



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.599 of 2017

Selvin

... Appellant/Petitioner

Vs.

John Angelin

... Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act, 1869, to set aside the fair order and decretal order dated 25.07.2016 made in I.D.O.P.No.327 of 2015, on the file of the Principal District Court, Thoothukudi.

For Appellant

: Mr.J.Ashok

For Respondent

: Mr.Ajith Geethan

JUDGMENT

Heard the learned counsel on either side.

2.The appellant is the husband. The respondent is the wife. They got married as per Christian rites and customs on 22.05.2006. A female child Princy was born on 02.11.2007. The marital relationship between the parties has come under strain. They initiated proceedings against each other. However, the matters were compromised and a memo to that effect was also filed on 20.07.2012. Even though, the parties were to live together thereafter, it did not happen. The parties continued to remain separate. Therefore, the appellant herein filed I.D.O.P.No.327 of 2015, on the file of the Principal District Court, Thoothukudi. The divorce petition was filed on the ground of desertion as well as cruelty. The learned Trial Judge dismissed the petition by order dated 25.07.2016. Aggrieved by the same, the husband_come on appeal before this Court.

3.It is evident that the parties have been living separately from each other since 19.10.2007. The appellant is working as a Secondary Grade Teacher in Dharmapuri at present. The respondent is working as a B.T. Assistant at Salem. The salary of the respondent/wife is almost double that of the appellant. The child is also presently living with her mother. It is admitted by both the parties that the earlier proceedings ended in a compromise by filing a joint memo on 20.07.2012. It is also seen that



thereafter the wife issued a notice dated 02.01.2013. A copy of the said notice is enclosed in the typed set of papers and it was marked as Ex.P12.

4.A mere reading of the contents of the said notice would show that the respondent herein does not want to live with the appellant. Even though, the said notice is in the nature of demand of restitution of conjugal rights, a mere reading of the said contents of the notice would show that the respondent herein was more bent on levelling allegations against the appellant. The respondent has alleged that the appellant indulged in demand of dowry and that criminal prosecution would be initiated against him, if he did not take back the respondent. Holding out the threat of criminal prosecution is sufficient to indicate the mental state of the respondent/wife. There was only exchange of legal notices between the parties. The respondent did not proceed to initiate any legal action against the appellant. Therefore, this Court can come to the conclusion that the respondent had no intention to rejoin with the appellant. It was the appellant who filed the present I.D.O.P.327 of 2015 seeking divorce. The respondent/wife had not rejoined with the appellant for two years prior to institution of the said I.D.O.P.327 of 2015.

5.As already pointed out, the mental state and condition of the respondent is evident from the contents of the said legal notice dated 02.01.2013. The respondent had also lodged a criminal case against the appellant on 26.05.2013. It is submitted that the said case is still pending. The learned counsel for the appellant in all fairness would not press the ground of cruelty. He also submitted that this Court can record the undertaking of the appellant to pay a sum of Rs.5,000/- per month as maintenance for the minor child payable from 01.01.2018 onwards to the respondent. This will not however foreclose the rights of the minor child to sue the appellant by either seeking enhancement of the maintenance amount or for filing a case for bearing a portion of the marriage expenses.

5.This Court makes it clear that this appeal is allowed only on the ground of desertion and not on any other ground. The order dated 25.07.2016 made in I.D.O.P.No.327 of 2015, on the file of the Principal District Court, Thoothukudi, is set aside.

6.This Civil Miscellaneous Appeal is allowed accordingly. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar



To

1. The Principal District Judge,
The Principal District Court, Thoothukudi.

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

+1cc to Mr.J.Ashok, Advocate Sr.No.89855

+1cc to Mr.Ajith Geethan, Advocate Sr.No.89755

TSG

VB/JC/SAR1/22/01/2018/3P/6C

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