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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.577 of 2017

and

C.M.P. (MD) .No.6092 of 2017

A.Thilak Pandian

... Appellant/Petitioner

Vs.

A.Jenita Jeba Malar

... Respondent/Respondent

Prayer: Appeal filed under Section 55 of the Divorce Act, 1869, to set aside the judgment and decree in D.O.P.No.401 of 2014 dated 28.04.2017 on the file of the Principal District Judge, Tuticorin, Tuticorin District.

For Appellant : Mr.S.Muthalraj

For Respondent : Mr.A.Thiruvadikumar

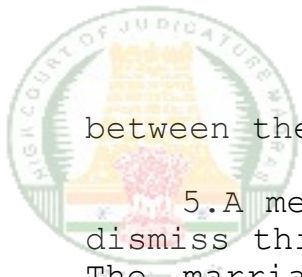
JUDGMENT

The appellant herein got married to the respondent on 29.06.2012 as per Christian rites. He now seeks divorce on the ground of cruelty under Section 10-1 (x) of the Divorce Act.

2.The respondent herein filed a detailed counter denying the allegations made by the appellant. The appellant examined himself as PW1 and marked Exs.A1 to A5. The respondent examined herself as RW1. The Court below came to the conclusion that the wear and tear of marital life has been grossly exaggerated by the husband and that he had not made out a case for divorce. In that view of the matter, I.D.O.P. was dismissed. Questioning the same, this appeal has been filed.

3.Heard the learned counsel for both parties.

4.The grounds of appeal are to the effect that the appellant had suffered pain and suffering at the hands of the respondent and that the conduct of the wife amounts to mental torture and cruelty. It was further contended that there is no possibility of reunion



between the parties.

5. A mere look at the memo of grounds of appeal is sufficient to dismiss this appeal. The parties herein profess Christian religion. The marriage was performed as per Christian rites and customs. Therefore, such a marriage can be dissolved either by mutual consent or if any one or more of the grounds set out in Section 10 of the Divorce Act, 1869 are established. It is not open to this Court to dissolve the marriage on the ground that the marital relationship has irretrievably broken down and that there is no possibility of reunion.

6. The husband has filed a petition for divorce under Section 10(1)(x) of the Act. He is therefore obliged to establish by preponderance of probability that the wife treated him with such cruelty as to cause a reasonable apprehension in his mind that it would be harmful or injurious for him to live with the respondent. Unless, this is made out, the appellant cannot get divorce.

7. All that the appellant herein has alleged is that his wife did not discharge her wifely obligations and that she left the marital home on 14.01.2013. When she was 6 months pregnant and that she did not return to marital home even after giving birth to the child. It was the appellant who brought her back on 27.06.2013. The respondent did not change her conduct and approach. The parties were together for hardly nine months. She left the marital home on 12.04.2014 along with the child and did not return. She gave a police complaint before All Woman Police Station and took back her jewelry. She threatened the appellant that if the appellant called her back to her matrimonial home, she would commit suicide. The appellant issued legal notice on 24.09.2014 seeking dissolution of marriage by mutual consent. In response, she lodged a police complaint and took back the dresses and other articles. Since there was no possibility of reunion, the appellant was driven to filing the Divorce Petition. This was the stand taken by the appellant in his petition.

8. On the other hand, the respondent alleged that the appellant was highly insulting in his treatment and that when she left for her parents home in connection with delivery of the child. The respondent did not even bother to come and see her. She had also alleged that she was physically assaulted by appellant's sister.

9. The respondent herein has already filed M.C.No.27 of 2014 on the file of the Judicial Magistrate No.1, Thoothukudi. The same is still pending. There are two children born of the wedlock. They are in the custody of the respondent. The respondent would plead that the husband should be appropriately counselled and that she is ready for reunion.

10. The Trial Judge has noted that the appellant's sister is a physically challenged person and that she was also residing in the



same house. The strain between the parties commenced when the respondent wanted to leave for her parents house in the seventh month of pregnancy. It appears that the appellant herein did not give permission for the same. Secondly, the appellant's parents were not properly invited for the marriage of the respondent's brother. Thirdly, the appellant did not permit the respondent to take back the jewelry which were in bank locker. The bank locker was in the names of the appellant, respondent and father of the respondent. That is why, the respondent went to the extent of giving a police complaint for taking back her jewelry. Before the Trial Court excepting the oral testimony of the appellant, there was no other corroborating material. The Trial Judge also noted that the respondent had given birth to two children. But both the deliveries were not natural. Therefore considering her health condition, she had persuaded the appellant to set up a separate marital home. This was not acceptable by the appellant. After taking into account the totality of the facts and circumstances, the Trial Judge has given a finding that the husband has not made out a case for grant of divorce. The incidents portrayed by the husband happen in any normal family. More than anything else, when two children have been born to the parties and the respondent has expressed her readiness and willingness to be with the husband., there is no need to dissolve the marriage tie.

11. Another contention raised by the husband is that the respondent was found often talking to third parties over cell phone. This appears to have caused major irritation to the husband. But this cannot amount to cruelty in terms of 10 (1) (x) of the Divorce Act, 1869. At the cost of repetition, it must be pointed out even before this Court, in the grounds of appeal no where has it been even contended that the appellant is having reasonable apprehension in his mind that it would be harmful or injurious for him to live with the respondent and that therefore he must be granted divorce. It is relevant to note here that the appellant has not prayed for divorce on the ground of desertion. It is only on the ground of cruelty, he seeks relief. Therefore, the onus is entirely on the appellant to prove to the satisfaction of the Court that the conduct of the respondent wife is of the degree envisaged by law. The Trial Court has given a finding that this burden of proof has not at all been discharged. I am in entire agreement with the reasons assigned by the learned Trial Judge for dismissing the Divorce Original Petition.

12. I have to necessarily comment on the conduct of the husband/appellant. Having given birth to two children through the respondent, the husband without even making a whisper about his legal obligations towards his children merely wants to walk away from his responsibilities. The respondent even though has certain serious grievances regarding the appellant's conduct still wants reunion. That is obviously because she has given birth to two children and they are entitled to the love, affection and support of the father. There is absolutely no merit in this appeal. It stands



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dismissed.
is closed.

No costs. Consequently, connected miscellaneous petition

Sd/-

Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Tuticorin, Tuticorin District.

+ 1 CC TO Mr.A.THIRUVADI KUMAR, ADVOCATE IN SR No. 85063

TSG

TE/MR-KKR/SAR-III : 14/11/2017 : 4P/3C

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