any interference. There is absolutely no merit in this appeal. It is liable to be dismissed.

5. However, the matter cannot rest there. The respondent herein gave birth to a girl child through appellant. When the question was posed to the learned counsel appearing for the respondent, the learned counsel for the respondent on instructions stated that the respondent would pay a sum of Rs.2,000/- every month. The appellant shall furnish her bank details to the respondent. The address of the respondent appears in the cause title. Thereafter, the respondent shall remit a sum of Rs.2,000/- per month to the appellant as maintenance for the daughter. This is without prejudice to the right of the appellant to file appropriate application for the maintenance for the minor child. The liability to pay the said sum shall commence from 01.01.2018 onwards. With this direction, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge, Dindigul.

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The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.A.ANANDAN, ADVOCATE IN SR No. 89378

KMI

TE/KKR/SAR-3 : 01/03/2018 : 2P/5C