

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2018

Pronounced on : 14-09-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal No. 721 of 2014

Murali Krishna .. Appellant

Versus

K.M. Choodamani .. Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Decree and Judgment dated 13.12.2013 passed in O.P. No. 3379 of 2008 on the file of Principal Family Court at Chennai

For Appellant : Ms. K. Sumathi
For Respondent : Mrs. Sheila Jayaprakash

JUDGMENT

R. Subbiah, J

This appeal is filed by the appellant/husband aggrieved by the Judgment and Decree dated 13.12.2013 passed in O.P. No. 3379 of 2008 on the file of Principal Family Court, Chennai. By the said Judgment dated 13.12.2013, the Original Petition filed by the appellant, for dissolution of the marriage solemnised between him and the respondent on 29.04.1990, on the ground of cruelty, was dismissed.

2. The facts, as could be culled out from the Original Petition filed by the appellant, are as follows:-

(i) The marriage between the appellant and the respondent was solemnised on 29.04.1990 as per Hindu rites and customs at Raja Kalyana Mandapam, Luz Church Road, Chennai - 600 004. The respondent is none other than the appellant's aunt's daughter. According to the appellant, the married life was peaceful and blissful for a period of six months and thereafter, the relationship between the couple got strained by reason of the intermittent desertion of the respondent from the matrimonial home, to her parents house. It is his contention that the

respondent, without informing the appellant, would desert his matrimonial company and stay in her parents house for month's together ranging from three months to six months and used to intermittently return to the matrimonial home. Even during such short stay, the respondent would refuse physical relationship with the appellant for the reasons best known to her. According to the appellant, the respondent, for one reason or the other postponed the child birth and therefore, the appellant took the respondent to G.G. Hospital, a well known infertility centre for treatment and spent lot of time and money. As per the advice of the Doctor, the appellant also underwent some test along with the respondent. However, the respondent did not follow the instructions given by the Doctor in taking the routine medicines and tests with a malicious intention to deprive the appellant's right to lead a normal married life and also to have children, thus, inflicting matrimonial cruelty on the appellant. According to the appellant, during the end of 1992, the respondent left the matrimonial home and stayed in her parents house for a period of three years and after much persuasion, during April 1995, she rejoined the matrimonial company of the appellant. According to the appellant, even during a short stay, the respondent repeatedly pointed out his financial inability to meet her demands and thereby inflicted matrimonial cruelty on him. The respondent, on the basis of ill-advice given by her mother and sister, acted against the interest of the appellant. After a short stay in the matrimonial home, the respondent once again went to her parents house and stayed there. On one occasion, the appellant met with an accident and was bed ridden. Even though the factum of accident was informed, the respondent did not come to the matrimonial home to take care of the appellant. After much persuasion by the friends and relatives, the respondent came to the matrimonial home and stayed along with the appellant. However, immediately after the appellant recovered from his illness, she left the matrimonial home on 23.08.1996. In such circumstances, the appellant filed F.C.O.P. No. 1205 of 1996 before the Family Court, Chennai for dissolution of the marriage. On notice, after counselling, the respondent agreed to live with the appellant provided a separate house is set up for their dwelling, however, she finally agreed to live along with the appellant and his parents, hence, the appellant did not press FCOP No. 1205 of 1996 and accordingly, FCOP No. 1205 of 1996 was dismissed as not pressed.

(ii) According to the appellant, after dismissal of the FCOP No. 1205 of 1996, he along with the respondent stayed together only for three months and thereafter, the respondent started picking up quarrel with the appellant for trivial and insignificant reasons. According to the appellant, only for the purpose of complying with the order of the Court, the respondent reluctantly joined him in the matrimonial home and she has no

inclination or interest to lead a happy life with the appellant. The respondent repeatedly left his matrimonial company and stayed in her parents house on and off. On 23.12.2007, once again, the respondent, after a wordy quarrel, left the matrimonial home. Even though the father of the appellant requested the respondent to stay in the matrimonial home, she left the matrimonial home. After her departure, the appellant asked the respondent to come back to the matrimonial home, but the respondent had stated that she is no longer interested to lead a matrimonial life with the appellant. Hence, the appellant sent a notice to the respondent through his counsel calling upon the respondent to give her consent for dissolution of the marriage since the matrimonial life between them had broken irretrievably. The respondent sent a reply notice with untenable averments, hence, the appellant has filed F.C.O.P. No. 3379 of 2008 before the Family Court for dissolution of marriage on the grounds of desertion.

3. Repudiating the averments in the Original Petition, respondent filed a counter affidavit contending that she never left the matrimonial company of the appellant and stayed in her parents house for a longer period, as alleged. Even her desertion is not voluntary but she was forced to leave the matrimonial home due to the harassment and abuse perpetrated at the instance of the appellant and his family members. The matrimonial rift was caused due to the fact that the respondent could not get pregnant and therefore, the appellant and his family members insisted the respondent to give her consent for dissolution of the marriage so as to enable the appellant to get married again. When the respondent refused to give such consent, she was forcibly sent out of the matrimonial home. It is true that the respondent was taken to a fertility clinic and she subjected herself to all the clinical examination. Therefore, the allegation that the respondent did not cooperate for the treatment is denied.

4. According to the respondent, as there was no child born to the appellant and the respondent, the appellant filed FCOP No. 1205 of 1996 for divorce and during the counselling, the respondent agreed to undergo fertility treatment and that the cost of such treatment will be borne by her family. It is under these circumstance, the appellant withdrew FCOP No. 1205 of 1996 and had taken the respondent back to the matrimonial home. Further, as agreed, the respondent underwent all the medical procedure and her parents spent nearly Rs.6 lakhs for such medical treatment. In spite of such treatment, as the respondent could not get pregnant, she was taunted and teased by the appellant and his family members which made her to leave the matrimonial home once again. It is incorrect to state that when the appellant met with an accident, the respondent did not look

after him. The fact remains that it is the respondent who nursed the appellant during his ailment and looked after him well. The appellant and the respondent lived in a portion of the house owned by the parents of the appellant and it was not a separate house, as alleged by the appellant. The respondent never picked up quarrel with the appellant for trivial or insignificant reason, as alleged. The appellant sent a notice to the respondent for which she had sent a reply dated 28.09.2008 denying the averments made therein. In any event, the desertion of the respondent on 23.12.2007 is not voluntary and she was beaten and driven out of the matrimonial home by the appellant. The respondent therefore prayed for dismissal of the Original Petition.

5. Before the Family Court, the appellant examined himself as PW1 and his father was examined as PW2 and Exs. P1 to P4 were marked. On behalf of the respondent, the respondent examined herself as RW1 and Exs. R1 to R6 were marked. The Family Court, on analysing the entire evidence made available, has come to the conclusion that the appellant did not prove by any concrete evidence that he was subjected to matrimonial cruelty by the respondent. The Family Court also had come to the conclusion that both the appellant and the respondent were residing in a portion of the same house where the parents of the appellant were also living, till 2007. Further, the appellant himself admitted that the respondent was pregnant during December 2007, but unfortunately, the pregnancy ended in miscarriage due to medical complication. Thus, the Family Court concluded that the appellant and the respondent were residing under one roof till 2007 and that the respondent was made to leave the matrimonial home due to the harassment caused to her by the appellant and his family members on the ground that she is unfit to beget a child. The Family Court therefore refused to grant a decree of divorce and dismissed the Original Petition filed by the appellant.

6. The learned counsel for the appellant would contend that the respondent is closely related to the appellant. The respondent is none other than the appellant's aunt's daughter and taking into account such proximity of relationship, the marriage between the appellant and the respondent was solemnised by the relatives of both sides. The appellant and the respondent lived happily for six months and thereafter, by reason of the frequent desertion of the respondent from the matrimonial home, differences cropped up between the couple. The respondent was unwilling to lead a normal matrimonial life with the appellant and frequently deserted his company. Whenever the respondent left the matrimonial home, the appellant, after much persuasion, would bring her back to the matrimonial home. As there were no children born out of the

wedlock, the appellant spent his entire savings amount for treatment of the respondent in a leading fertility centre in the city and it was not denied by the respondent. On the other hand, the averment that the parents of the respondent spent about Rs.6 lakhs is not correct and this is evident from the medical bills filed by the respondent under Ex.R2 series which would indicate that the respondent's parents did not spent Rs.6 lakhs, rather, they have spent around Rs.2,32,000/- only. Further, the appellant also, in his cross-examination, specifically denied the suggestion that the parents of the respondent had spent Rs.6 lakhs for medical treatment.

7. The learned counsel for the appellant would further contend that the respondent deserted the matrimonial company of the appellant on and off which led to serious matrimonial dispute between the couple. It is further contended that whenever the appellant, after such desertion, called upon the respondent, she insisted for setting up a separate residence as a condition precedent for joining the appellant in the matrimonial home, which caused acute mental agony and hardship to the appellant. This was also admitted by the respondent in her deposition before the Family Court. Further, the appellant in the notice dated 29.08.2008 issued to the respondent had clearly indicated about the matrimonial cruelty inflicted on him by reason of her frequent desertion from the matrimonial home, but the factum of such desertion was not specifically denied by the respondent. Even as admitted by the respondent, on 23.12.2007, she left the matrimonial company of the appellant and from then on, she is staying with her parents. Thus, according to the counsel for the appellant, for the past more than ten years, the appellant and the respondent are residing separately. The respondent had left the matrimonial company of the appellant without any just or sufficient cause and thereby caused matrimonial cruelty on the appellant. The appellant and the respondent are residing separately without any physical contact with each other, thereby the respondent had caused cruelty to the appellant. While so, the Family Court, without considering the frequent intervals at which the respondent deserted the matrimonial company of the appellant and the impact it had in the matrimonial life of the appellant, has erroneously dismissed the Original Petition filed by the appellant for dissolution of marriage.

8. The learned counsel for the appellant would also contend that the respondent had alleged that on 23.12.2007, the appellant had assaulted her in the ear and caused bleeding injury and which necessitated her to leave the matrimonial home. To prove this allegation, Ex.R4, medical report was marked to show that she had taken treatment for the alleged injuries sustained in her ear. On perusal of Ex.R4, it would show that

she was taking treatment for her ear problem with Dr. P.V. Rajender Kumar from the year 1991 and therefore, it cannot be said that the respondent was taking treatment after she was physically assaulted by the appellant on 23.12.2007. This would clearly indicate the fact that the respondent would go to any extent to cast aspersions on the appellant, without any basis. By reason of such false claim made by the respondent, the appellant was subjected to acute matrimonial cruelty.

9. The learned counsel for the appellant would further contend that the respondent has falsely stated that her parents have spent a sum of Rs.6 lakhs for the infertility treatment she had taken. However, even as per the medical bills produced before the Family Court, the parents of the respondent have spent only Rs.2,32,000/-. If really the respondent's parents have spent Rs.6 lakhs for infertility treatment of the respondent, as alleged, the respondent ought to have produced the entire bills to show that a sum of Rs.6 lakhs was spent by her parents. The fact remains that 50% of the medical expenses for the infertility treatment of the respondent was met by the appellant and therefore, the allegation that the respondent's parents have spent Rs.6 lakhs for the infertility treatment is absolutely false. For having made such false averment, the Family Court ought to have accepted the plea of the appellant that the parents of the respondent did not spend Rs.6 lakhs for the infertility treatment of the respondent and that half of the amount was spent by the appellant. The Family Court, taking into account the false plea made by the respondent with reference to the amount spent for infertility treatment, ought to have taken note of the mental agony that it would have caused to the appellant and granted a decree of divorce. Therefore, the learned counsel for the appellant prayed for allowing the appeal.

10. In order to buttress her contentions, the learned counsel for the appellant relied on several decisions, prominent among them is the decision rendered by the Honourable Supreme Court in (Naveen Kholi vs. Neelu Kohli) reported in 1 (2006) DMC 489 (SC) to contend that the parties are living separately for more than 10 years and it resulted in breakage of matrimonial bond.

11. The learned counsel appearing for the appellant also relied on the decision of the Honourable Supreme Court in the case of (Samar Ghosh vs. Jaya Ghosh) reported in 1 (2007) DMC 597 (SC) to demonstrate as to what constitutes cruelty and what are all the circumstances which could be taken note of by the Court to infer cruelty.

12. Per contra, the learned counsel for the respondent would contend that the marriage between the appellant and the

respondent was solemnised on 29.04.1990 and till 2007, the appellant and the respondent were living together. The instant Original Petition was filed in the year 2008 and only due to the pendency of the Original Petition, the respondent was made and compelled to reside in her parents house. Even otherwise, it was clearly established by the respondent, through oral evidence, that she was made to leave the matrimonial home due to the harassment caused to her by the appellant and his parents. According to the counsel for the respondent, the respondent was chided, taunted and teased by citing that she is unfit to give birth to a child. Even according to the appellant, he had clearly admitted that the appellant and the respondent have subjected themselves to all medical tests and spent their time and energy together and inspite of such medical treatment, there were no children born to them. At the same time, it is not the case of the appellant that the respondent is medically not fit to give birth to a child. In other words, the appellant and the respondent are fit enough to give birth to a child, but due to reasons unknown, they were not blessed with any child. Thus, according to the counsel for the respondent, both the appellant and the respondent have taken treatment for infertility from 1991 to 2007 without any avail. The fact remains that even within a year of the marriage, the respondent was made to take treatment in Isabella Hospital, Surya Hospital, G.G. Hospital and other prominent hospitals. In fact, during the course of her treatment at Prashanth Hospital, the respondent conceived, but unfortunately, the pregnancy ended in abortion due to medical complications. While so, the respondent alone cannot be blamed for not giving birth to a child.

13. According to the counsel for the respondent, the separation of the respondent from the matrimonial home is neither intentional nor deliberate but she left the matrimonial company of the appellant due to the harassment meted out to her by the appellant and his family members. In fact, on 23.12.2007, the respondent was physically assaulted by the appellant and then she was driven out of the matrimonial home. This was also spoken to by respondent, as RW1, in the chief as well as cross-examination. Thus, the injuries caused to the respondent is clearly established by the respondent which would show that it is the appellant who had subjected the respondent to matrimonial cruelty. The appellant and his family members had driven the respondent out of the matrimonial home by citing the fact that she is unable to bear a child. The respondent always expressed her readiness and willingness to join the appellant in the matrimonial home. In fact, when the appellant filed O.P. No. 1205 of 1998, the respondent volunteered and agreed to join the appellant and on the basis of such statement, the appellant withdrew O.P. No. 1205 of 1998. Therefore, according to the counsel for the respondent, the Family Court

has come to a right conclusion to refuse the relief sought for by the appellant in the Original Petition. The appellant has not proved that he was subjected to matrimonial cruelty by reason of the frequent desertion of the respondent. The desertion of the respondent from the matrimonial home is not without any justifiable reason or cause. The respondent did not leave the matrimonial home voluntarily, rather, she was subjected to harassment and physical assault, which made her to part with the matrimonial company of the appellant. The learned counsel for the respondent therefore submits that the decision of the Family Court, refusing to dissolve the marriage solemnised between the parties, does not call for any interference by this Court.

14. We have heard the counsel for both sides and perused the materials placed. As we have narrated the factual matrix of the case in detail, we refrain ourselves from dealing with the same any further. However, certain facts which are absolutely necessary for disposal of this appeal alone are reiterated.

15. The marriage between the appellant and the respondent was solemnised on 29.04.1990 as per Hindu rites and customs. Due to the wedlock, there were no children born to the couple, of course, it was projected as a main reason for the differences which cropped up between them. According to the appellant, the respondent frequently deserted his matrimonial company, refused physical relationship and thereby subjected him to matrimonial cruelty. This was refuted by the respondent by contending that she was made and compelled to leave the matrimonial home as she was harassed, taunted and teased by the appellant and his family members by citing that she is unfit to bear a child.

16. In this context, the deposition of the appellant, as PW1, is required to be examined. PW1 in his cross-examination has stated that he lived happily with the respondent for six months, but there was no sign of the respondent getting pregnant. In this context, the respondent was taken to infertility centre for treatment and inspite of the same, the couple could not be blessed with a child. In the cross-examination of the appellant, as PW1, he has admitted that he has filed OP No. 1205 of 1998 for dissolution of the marriage and on notice, the respondent expressed her willingness to join the appellant in the matrimonial home. It was also agreed that the appellant and the respondent can subject themselves to all medical tests to ascertain the deficiency which bars them from getting a child, especially when it was the main reason for their difference. On the basis of such statement, the appellant withdrew HMOP No. 1205 of 1998. It was further deposed by the appellant that prior to the filing of the present Original Petition, being OP No. 3379 of 2008, there were exchange of

notice and in the reply notice sent by the respondent, she has clearly expressed her willingness to join the appellant in the matrimonial home. Even though the appellant had deposed that the respondent left his matrimonial company on and off, he admitted that from the date of marriage, till 23.12.2007, both of them were residing jointly.

17. On the contrary, the respondent, in her deposition as RW1 has clearly stated that during the course of the matrimonial life, the appellant had slapped her which resulted in serious bleeding injury in her ear. It was further deposed that she underwent a surgery for such injury and after surgery, she had taken rest in her parents house for about three months. RW1 also further deposed that since she could not bear a child, the appellant and his family members criticised her and often cited her inability to bear a child. RW1 further deposed that she was taunted, teased and harassed by the appellant and his family members, by citing her alleged inability to bear a child and which led to the respondent leaving the matrimonial home quite often.

18. In the light of the above statement of the appellant as well as the respondent, it has to be examined as to whether the respondent subjected the appellant to matrimonial cruelty in any manner, particularly by reason of her leaving the matrimonial company of the appellant very often.

19. Admittedly, there were no children born due to the wedlock between the appellant and the respondent and this is said to be the main cause for the matrimonial rift between them. Further, when the appellant filed OP No. 1205 of 1998, the respondent agreed to join the matrimonial company of the appellant. At that time, a condition was imposed to the effect that the respondent has to subject herself to all medical tests and the expenses for which has to be borne by the parents of the respondent. The respondent agreed to such conditions and therefore, the appellant withdrew OP No. 1205 of 1998. After withdrawal of OP No. 1205 of 1998, even as admitted by the appellant, the respondent had tirelessly taken various medical tests by spending lots of money. Of course, the appellant would contend that the averment of the respondent that her parents have spent Rs.6 lakhs is false and that he had spent almost 50% of the amount thereof. It is his contention that the respondent has made a false plea with respect to spending of amount for the infertility treatment.

20. We are not in a position to appreciate the contention of the appellant that the parents of the respondent have only spent a sum of Rs.2,32,000/- and the balance sum of Rs.3,68,000/- was spent by him towards the infertility treatment

for his wife, the respondent herein. Marriage is a solemn unification of two souls, which heralds the commencement of matrimonial relationship between a man and a woman. It is founded and blended on the concept of mutual trust and belief. The institution called Marriage, is built with trust and sacrifice with each other. After marriage, it is the bounden duty of the husband to provide all the amenities befitting his status to the wife whether she is employed or unemployed. It is the husband who has to take care of the expenses, which are reasonably required to be incurred, for his wife. After marriage, a wife is considered to be part of the family of the husband. The obligation of the husband or the wife is co-extensive with each other. Whether it is joy or sorrow, they have to share it equally. If a wife owes a moral duty towards her husband to take care of him while he is ailing, it has to be reciprocated by the husband as well, without expecting anything in return, except love and affection. Both the husband and wife have to work in tandem to transform the matrimonial relationship to secure more bliss and pleasure. It is needless to say that the medical expenses or any emergent expenses towards hospitalisation or medical examination of the wife, have to be borne by the husband befitting his financial capacity. Therefore, we reject the contention of the appellant that the family of the respondent did not spend a sum of Rs.6 lakhs, as alleged by the respondent, while in fact, they need not have any obligation to incur expenses at all after giving their daughter in marriage to the appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court rendered in the case of (Vennangot Anuradha Samir vs. Vennangot Mohandas Samir) in Transfer Petition (Civil) No. 702 of 2015 dated 02.12.2015, wherein, it was held as follows:-

"20.As discussed above, it is a duty of the respondent-husband to take care of the health and safety of the petitioner-wife. In the instant case also, it is a primary duty of the husband only to provide facilities for the treatment of the petitioner. This is a pre-existing duty of the husband, provided the husband has sufficient means and he is diligently doing his part in taking care of her. In the present case, by the settlement agreement, the respondent-husband is promising to do something which he is already duty bound, is not a valid consideration of the settlement."

21. The next point for consideration is whether the appellant was subjected to matrimonial cruelty at the instance of the respondent. In the original petition filed by the appellant, before the Family Court, it was mainly articulated that the respondent deserted his matrimonial company, on and

off, refused physical relationship and thereby he was subjected to matrimonial cruelty. On the other hand, the respondent would contend that she was made and compelled to part with the matrimonial company of the appellant as she was teased and that the appellant and his family sniggered towards her by citing her inability to bear a child. While so, unable to bear such harassment, the respondent was made and compelled to part with the matrimonial company of the appellant and that her desertion is not wilful.

22. In this context, it is to be considered as to whether the respondent, by reason of her frequent departure from the matrimonial home had caused matrimonial cruelty to the appellant. On appreciation of the entire factual aspects of this case, it could be reasonably inferred that the matrimonial rift has been caused between the appellant and the respondent by citing the alleged inability of the respondent to bear a child. It is not in dispute that the appellant as well as the respondent have taken treatment in this direction, but they are not fortunate to be blessed with a child. Thus, the respondent could not be faulted for not giving birth to a child. According to the respondent, due to harassment caused to her, she was made and compelled to part with the matrimonial company of the appellant and that her desertion is not voluntary. This is more so that prior to filing the instant petition in OP No. 3379 of 2008, there were exchange of notice between the appellant and the respondent. The respondent, in her reply dated 28.09.2008, has categorically asserted that she has no intention to live separately and that she is inclined to join the appellant in the matrimonial home. Even in the counter filed to the present Original Petition, reference was made to the effect that she is ready and willing to join the matrimonial company of the appellant, meaning thereby, she has no intention to stay in her parental house, rather, she is only interested to join the appellant in the matrimonial home. Thus, due to compelling necessity, the respondent was made to part with the matrimonial company of the appellant. At any rate, except the intermittent desertion of the respondent from the matrimonial home, due to compulsion, there is nothing that could be attributed towards the respondent to conclude that the appellant was subjected to matrimonial cruelty. The instances quoted by the appellant in the Original Petition are trivial and they are not such that it warrants dissolution of the marriage solemnised between the appellant and the respondent. Therefore, we are of the view that the instances cited by the appellant in the Original Petition does not satisfy the test of cruelty as enshrined in Section 13 (1) (i-a) of The HIndu Marriage Act.

23. The learned counsel for the appellant, by relying on the decisions of the Honourable Supreme Court cited supra,

contended that the parties are residing separately for 10 years and therefore, it is not possible for the couple to join together. In the decision relied on by the counsel for the appellant, in (Naveen Kholi vs. Neelu Kohli) reported in 1 (2006) DMC 489 (SC) cited supra, the Honourable Supreme Court, by taking note of the complaint and counter complaint filed by the spouse against each other as also their family members, had concluded that the matrimonial life between them had irretrievably broken down by reason of complaints and counter-complaints filed against each other which had widened their matrimonial relationship and granted a decree of divorce. Therefore, in that case, the Honourable Supreme Court granted the decree of divorce not merely because the spouse are residing separately but taking note of the simmering matrimonial differences that surfaced between them. It is not so in the present case. While so, the said Judgment of the Honourable Supreme Court cannot be applicable to the present case on hand.

24. In the decision relied on by the learned counsel for the appellant in (Samar Ghosh vs. Jaya Ghosh) reported in 1 (2007) DMC 597 (SC) the Honourable Supreme Court found that the respondent/wife expressed her decision not to give birth to a child for atleast two years and thereby, it was alleged that she had caused cruelty towards the husband. In that case, the respondent/wife obtained a decree of divorce from her first husband, through whom a child was also born. After obtaining a decree of divorce from her first husband and during the pendency of the appeal filed thereagainst by the first husband, she married the appellant as her second husband. After such marriage, she declared that she is not inclined to give birth to a child for two years and till such time, the appellant should not disturb her and that he should try to keep himself aloof. In the above circumstances, the Honourable Supreme Court has held the the conditions imposed by the respondent/wife is against the spirit of the matrimonial relationship between them and thereby the appellant husband was subjected to matrimonial cruelty by reason of the respondent/wife refusing to have cohabitation with him. While so, the said judgment also cannot be made applicable to the facts of this case. In the present case, it was not alleged by the appellant before the Family Court or before this Court that the respondent refuses cohabitation and therefore, he was subjected to matrimonial cruelty.

25. In this case, admittedly, the appellant and the respondent are residing separately from the year 2007, however, the mere separation will not be a ground for granting a decree of divorce. There cannot be a straight-jacket formula to be adopted to dissolve the matrimonial tie of a couple by reason of their long and continued separation and it depends on the facts

and circumstance of each case. Further, admittedly, the appellant and the respondent are residing together from 1990 to 2007, of course, there were intermittent desertion by the respondent, which she attribute on the part of the appellant and his family members by citing her inability to hear a child. In the year 2008, the appellant has filed the instant Original Petition for dissolution of the marriage. When the appellant has filed the instant petition for dissolution, thereafter, the respondent/wife cannot be expected to join the matrimonial company of the appellant owing to the pendency of the Original Petition. Therefore, we are of the view that long and continued separate living of the spouse alone is always not a criteria for the Courts to dissolve the matrimonial relationship of a spouse and such separate living has to be considered in the light of the attending facts and circumstance prevailing in each case. In the present case, we are of the view that this is not a case where the matrimonial relationship between the appellant and the respondent had reached a point of no return and still there are abundant chance for their reunion. By reason of the desertion of the respondent, it cannot be said that the appellant was subjected to matrimonial cruelty. While so, we are of the view that the Family Court has rightly concluded that the averments made by the appellant in the Original Petition are not such which warrants dissolution of the marriage solemnised between the appellant and the respondent. We do not find any infirmity in the Order passed by the Family Court warranting interference.

26. For all the reasons aforesaid, we confirm the Decree and Judgment dated 13.12.2013 passed in O.P. No. 3379 of 2008 on the file of Principal Family Court at Chennai. The Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rsh

To

1. The Principal Judge,
Family Court at Chennai
2. The Section Officer,
VR Section, High Court, Madras

+lcc to Ms.K.Sumathi, Advocate, S.R.No.63780

CMA No. 721 of 2014

jp(co)

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