

In the High Court of Judicature at Madras

Dated : 27.04.2018

Coram

The Honourable Mr.Justice R.SUBBIAH
and
The Hon'ble Mr.Justice P.D.AUDIKESSAVALU

C.M.A.No.3384 of 2017

K.Balamurugan ..Appellant/Petitioner

..vs..

N.Sasikala ..Respondent/Respondent

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, against the order and decreetal order dated 24.10.2017 passed in H.M.O.P.No.147 of 2015 on the file of the learned VI Additional Principal Judge, Family Court, Chennai.

For Appellant : Mr.C.Nithyash Sekhar

For Respondent : Mrs.K.Anees Fathima
(Legal Aid Counsel)

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

By this appeal, the appellant / husband has questioned the legality and propriety of the order and decree dated 24.10.2017 passed by the VI Additional Principal Judge, Family Court, Chennai, in O.P.No.147 of 2015, dismissing the petition filed by him under Section 13(1)(i) and 13(1)(i-a) of the Hindu Marriage Act, 1955 for dissolution of the marriage solemnized between him and the respondent / wife on 02.09.2013.

2.The case of the appellant / husband before the trial Court is that the marriage between the parties was solemnized on 02.09.2013 at Sree Sowmya Damodara Perumal Thirukovil, Villivakkam, Chennai- 600 049, as per the Hindu rites and customs. At the time of marriage, both the parties were working in Raj TV. Initially, there were some disputes between them, due to which, they mutually decided to part ways. However, after some time, the respondent / wife compelled the appellant / husband to marry her. On one occasion, she came to his home with her relatives and a lawyer and threatened him to marry her, failing which, she would lodge a false complaint against the appellant/ husband and his parents. Thereafter, the respondent /

wife lodged a complaint to the Commissioner of Police, due to which, the appellant / husband had no other option except to marry her. After the marriage, they started their married life at the residence of the appellant / husband. Right from the beginning, the respondent / wife showed disrespect towards the parents and other family members of the appellant / husband, besides constantly abusing the appellant / husband and his parents and frequently threatened that she will file false complaints of dowry harassment and cruelty against them. She further threatened that she will commit suicide, with a letter stating that the appellant / husband and his parents are responsible for her death. Further, the respondent / wife pressurized the appellant / husband to come away from his parents, due to which, the appellant / husband took a house on rent and both of them were living at a rented premises, where, her activities went from bad to worse and she developed close relations with several men and was engaging herself in telephonic conversations and messaging with them for several hours even till midnight. When the same was questioned, she abused the appellant / husband and threatened him that she would file false complaints of domestic violence and dowry harassment against him. According to the appellant / husband, the respondent / wife is in adulterous life and is engaged in illicit relationships with several other men. Hence, the appellant / husband has filed OP.No.147/2015 seeking divorce.

3. Denying the allegations made in the aforesaid petition, the respondent / wife filed a detailed counter affidavit, wherein, it is stated that only the appellant / husband had fallen in love with her and he continuously approached and urged her to marry him. According to her, the appellant / husband is a big shot and a highly influential person in the society and he exerted continuous pressure and force on her to marry him. In fact, with the help of anti-social elements, he threatened the respondent / wife to marry him. In order to escape from the threats exerted on the respondent / wife, she resigned her job in Raj TV. Since the appellant / husband continuously pressurised the respondent / wife to marry him, the respondent / wife lodged a police complaint, but it ended in vain. Ultimately, she was forced to marry the appellant / husband on 2.9.2013. After completion of wedding ceremony, the matrimonial home was set up by the parents of the appellant / husband in their house. The appellant / husband and his parents started torturing the respondent / wife to the maximum extent of cruelty, by refusing to provide even basic needs i.e., food, clothes, etc. It is further stated therein that since the respondent / wife was working in the media, she had to accompany her unit members to go for outdoor shooting and she used to do so, only after obtaining consent from the parents of the appellant / husband. However, with an ulterior motive and mala fide intention, the appellant / husband has included one actor by name Veera in this case, as an adulterator. She further stated

that her attempt to reunion with the appellant / husband ended in vain. Thus, she sought dismissal of the divorce petition.

4.In order to prove his case, the appellant / husband examined himself as P.W.1 and marked Exs.P1 to P6 documents. Though the respondent / wife filed a detailed counter, she has not chosen to appear before the trial Court to defend her case.

5.By the order impugned herein, the trial Court, after examining the oral and documentary evidence, dismissed the petition, observing that no corroborative evidence was available to prove the case of the appellant / husband; Ex.P3- CD filed by the appellant / husband was in broken condition and the same could not be taken into account, as he did not file any petition to receive the same under Section 65-B of Indian Evidence Act; and the appellant / husband did not adduce any evidence to substantiate his contentions. Challenging the same, the appellant/ husband has filed this Civil Miscellaneous Appeal.

6.The main contention of the learned counsel for the appellant / husband is that the trial Court grossly erred in holding that the appellant / husband has not proved his contentions by adducing sufficient and satisfactory evidence. According to the learned counsel, the appellant / husband produced Ex.P3-CD along with the petition, which was copied from the mobile phone of the respondent / wife bearing No.99627 51925, about the conversations between the respondent / wife and her paramours through Whatsapp, which would prove the case of the appellant / husband on the ground of adultery. However, the trial Court failed to take into account, stating that the appellant / husband did not file any petition to receive the CD under Section 65-B of the Indian Evidence Act, which is illegal and against the law. The learned counsel also placed reliance on a decision of the Supreme Court in Shafhi Mohammed v. State of Himachal Pradesh [(2018) 2 SCC 801] to the effect that the applicability of procedural requirement under Section 65-B(4) of furnishing certificate is to be applied only when such electronic evidence is produced by a person, who is in a position to produce such certificate being in control of the said device and not of the opposite party. As such, the requirement of certificate under Section 65-B(4) is not always mandatory. Thus, the learned counsel prayed for setting aside the order impugned in this appeal.

7.Despite service of notice through paper publication, there was no representation on the side of the respondent / wife. Considering the nature of the relief sought by the appellant / husband, this Court by order dated 20.03.2018, directed the Tamil Nadu State Legal Services Authority to appoint a counsel for the respondent / wife. Accordingly, one Mrs.K.Anees Fathima was appointed to defend the case on behalf of the respondent / wife.

8. According to the learned counsel for the respondent / wife, the trial Court, after analysing all the materials available on record, has rightly dismissed the petition filed by the appellant / husband seeking divorce, which warrants no interference by this Court.

9. Heard the submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

10. The undisputed facts are that initially, there were some disputes between the appellant / husband and the respondent / wife. However, they got married on 02.09.2013 at Sree Sowmya Damodara Perumal Thirukovil, Villivakkam, Chennai-600 049. Both the parties were working in the media at the time of marriage.

11. The appellant / husband alleged in the petition seeking divorce that the respondent / wife is in adulterous life and when it was questioned, she threatened him saying that she would file false complaints of domestic violence and woman harassment against him. To prove the same, he produced a CD, which was marked as Ex.P3, containing the conversations between the respondent / wife and her paramours through Whatsapp, about their illicit relationship.

12. However, the trial Court has not considered Ex.P3 CD, stating that the appellant / husband has not filed any petition to receive the same under Section 65-B of the Indian Evidence Act. Further, the trial Court has dismissed the petition, as the appellant / husband has not adduced any evidence to substantiate his contention.

13. Questioning the legality and the propriety of the order so passed by the trial Court, the appellant / husband is before this Court with the present appeal. According to the learned counsel for the appellant / husband, the requirement of certificate under Section 65-B(4) is not mandatory, when the appellant / husband is not in possession of mobile phone of his wife, from which, he has copied the conversation between his wife and her paramours, whereas, the trial court, without looking into this aspect properly, dismissed the divorce petition for want of legal requirement under Section 65-B(4) of the Evidence Act.

14. At this juncture, it would be relevant to point out the observation of the Supreme Court in Shafhi Mohammad's case (supra) cited on the side of the appellant / husband, which reads as follows:

"The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person

who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case, where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in the absence of certificate under Section 65-B(4) of the Evidence Act, which party producing cannot possible secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory."

15. In the instant case, admittedly, the appellant / husband, who produced Ex.P3-CD, is not in possession of mobile phone of his wife, from which, he has copied the conversation between his wife and her paramours. As such, the requirement of certificate under Section 65-B(4) is not applicable to the facts of the present case, in the light of the aforesaid dictum laid down by the Supreme Court and the order so passed by the trial Court without considering Ex.P3-CD, in our considered opinion, is erroneous and contrary to law and is hence, liable to be set aside.

16. Accordingly, the applicability of requirement of certificate being procedural, is hereby, relaxed. Consequently, the order and decree dated 24.10.2017 passed by the VI Additional Principal Judge, Family Court, Chennai in HMOP.No.147 of 2015 stands set aside. The matter is remanded back to the Family Court, Chennai, which shall consider Ex.P3-CD and also other evidence and dispose of the case on merits and in accordance with law, on or before 31.12.2018.

17. This Civil Miscellaneous Appeal is allowed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
The VI Additional Principal Judge,
Family Court, Chennai.

Copy to: The Section Officer,
VR Section,
High Court, Madras

+1cc to Mr.K.Anees Fathima, Advocate SR.no.31736
+2cc to Mr.C.Nithyash Sekhar, Advocate Sr.No.31565

RSY(CO)
sm:28.6.2018

C.M.A.No.3384 of 2017



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