



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.533 of 2016

and

CMP (MD) No.7172 of 2016

Shobana ... Appellant /Respondent

Vs.

Sam Albert ... Respondent/Petitioner

**Prayer:** Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, to set aside the judgment and decree dated 02.02.2016 passed in IDOP.No.11 of 2014 on the file of I Additional District Judge, Madurai.

For Appellant : Mr.A.Rajaram

For Respondent : Mr.T.R.Subramanian

### JUDGMENT

The wife has filed this appeal questioning the order dated 02.02.2016 made in IDOP.No.11 of 2014 on the file of I Additional District Judge, Madurai dissolving the marriage between the appellant and the respondent.

2.The respondent is the husband. The marriage between the parties took place on 12.05.2011. Shortly after marriage, the appellant conceived. Therefore since she is said to be a diabetic, she chose to go to her mother's home for delivery of the child. She in fact left in September 2011 itself. A female child was born on 16.03.2012. Thereafter, the respondent herein visited the appellant. He had also given gifts for the child. The respondent called upon his mother in law to send the appellant. The appellant's mother promised to send the appellant within three months.

3.According to the respondent herein, the appellant came to the marital home only after 6 months, that is, in September 2013. She chose to be in the marital home only for four days. Thereafter, she left the marital home. The respondent attempted



to effect reconciliation. He met the appellant in person on 08.09.2013. The appellant plainly told the respondent that she was not interested to live with him. Therefore, on 12.11.2013, the respondent herein filed IDOP.No.11 of 2014 on the ground of cruelty as well as desertion.

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4.The respondent herein examined himself as PW.1. He also marked Exs.P1 to P5. The appellant herein examined herself as RW.1. No documents were marked on the side of the appellant herein. The Trial Judge rightly found that the case of cruelty was not made out by the husband. However, according to the Trial Court, the marriage was liable to be dissolved on the ground of desertion by the appellant/wife herein. It is this finding that is questioned in this appeal.

5.It is beyond dispute that the marriage between the parties took place on 12.05.2011. The Ex.P3 police complaint dated 30.09.2013 was given by the respondent husband. In the said complaint, the husband had admitted that they lived together for four days in September 2012. The husband also claimed that he attempted to effect reconciliation on 08.09.2013. Section 10(1) (ix) of The Indian Divorce Act states that the desertion must be for a period of two years immediately preceding the presentation of the petition.

6.In this case, the petition was presented on 12.11.2013. Therefore, the husband was obliged to demonstrate that the appellant wife had left the marital home with no intention to return in the year 2011 itself. But, he himself admitted that they had lived for four days in September 2012. The point of no return appears to have been reached only on 08.09.2012. Therefore, if at all, the cause of action for filing the divorce petition on the ground of desertion will arise only 2 years thereafter. In the present case, the divorce petition filed by the husband is obviously not maintainable. It does not conform to the statutory requirement of two years.

7.On this sole ground, I must hold that the petition filed by the respondent is not maintainable. This is on his own showing. I therefore set aside the order dated 02.02.2016 made in IDOP.No.11 of 2014 on the file of I Additional District Judge, Madurai.

8.This Civil Miscellaneous Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True Copy/



To

1. The I Additional District Judge, Madurai.

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

+ 1 cc TO Mr.A.Rajaram , Advocate in SR No. 88542

+ 1 cc TO Mr.T.R.Subramanian , Advocate in SR No. 88685

SKM

AE/MR KKR/SAR2/18.12.2017/3P/5C

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