



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.390 of 2017

S.Naveen Charles

... Appellant

Vs.

Savariammal Stellarani

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, 1869 to call for the records and set aside the judgment and decree dated 26.02.2015 passed in IDOP.No.9 of 2012 by the learned Principal District Judge, Theni.

For Appellant : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.J.Lawrance

JUDGMENT

The appellant is the husband. The respondent is the wife. They got married on 24.10.2004 as per Christian rights and customs. The parties resided together for hardly 59 days. The respondent left the marital home on 59th day. She had conceived by then. A girl child was born on 07.09.2005. The appellant filed IDOP.No.26 of 2007 on the file of Family Court, Madurai for restitution of conjugal rights. The same was withdrawn by him. Thereafter, he filed the present IDOP.No.9 of 2012 on the file of the Principal District Judge, Theni seeking dissolution of his marriage on the ground of desertion and cruelty on the part of the respondent. The respondent filed her counter opposing the prayer made by the appellant herein. The respondent examined herself as RW.1. The learned Trial Judge dismissed the OP by order dated 26.02.2015. Aggrieved by the same, this appeal has been filed.

2.Heard the learned counsel for both parties.

3.The fact that the respondent left the marital home on the 59th day is not in dispute. The respondent would allege that the appellant and his parents persuaded her to abort. Since the respondent was not agreeable to the said suggestion, she had to leave the marital home to protect the child growing within her. To sustain the said contention, except the testimony of the respondent, there is no other corroborative material. The appellant filed IDOP.No.26 of 2007 seeking restitution of conjugal rights. The respondent herein filed her counter in the said IDOP. Both the



petition as well as the counter have been marked as Exs.R1 and R2. In fact, it is the respondent who marked the counter filed by her in the IDOP.

4.I went through the contents of the counter. The respondent had seriously opposed the request of the appellant for re-union. The learned counsel appearing for the respondent contended that it was the appellant who had withdrawn the petition for restitution of conjugal rights and filed the present petition for divorce. While this is factually correct, it has to be noted that IDOP.No.26 of 2007 came to be withdrawn by the appellant only after filing of counter by the respondent herein. A mere reading of the counter filed by the respondent would show that there was no point in pursuing the petition for restitution. Therefore, the appellant herein cannot be faulted for withdrawing IDOP.No.26 of 2007 and thereafter filing the present petition for divorce.

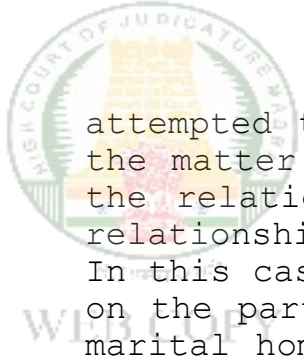
5.The appellant sought divorce on the grounds of desertion as well as cruelty. It must be made clear that cruelty on the part of the respondent has not at all been established. Therefore, the only question for consideration is as to whether the appellant is entitled to divorce on the ground of desertion. Statute says that desertion must be for a continuous period of two years immediately preceding the filing of the divorce petition.

6.In the present case, divorce petition was filed on 27.11.2009. For full of five years preceding the said dates, the parties had been away from each other. As on today, it comes to almost 13 years. The respondent was examined as RW.1. In the course of cross examination, the respondent made it clear that she had not filed any petition seeking restitution. A question was asked whether she was willing for re-union. The respondent made it clear that since the appellant had not mended his ways, it is not possible for her to live with him along with the child. To a pointed question as to whether she was willing for reconsideration of her position, the respondent stated that she was not ready for re-union. Thereafter, a question was asked whether she was ready for divorce. The answer of the respondent was that she must think about it.

7.In all fairness to the respondent, this Court must place on record that when she was enquired in my chambers, she expressed her readiness for re-union. But I will have to go by what is on record. Before the Trial Court, in the witness box, she had taken a categorical stand that she is not ready for re-union. The appellant is working as Head constable. The respondent is working as a Teacher in a Government aided educational institution. The marriage had taken place as early as in the year 2004. They were together for just 59 days. Thereafter, they have not been together even for one day.

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8.In spite of it, this Court had more than one occasion



attempted to effect re-union between the parties. It appears that the matter has reached a point of no return. There is no love in the relationship. Of course, irretrievable break down of marital relationship is not a statutory ground to dissolve the marriage. In this case, the appellant has clearly made out a case of desertion on the part of the respondent. It is the respondent who left the marital home. She would of course contend that the conduct of the appellant was responsible for her leaving the marital home. In such a case, the onus to establish that the appellant was guilty of misconduct is on her. The said onus has not been discharged in this case. I therefore have no option but to set aside the order dated 26.02.2015 passed in IDOP.No.9 of 2012 by the learned Principal District Judge, Theni.

9.This appeal is therefore allowed. But that cannot be the end of the matter. A girl child was born to the parties unfortunately. Because of serious differences between them, they chose to remain apart. This Court has to perform the unfortunate duty of snapping the marital tie. When the Court posed a question to the appellant as to what he proposed to do with regard to his daughter, the appellant came forward to pay a sum of Rs.5,000/- per month to his daughter towards educational expenses and maintenance till her marriage. He has also filed an affidavit dated 10.11.2017 in this regard.

10.The said affidavit is placed on record. The appellant is directed to pay a sum of Rs.5,000/- per month to the respondent as maintenance for the daughter, namely, Rajasahaya Shalini, aged 13 years. The liability to pay the said sum will commence from 01.12.2017 onwards. The appellant shall continue to pay the said sum every month till the child gets married.

11.The learned counsel appearing for the respondent shall furnish the bank details to the learned counsel for the appellant so as to enable the appellant to make the monthly payment. Even while allowing this appeal, this maintenance decree is passed against the appellant in favour of the daughter. This Civil Miscellaneous Appeal is allowed accordingly. No costs.

Sd/-

Assistant RegistrarCS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Theni.

2.The Record Keeper,

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.D.Shanmugaraja Sethupathi Advocate in SR. No. 87360

SKM

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JS/SV.MMS/SAR.3/24.11.2017/3P-4C

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