

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.S.A.No.25 of 2017

K.Murugan

... Appellant/Petitioner/Petitioner

Vs

R.Jayalakshmi

... Respondent/Respondent/Respondent

Prayer :- Civil Miscellaneous Second Appeal filed under Section 100 of CPC, against the fair and decretal Order dated 05.05.2014 passed in C.M.A.No.14 of 2011 on the file of the Principal District Judge, Villupuram confirming the fair and decretal order dated 18.09.2010 made in HMOP.No.29 of 2009 on the file of Principal Subordinate Court, Villupuram.

For Appellant : Mrs.V.Alamelu

For Respondent : Mr.L.J.Venkatesh
for J.Dhanalakshmi

JUDGMENT

The appellant herein is the husband of the respondent. This appeal is preferred against the order and decretal order dated 05.05.2014 passed in C.M.A.No.14 of 2011 on the file of the Principal District Judge, Villupuram.

2. The admitted facts are :

The appellant married the respondent on 30.08.2001, and that they have a daughter, namely, Haritha. They lived together for close to 10 years. The appellant/husband has filed the petition seeking dissolution of his marriage with the respondent broadly on:

- a) The respondent is a habitual liar, that she is always lying even on petty things;
- b) That she had some health issues pertaining to her menstruation for which he had to spend substantial sum every month.
- c) She would never cooked, and always insisted that the food to be bought from restaurants.
- d) That she has given a fake complaint to the Police.

3. The respondent has denied all of them in her counter. Before the trial court, both the petitioner and the respondent have examined themselves as PW1 and RW1 respectively. The trial court has focused essentially on the alleged health issue of the respondent and had come to the conclusion that the respondent has not treated the appellant with cruelty. Challenging the same, the appellant has approached the Principal District Court, Villupuram in C.M.A.No.14 of 2011. In its order dated 05.05.2014, the first Appellate Court concurred with the findings of the trial court. This order is under challenge.

4. The Civil Miscellaneous Second Appeal is admitted on the following substantial questions of law :

1. Whether the Court below are justified in ignoring the Police complaint often given by the Respondent against the petitioner which constitute clear case of cruelty?
2. Whether the Court below committed an error in ignoring the admitted facts of the Respondent withdrawal from matrimonial home for long duration sufficiently construed the ground for divorce claimed by the petitioner/appellant?
3. Whether the Lower Court erred in dismissing the petition and did not consider the length of separation itself constitutes cruelty and can be well presumed that the marriage has broken down. But erred in law in dismissing the petition for divorce on the ground of cruelty?

5. Heard both sides.

6. On going through the pleadings and the evidence, the following facts are emerged:

a) The respondent had not averred any justifiable reason to withdraw the complaint on the appellant. While it may give independent cause to a spouse to seek dissolution of marriage on the ground of desertion, it can also in a given case supply ground for mental cruelty. A groundless separation by a spouse necessarily implies the denial of conjugal comforts to the other which also needs to be factored in, while endeavouring to ascertain if the conduct of the spouse-in-fault constituted mental cruelty. The case of the respondent falls in this category also.

b) It is an admitted fact that the respondent had preferred a criminal complaint in her cross-examination, RW1 has testified that she had given the complaint to enable the Police threaten her husband. She has not

explained the circumstances that would justify her conduct in approaching the Police. Preferring complaints to the police without any justification in law, and exposing one's spouse to public embarrassment, humiliation and stress instantly constitute a case of mental cruelty.

7. This Court, therefore finds merit in this appeal. The learned counsel for the appellant submitted that the appellant was directed to pay a permanent alimony of Rs.5,00,000/- which has been handed over to the respondent by way of Demand Draft bearing No.191284 dated 30.07.2018, and that there is outstanding of the maintenance to be paid.

8. In view of the above, this Civil Miscellaneous Second Appeal is allowed and the order dated 05.05.2014 passed in C.M.A.No.14 of 2011 on the file of the Principal District Judge, Villupuram is set aside. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Principal District Judge,
Villupuram.
2. The Principal Subordinate Court,
Villupuram.
3. The Section Officer,
V.R.Section,
High Court,
Madras.

+2cc to Mrs.V.Alamelu, Advocate sr.no.51544

C.M.S.A.No.25 of 2017

nr 09/10/2018