

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **12.03.2018**

CORAM:

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

C.M.A.Nos.3135 and 3136 of 2017
and C.M.P.Nos.19339 and 19348 of 2017

Anand Gopal ... Appellant / Respondent
Vs.
Gayathri ... Respondent / Petitioner

Prayer : Civil Miscellaneous Appeals filed under Section 19 of Family Courts Act, 1984, against the Judgment and Decree, dated 30.08.2017 passed in O.P.No.1248 of 2012 and O.P.No.4331 of 2011 on the file of the VI Additional Family Court, Chennai.

For Appellant : Mr.P.M.Subramaniam
For Respondent : Mr.D.Kumaralingam

COMMON JUDGMENT

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

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These two Civil Miscellaneous Appeals have been filed by the appellant/husband against the Common Order, dated 30.08.2017 passed by the VI Additional Family Court at Chennai, dismissing O.P.No.4331 of 2011 for divorce and allowing

<http://www.judis.nic.in> O.P.No.1248 of 2012 for restitution of conjugal rights.

2.The husband filed O.P.No.4331 of 2011 under Section

13[1][i-a] of the Hindu Marriage Act, 1955, for divorce on the ground of cruelty. The wife filed O.P.No.1248 of 2012 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. The marriage was solemnised between the appellant/husband and respondent/wife on 06.09.2009 as per Hindu Rites and Customs at Chennai.

3.The contention of the appellant/ husband is that the wife had been arrogant with the petitioner and harassed him from the beginning of the marriage and she deserted him on 13.07.2010 without any valid reason and has been living separately. She took all her belongings and articles, thus, expressed her unwillingness to live with the petitioner. She also lodged a complaint with the police and caused cruelty.

4.The respondent/wife per contra, contends that the husband and his parents never treated her properly and on the death of her father, neither the petitioner nor his parents expressed their sorrow. The wife having found her husband medically unfit for the marriage life, she being homeopathic doctor, gave him treatment and when it came to the notice of his parents, the husband stopped taking medicines at their instance. They started blaming the respondent for not giving birth to baby. The respondent lodged a complaint only to get back her articles and not otherwise.

5.The husband and the wife examined themselves as P.W.1 and R.W.1 and nine exhibits on the side of the husband and three exhibits on the side of the respondent were marked. The trial Court after analysing both oral and documentary evidence of both sides passed the common order as aforesaid.

6.The learned counsel for the appellant contends that continuing the marriage life by the appellant with his wife is totally impossible when the wife has made grave allegation of impotency against him. Further, the wife took away all her belongings from the matrimonial home, by preferring a complaint with the police and the same demonstrates that she is not interested to continue her matrimonial life. The wife also deserted her husband on 13.07.2010 permanently and she has been living with her mother. Therefore, the appellant is entitled to get divorce on the ground of cruelty.

7.The learned counsel for the respondent *inter alia* argued that the alleged cruelty in the petition are not sufficient to sever the marriage bond and the allegations made against the petitioner are trivial in nature and the trial Court, after analysing both oral and documentary evidence, has rightly dismissed the petition for divorce and allowed the petition for restitution of conjugal rights.

8.The fact remains that the marriage between the appellant and respondent was solemnised on 06.09.2009 as per Hindu Rites and Customs at Chennai and they are not blessed with any child. The main allegation of cruelty is that the respondent/wife was very adamant from the beginning and she left the matrimonial home on 13.07.2010 without any valid reason. It is further alleged that she lodged criminal complaint which led the appellant to move the court for anticipatory bail. The respondent/wife has also admitted in her evidence that she left the matrimonial home on 13.07.2010, after the demise of her father. Further, she says that she was not treated properly. Therefore, it cannot be said that she left the matrimonial home without any justifiable reason.

9.The complaint given by the wife is marked as Ex.R2. The complaint discloses that the same was lodged only to get back her articles from her husband. But the husband moved anticipatory bail application, apprehending that case has been filed under Section 498-A of Indian Penal Code. Lodging the complaint with the police to get back her articles by the wife cannot be construed to have caused cruelty to the husband.

10.It is pertinent to note that the husband originally filed petition under Section 9 of the Hindu Marriage Act, 1955, in O.P.No.

3299 of 2011 for restitution of conjugal rights on 12.09.2011, after issuing legal notice [Ex.P3] dated 09.09.2011. Only after lodging the complaint with the police by the wife, the husband changed his mind and issued legal notice dated 14.11.2011 [Ex.P8], calling her to give consent divorce. The husband filed the petition for divorce under Section 13[1][i-a] of the Hindu Marriage Act, 1955, only on 02.12.2011. Thus, after lodging the complaint and taking away the articles by the wife, the husband changed his mind and filed petition for divorce on the ground of cruelty. Considering the above sudden change in attitude of the husband, the alleged adamant attitude, leaving the matrimonial home and taking away all her articles and belongings from the matrimonial home cannot be considered sufficient, warranting for divorce on the ground of cruelty.

11.Though the respondent/wife makes an allegation of impotency as against her husband, she still believes that it is curable one and she being a homeopathy doctor, herself administered medicines. The intention of the respondent is to live with the appellant and not to sever her marital relationship.

12.The trial Court, after analysing both oral and documentary evidence, has rightly dismissed the petition for divorce and allowed the petition for restitution of conjugal rights and this

Court does not see any reason to interfere with the Common Order passed by the trial Court and accordingly, both the Civil Miscellaneous Appeals are liable to be dismissed.

In the result, these Civil Miscellaneous Appeals are dismissed without costs and the Common Order passed by the trial Court in O.P.No.4331 of 2011 and O.P.No.1248 of 2012 are confirmed. Consequently, connected miscellaneous petitions also dismissed.

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

12.03.2018

Index : Yes

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To

The VI Additional Family Court,
Chennai.

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A.SELVAM, J.

AND

P.KALAIYARASAN, J.

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**Common Judgment
in
C.M.A.Nos.3135 and
3136 of 2017**

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