

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **07.02.2018**

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.Nos.2178 and 2179 of 2017

P.Nandha Kumar ... Appellant / Petitioner

Vs.

R.Ajanta ... Respondent / Respondent

Prayer : Civil Miscellaneous Appeals filed under Section 19 of Family Courts Act, 1984, against the Judgment and Decree, dated 13.10.2016 passed in H.M.O.P.No.103 of 2014 and H.M.O.P.No. 649 of 2014 on the file of the Family Court, Erode.

For Appellant : Mr.R.Thiyagarajan
for Mr.Anil Relwani

For Respondent : Mr.V.Ayyathurai, Senior counsel
for Mr.V.Balamurugan

COMMON JUDGMENT

(Judgement of the Court was delivered by **P.KALAIYARASAN, J**)

These two Civil Miscellaneous Appeals have been filed by the husband against the common order, dated 13.10.2016 passed by the Family Court, Erode in H.M.O.P.No.103 of 2014 and

H.M.O.P.No.649 of 2014 dismissing the divorce petition on the ground of cruelty and desertion filed by the husband and allowing the petition for restitution of conjugal rights filed by the wife.

2. The case of the appellant / husband is that the marriage between him and the respondent was solemnised on 08.09.2003 at Erode as per Hindu Rites and Customs and they were blessed with a female child on 07.12.2004. Ever since the date of marriage, the wife was not having cordial relationship with the husband as well as with his family members. In the first week of 2004, she left the marital home without informing the petitioner and his family members. The appellant / husband brought the respondent back from her parental home. Again in October 2004, she went to her parental home and refused to come back. The appellant was informed only when the wife was taken to the operation theater in the hospital. The appellant was not allowed to see the baby. Again in the first week of May 2006, the respondent quarreled with the husband and left the matrimonial home with her baby with a open declaration that she will never come back to her matrimonial home. The husband made a final attempt in the last week of May 2006 through mediators to bring back the wife and the child but in vain. Thus the wife caused untold mental agony apart from desertion.

3. The respondent / wife denied all the allegations of cruelty and desertion made by the husband in his petition. She averred in her counter that the husband was doing civil contract business in and around Kumbakonam and as such he had to stay away from the home and he used to visit her once in every two months. The mother-in-law and sister-in-law of the respondent caused mental cruelty to her. The birth of the child was immediately informed and neither the petitioner nor his mother visited the child. Only after a long persuasion and deliberation, the husband visited the child after three days. Thereafter they did not visit the child for about 5 months. The husband never showed any interest in the child. They never attended the needs of the wife and the child. On 07.07.2005, when they returned to Erode after attending a marriage at Kerala, the mother-in-law of the respondent picked up quarrel with the respondent and her parents and insulted them. On the next day, the respondent and the child were forcibly sent out of the matrimonial home by the mother-in-law and sister-in-law proclaiming that the respondent would soon get a divorce notice from her husband. When the petitioner was informed about the same, he also insisted the wife to leave the matrimonial home and stay with her parents till his return from the work.

4. The respondent never left the matrimonial home. She was driven out from the matrimonial home by the mother-in-law and sister-in-law. The wife is always willing to live with her husband and the husband alone has been living separately as per the tunes of his mother without any justifiable reason.

5. On the side of the husband, one witness was examined and 8 Exhibits were marked. On the side of the respondent, two witnesses were examined and 7 Exhibits marked.

6. The learned trial Judge after analysing oral and documentary evidence of both sides, dismissed the petition for divorce filed by the husband and granted restitution of conjugal rights as prayed by the wife. Aggrieved by the said common order, the husband has preferred both these Civil Miscellaneous Appeals.

7. The learned counsel appearing for the appellant argued that the wife has no intention to live with the appellant / husband and left the matrimonial home without any justifiable reason and the cruelty exerted on the appellant by the wife has been established and therefore, the Judgment of the trial Court is liable to be set aside. He also argued that the wife went to the extent of

lodging complaint of dowry harassment with the police and the petition for restitution of conjugal right has been filed later, after the petition filed by the husband for divorce.

8. The learned Senior counsel appearing for the respondent argued that the allegation of cruelty made by the husband are not suffice to warrant divorce and the trial Court has rightly analysed the evidence and dismissed the petition for divorce and allowed the petition for restitution of conjugal rights filed by the wife.

9. The admitted facts are that the spouses got married on 08.09.2003 in Erode as per Hindu Rites and Customs. Out of the wedlock, female child by name Sharmitha was born on 07.12.2004. The husband being contractor is doing contract work in and around Kumbakonam and he used to visit the home once in a month or two months. The female child is now aged about 14 years.

10. As far as the ground of desertion is concerned, the husband alleges that the wife left the matrimonial home in the first week of May 2006, declaring that she would never come back to the matrimonial home. The same has been denied by the respondent /

wife and according to her, she along with the child was driven away from the matrimonial home by her in-laws. Though the husband states that he made an attempt through panchayatdars by name Venkatachalapathy and L.Arul to bring his wife and child in the last week of May 2006, none of the said panchayatdars has been examined. Whereas one Kulandaivel examined on the side of the wife as R.W.3 has deposed that he along with the relatives of respondent went to Nagapatinam where the husband was working and requested him to take back his wife and child but in vain. He further says that he also met the mother of the husband and she was very adamant in allowing the wife into the matrimonial home. When the husband does not take his wife to the place where he usually works and visits the wife once in a month, his wife left the matrimonial home due to misunderstanding with her in-laws and has been living with her parents and hence, it cannot be said that she deserted her husband without reasonable cause.

11. As as far as the ground of cruelty, the main allegation relied upon by the husband is that the wife quarreled with the husband in the first week of May 2006 and left the matrimonial home with her baby and on the next day, she and her father came to the matrimonial home and abused the family members standing

in the street and the adjacent house owners witnessed the same. The allegations of cruelty immediately after the marriage and after the birth of the child in 2004 are to be construed as condoned as the spouses had been living for about two years after those alleged cruelties. The alleged cruelty occurred in May 2006 has been denied by the wife. Though the husband says that the adjacent house owners witnessed the same, none has been examined. The above said cruelty is not to the extent that the parties cannot reasonably be expected to live together considering the social status and educational qualification level of the parties.

12. The learned counsel appearing for the appellant brought to the notice of this Court the complaint given by the wife as to the dowry harassment against the husband and in-laws. Ex.P.7 and Ex.P.8 are the copy of the complaint and the compromise memo filed by the parties with the police. Even in the complaint the wife has prayed to make the spouses to live together. As per Ex.P.8, the gifts and ornaments given to the wife were handed over to her by the husband. Therefore lodging a complaint and getting back the goods and ornaments belonging to the wife, that too during the pendency of the HMOP petition cannot be construed as causing cruelty to the husband.

13. The learned counsel appearing for the appellant has also argued that the married life between the spouses has irretrievably broken down and they have been living separately from May 2006 and therefore, divorce may be granted.

14. Irretrievably broken marriage is not a ground under the Act. Further in the case on hand, it cannot be said that the marriage has been irretrievably broken down for the reasons that the wife in her evidence says that till filing of the divorce petition, her husband used to visit her and child in her parental home and the present temporary separation between spouses is mainly because of the attitude of the mother-in-law and the wife wants to join with her husband particularly for the welfare of their female child now aged 14 years.

15. The trial Court has rightly dismissed the petition for divorce and allowed the petition for restitution of conjugal rights. This Court does not see any error in the order of the trial Court and therefore, both these civil miscellaneous appeals are to be dismissed.

In the result, both the Civil Miscellaneous Appeals are dismissed without cost, confirming the common order, dated 13.10.2016 made in H.M.O.P.No.103 of 2014 and H.M.O.P.No.649 of 2014 on the file of the Family Court, Erode.

(A.S., J.) (P.K., J.)

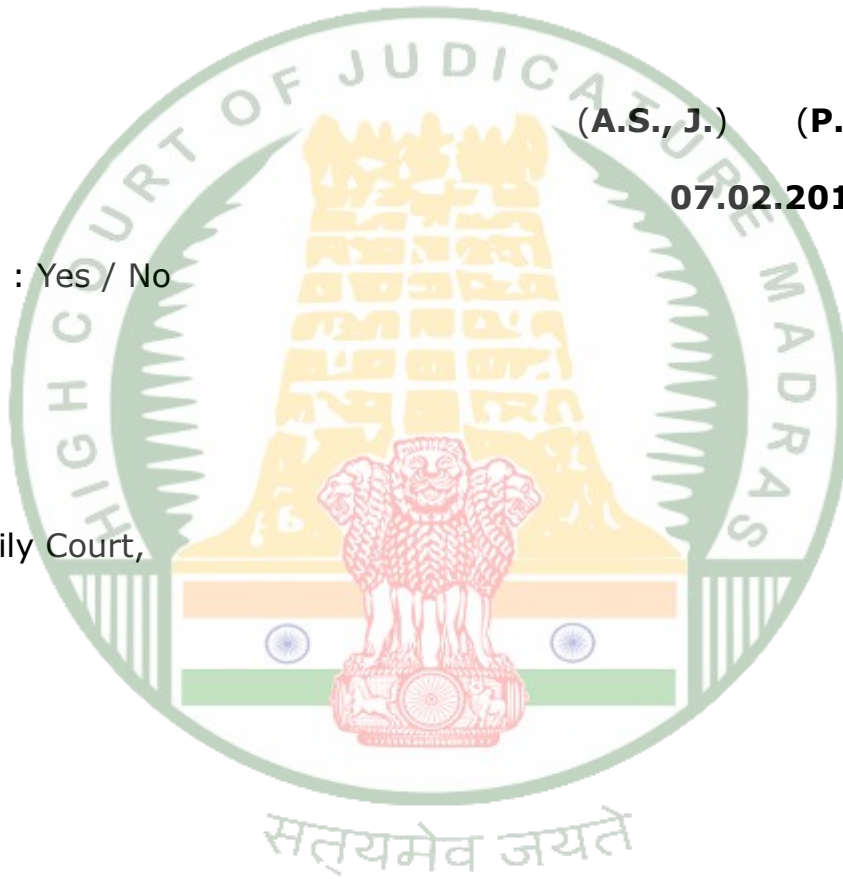
07.02.2018

Index : Yes/ No

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To

The Family Court,
Erode.



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**A.SELVAM, J.
AND
P.KALAIYARASAN, J.**

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