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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.S.A.NO.29 OF 2010

G.Kesavan

... Appellant/Petitioner

Vs.

P.Visalakshi

... Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 CPC read with Section 28 of Hindu Marriage Act against the judgment and decree in C.M.A.No.120 of 2000 dated 02.12.2002 on the file of the 1st Additional District Judge cum Chief Judicial Magistrate, Coimbatore, confirming the judgment and decree made in H.M.O.P.No.38 of 94 dated 19.06.2000 on the file of the Sub Court, Tirupur.

For Appellant : Mr.S.D.Venkateswaran

For Respondent : No appearance

J U D G M E N T

The unsuccessful husband is before this Court against the order rejecting his prayer for divorce by the Courts below.

2. The appellant / husband filed a petition for divorce on 13.06.1994 on the grounds of mental cruelty. The appellant / husband and the respondent / wife got married as per Hindu Rites and Customs on 03.03.1991. The appellant / husband is an Electrical Engineer having Bachelor's Degree in Engineering. He was employed as Sales cum Service Engineer and due to his avocation, he had to travel four to five days in the States of Tamil Nadu and Kerala. In view of the nature of his job and considering the safety of the respondent / wife, he was living with his parents as a joint family. The parties have got a female child born to them on 03.09.1992. But the wife refused to come back to matrimonial home. On the persuasion of the elders, the appellant brought the respondent/wife to his house. But the respondent/wife has left the matrimonial home with the child on 01.11.1992 without informing anyone and also lodged a police complaint on 02.11.1992. Despite several mediations and legal notices, the respondent refused to resume her marital obligation



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and wilfully lived separately. The respondent/wife insisted that she will come back only on setting up a separate home, in the reply notice. Controverting the allegations, wife filed a reply statement. The respondent/ wife denied the allegations made by the appellant and had contended that it was impossible and dangerous to live along with her mother-in-law and therefore, she insisted on setting up separate home and never refused to rejoin the appellant/husband. Both the Courts below, after framing appropriate issues have found that cruelty is not made out by the appellant / husband and considering the young age of the parties, rejected the request of the appellant / husband for divorce. Against which, the present appeal has been preferred.

3. In spite of notices and paper publications, the respondent / wife has not chosen to appear before this Court.

4. Learned counsel for the appellant / husband contended that in view of the nature of his job, he cannot set up a separate home. The respondent / wife was only 18 years of age at the time of marriage and it was not safe to leave her in a separate house. In order to give protection and also for her safety, the appellant / husband decided to live with his parents as a joint family.

5. In matrimonial life, parties had to bear the small misunderstandings and adjust each other and lead the live peacefully. The misunderstandings between the mother-in-law and the daughter-in-law is prevalent in Indian families. Therefore, the refusal to live with the husband on silly reasons is not acceptable in a matrimonial relationship.

6. The marriage between the appellant / husband and respondent / wife was solemnized in the year 1991 and the respondent / wife deserted him in the year 1992 and refused the conjugal relationship for more than 26 years. He had lost his conjugal relationship with his wife at the prime age of 25 years and the matrimonial bond is beyond repair due to the long period of continuous separation. The continuous separation and the refusal of the conjugal relationship would amount to mental cruelty and therefore, it is sought that the appeal be allowed on the grounds of mental cruelty.

7. From the factual background of this case, it is seen that at the very young age, both the husband and the wife have got separated. It is seen from the evidence that there were several mediations between the parties through elders and family members. Despite mediations, the couple could not join together and lead peaceful matrimonial life.



8. In SAMAR GHOSH VS. JAYA GHOSH [2007 (3) CTC 464] the Hon'ble Supreme Court has held that where there has been a long period of continuous separation, it may fairly be concluded that matrimonial bond is beyond repair and marriage in such cases become fiction though supported by legal tie and by refusing to sever that tie, law in such cases shows scant regard for the feelings and emotions of the parties and in such like situations, it may lead to mental cruelty. In the same judgment, it is also observed that feeling of deep anguish, disappointment, frustration of one spouse caused by conduct of other for a long time may lead to mental cruelty.

9. In yet another judgment of the Hon'ble Supreme Court in JYOTSNA MUKHERJEE (SMT) VS. UTPAL MUKHERJEE [(I) 2000 DMC 477 (DB)] it has been held that when a wife had neglected to live with the husband for which the husband was deprived of the enjoyment of the married life which is and was nothing but an act of cruelty not only on his physique but also on his mind by the wife. In this regard, paragraph no.7 of the said judgment is extracted hereunder:

"7. .... In order to prove cruelty, the general rule in the case of cruelty is that the entire matrimonial relationship must be considered and the Court should bear in mind the physical and mental condition of the parties as well as their social status and should also consider the impact of the conduct of one spouse in the mind of the other. It is now well settled law that where a divorce is sought on the ground of cruelty, the plaintiff must prove that the defendant has treated him with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for him or her to live with the defendant. [See Dr. N. G. Dastane v. Mrs. S. Dastane, I (1981) DMC 293 (SC)]. The incident that the wife had returned to her father's house and continued to stay there even today cannot be taken as too trivial. In the present case, the admitted position is that since the marriage which took place in the year 1984, the wife had been staying apart from her husband. In view of such conduct of the wife, the husband might feel irritated. In our view, the conduct of the wife in the present case must be considered to be 'cruel' within the meaning of Section 13(1) (a) of the Hindu Marriage Act. Admittedly within 25 days from the date of marriage, the wife left the matrimonial home and since then has been residing with her father without showing any



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intention of coming back. It is on record that it was the wife who first filed an application for maintenance under Section 125 of the Code of Criminal Procedure. From the evidence of the wife as well as from the materials on record, we are not convinced that the wife had ever intended to go back to her matrimonial, nor had she any intention to stay with her husband's family in the matrimonial home. On behalf of the wife, even her parents did not depose to the effect that they really intended to send her daughter back to the matrimonial home, but the husband or his family did not take her back. We do not find any material on record from the side of the wife to show such intention of the wife or of her parents. Therefore, the learned trial Judge was justified in holding that the wife was guilty of not coming back to her matrimonial home for a long time without any reasonable excuse and, therefore, in our view, this long absence of the wife in the matrimonial home may lead us to hold that this conduct of the wife amounted to mental cruelty on the husband. .... we can, therefore, safely hold that the Trial Court was right in holding that the wife had neglected to live with the husband for which the husband was deprived of the enjoyment of the married life which is and was nothing but an act of cruelty not only on his physique but also on his mind by the wife. "

10. In the instant case, though the respondent / wife had filed a counter stating that she never refused to join husband provided he sets up a separate home, but failed to establish the same by letting in cogent evidence. The conduct of the respondent / wife appears to be that she was not willing to join the husband. There are no denial of the nature of the job of the appellant / husband and his travel out of the States for most part of the week. From the materials available before this Court, it could be inferred that the respondent / wife deliberately stayed away from the matrimonial home. The wilful neglect by the wife will amount to cruelty as held in MRS.GAYATRI MISHRA VS. PRAMOD KUMAR NANDA [(I) 2000 DMC 102 (DB)]. Relevant portion of the said judgment is extracted hereunder:

"13. From the facts which have emerged from the record, there is no escape from the conclusion that the wife is voluntarily depriving her husband of her society and cohabitation for years. The husband, therefore,



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can definitely be said to be under the strain of wilful separation for years and complete denial of conjugal relationship. This would amount to causing mental cruelty. The husband is in his thirties--the prime of his life--and once he entered into the wedlock, he could naturally like to have conjugal relationship with the wife and in case the latter refuses to cohabit with him for years together, it is bound to cause him both mental and physical torture which, would be covered by the expression "cruelty" as used in connection with matrimonial matters covered by Section 13(1) (ia) of the Act."

11. In the instant case, the appellant / husband has taken efforts to bring the respondent / wife back to home and also sent legal notices to the respondent / wife to resume the matrimonial relationship. But it was rejected by the respondent / wife on the ground that unless a separate home is set up, she was not willing to rejoin her husband.

12. In NARENDRA VS. K.MEENA [2016 (9) SCC 455] the Hon'ble Supreme Court has observed as under:

"10. With regard to the allegations of cruelty levelled by the Appellant, we are in agreement with the findings of the trial Court. First of all, let us look at the incident with regard to an attempt to commit suicide by the Respondent. ....

11.....

12. The Respondent wife wanted the Appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the Appellant husband. It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with



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the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her."

13. In the instant case, the respondent / wife has simply stated that she cannot live along with the mother-in-law. But, I do not find any strong reason adduced by the respondent / wife to establish the harassment or torture by the mother-in-law. It appears that these pleadings were made only for the purpose of staying away from the husband. As held by the Hon'ble Supreme Court, it is both mental cruelty by denying the conjugal relationship and insistence for setting up separate home, will amount to cruelty to the husband. The Courts below have proceeded with an intention that in view of the young age, there were chances for reunion during the course of time. But the continuous separation for the past 26 years goes to show that there is no chance of reunion between the parties. Therefore, based on the judgments of the Hon'ble Supreme Court, this Court comes to a conclusion that the long and continuous separation between the parties amounts to mental cruelty. Literally, the marriage has become dead and there is no purpose in continuing the legal bond between the parties.

14. Considering the above circumstances, this Court is inclined to grant divorce to the appellant / husband and accordingly, the judgment and decree passed in C.M.A.No.120 of 2000 dated 02.12.2002 by the learned First Additional District Judge cum Chief Judicial Magistrate, Coimbatore, confirming the judgment and decree passed in H.M.O.P.No.38 of 1994 dated 19.06.2000 by the learned Sub Judge, Tirupur are set aside hereby and H.M.O.P.No.38 of 1994 stands allowed.

15. In fine, the Civil Miscellaneous Second Appeal stands allowed. No costs.

s/d-  
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

TK



To

1. The First Additional District Judge  
Cum Chief Judicial Magistrate  
Coimbatore.

2. The Sub Court  
Tirupur.

Copy to  
The Section officer  
VR Section, High Court, Madras (2 copies)

+2 Ccs to Mr.S.D. Venkateswaran, Advocate sr 7726 & 7727

C.M.S.A.NO.29 OF 2010

SSI (CO)  
SP(06/02/2018)