



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) No.1120 of 2016

Sebastian

... Appellant/Petitioner

Vs.

Clara

... Respondent/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, 1869 against the judgment and decree passed in IDOP.No.20 of 2012 dated 27.03.2015 by the District Court, Sivagangai.

For Appellant : Mr.N.Tamil Mani

For Respondent : Mr.K.S.Muthu

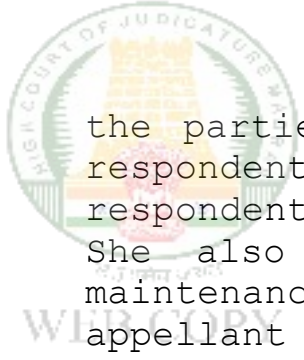
JUDGMENT

The husband is the appellant. The respondent is the wife. They got married on 16.09.2004 as per Christian rites and customs. A male child was born to them on 04.07.2005. The respondent was a close relative of the appellant even before marriage. The appellant was doing painting work. It appears that the appellant had suffered a serious accident. As a result, he is not in a position to discharge his conjugal obligations. According to the appellant, this gave rise to serious disputes and strain in the marital relationship. The respondent is said to have left the marital home. The respondent had also lodged a police complaint against him before the All Women Police Station, Sivagangai. Unable to bear the cruelty of the respondent, the appellant filed IDOP.No.20 of 2012 before District Court, Sivagangai. The same was dismissed on 27.03.2015. Challenging the same, this appeal has been filed.

2.Heard the submissions made on either side.

<https://hcservices.ecourts.gov.in/hcservices/>

3.Since this Court wanted to amicably resolve the matter,



the parties were asked to appear in person. Accordingly, the respondent appeared before me along with her minor son. The respondent stated that she wants to rejoin with the husband. She also pointed out that he has not been paying any maintenance to her for the last several years. Even though the appellant had suffered serious injury and he is not able to discharge his conjugal duties, still the respondent is very clear that she would live only with him. The respondent stated that it was the appellant who made her to leave the marital home.

4. Even though the appellant was directed to be present, he has chosen to not to appear before this Court. The appellant has also not given any communication as to whether he was willing to appear. I can understand the difficulty of the appellant to appear before me. This is because, I posed a specific question to the learned counsel appearing for the appellant that the appellant must fulfil his obligation to maintain his minor son at least, if not his wife. I made it clear, I would certainly question the appellant in this regard. It is evident that the appellant had been completely indifferent towards the respondent as well as the minor child. Probably to avoid such a question from the Court, the appellant has avoided to appear.

5. The appellant has filed divorce petition only on the ground of cruelty. The parties are Christians. Therefore, a person seeking divorce must show that it would be harmful for him or her to live with the spouse. This is the standard of cruelty that is expected to be established by a person who prays for divorce. In the present case, the respondent cannot be said have been so cruel. The case projected by the appellant does not fall within the ambit of Section 10(1)(x) of the Indian Divorce Act, 1869.

6. The learned Trial Judge rightly dismissed the IDOP filed by the appellant. The reasons assigned by the learned Trial Judge are sound in law. I therefore see no ground to interfere with the order dated 27.03.2015 made in IDOP.No.20 of 2012, on the file of District Court, Sivagangai. This appeal is dismissed. No costs.

Sd/-
Assistant Registrar (CS-I)



SKM
To

The District Judge, Sivagangai.

Copy to : The Record Keeper, V.R.SECTION,
Madurai Bench of Madras High Court, Madurai.(2Copies)

+1CC to Mr.M.Tamilmani, Advocate Sr.No.90126

GJM/SV/MMS/SAR-2-20.3.18-3P-5C

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