



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.60 of 2015
and
M.P.(MD)No.1 of 2015

Soby Packia Bai

... Appellant

Vs.

Johnson

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 55 of Divorce Act 1869, to set aside the order and decree dated 07.07.2014 made in I.D.O.P.No.73 of 2011 on the file of District Court, Kanyakumari at Nagercoil, allow this appeal.

For Appellant	: Mr.A.Arumugam for Mr.R.Russelraj
For Respondent	: Mr.R.Nandhakumar for M.R.Sreenivasan

JUDGMENT

The respondent herein and the appellant got married to each other as per Christian rites and customs on 28.12.1998 and a female child was born on 15.02.2000. The appellant is the qualified in Librarian Science. The respondent is working as conductor in the State Transport Corporation. The relationship between the parties came under strain. The appellant left the marital home on 10.10.2001. It is the case of the appellant that the conduct of the respondent forced her to leave the marital home.

2. The respondent filed I.D.O.P.No.73 of 2011 seeking dissolution of marriage with the appellant on grounds of desertion. The Trial Judge by decree dated, 07.07.2014 allowed the same. Aggrieved by the same, this appeal has been filed.

3. Heard the learned counsel on either side.

4. It is evident from the record that the respondent had earlier filed I.D.O.P.No.84 of 2000 for restitution of conjugal rights. The said proceedings appears in compromise themselves, because even in the I.D.O.P.No.84 of 2000, the respondent/husband would state that she returned home. In any event, I.D.O.P.No.84 of 2000 was prosecuted further. He again filed I.D.O.P.No.194 of 2001 for the very same relief. The appellant filed her counter and also deposited that she was not rejoined her husband. Therefore, the petition was dismissed on 17.11.2009.



5. In these circumstances, the respondent herein instituted the present I.D.O.P.No.73 of 2011 for divorce. The appellant examined herself as R.W.1, while, the respondent examined himself as P.W.1. On the side of the respondent herein, Exs.P1 to P12 were marked.

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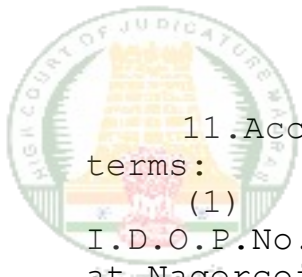
6.It is seen that the respondent and the appellant jointly purchased a property vide Ex.P2 on 02.07.1999. They had applied for approval and their direct put up any house mortgaged executive both parties TamilNadu Transport Labour Association Limited.

7.The learned counsel for the appellant states that subsisting liabilities of the said property has since been discharged as on date, the appellant as well as the respondent are having 50% shares in the said property. The respondent undertakes to execute a deed of realization of relinquish. The 50% of the share in the favour of the daughter following the execution of such realization of relinquish the property in question will belong absolutely to the appellant and the daughter. This submission is placed on record.

8. The learned counsel for the respondent on instructions would also add that a sum of Rs.5,00,000/- shall be paid to the appellant towards wedding expenses of the daughter which have been near future. The respondent shall pay a sum of Rs.5,00,000/- directly to the appellant by way of demand draft within a period of six months today. The respondent also undertakes to obey by the order of maintenance passed by the competent Court. It appears that a sum of Rs.5,000/- was ordered to be paid as maintenance.

9. The learned counsel for the appellant states that an application for enhancement of the maintenance is still pending. The respondent abide by the final outcome of the said maintenance proceedings. Since the respondent has come forward to satisfy the mandatory claims of the appellant and daughter, it is only just and appropriate to meet interest of justice, criminal prosecution against appellant is not proceeded with further. It is open to the parties either to close the prosecution of approach this Court by applying petition to quash the proceedings under Section 482 Cr.P.C.

10.In the present case, the Trial Court had taken note of the fact that the parties even living separately from each other more than ten years. The appellant had left the marital home in the year 2001. The divorce petition is filed only in the year 2002. It is seen from the records that respondent/husband had moved the Court two occasions for restitution of conjugal rights. The appellant herein had not taken any steps for resolving or resolution instituted only filed a criminal case prosecuting respondent. Therefore, the trial Judge was rightly come to the conclusion that the case of desertion put forth by the husband against him is made out. There is no need to interfere with the said finding. The order dated 07.07.2014 granting dissolving the marriage between the parties herein is confirmed.



11. Accordingly, this appeal is disposed of in the following terms:

(1) the order and decree dated 07.07.2014 allowing I.D.O.P.No.73 of 2011 on the file of the District Court, Kanyakumari at Nagercoil is confirmed.

(2) the maintenance proceedings instituted by the appellant shall be dealt with independently without being influenced by the observation in the order made in this C.M.A.(MD)No.60 of 2015.

(3) the respondent herein is directed to pay a sum of Rs.5,00,000/- directly to the appellant on or before 30.06.2018 towards the wedding expenses of the daughter.

(4) the respondent shall execute a deed of realization of relinquish of 50% share in the property purchased vide Ex.P2. Further, it is the any subsisting liabilities if any there on.

(5) the respondent herein shall abide by the final out come of the proceedings M.C.No.14 of 2001 instituted by the appellant for maintenance. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

The District Court, Kanyakumari at Nagercoil.

COPY TO:

The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.R.Russelraj, Advocate SR.No. 92458

+1cc to M/S.M.R.Sreenivasan, Advocate SR.No. 92053

C.M.A. (MD) No.60 of 2015

11.12.2017

psd

JM/JC/SAR 1/26.04.2018/3P/6C