

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.1330 and 1331 of 2013
and
M.P.Nos.1 and 2 of 2013
and
CMP.No.10085 of 2017

K.N.Lakshminarayan ... Petitioner in both the CMAs

Vs.

K.J.Kamakshi ... Respondent in both the CMAs

Common Prayer:- Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act read with Order 43 Rule 1 C.P.C., against the judgment and decree dated 09.03.2013 in F.C.O.P.Nos.3374 of 2009 and 3929 of 2011 on the file of the Principal Family Court, Madras.

(In both the CMAs)

For Appellant : Mrs.Hema Sampath, Senior counsel
for M/s.R.Meenal

For Respondent : Mr.R.Ganesh Ram

COMMON JUDGMENT

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

The two Civil Miscellaneous Appeals are filed against the Common Decree and Judgment passed in F.C.O.P.Nos.3374 of 2009 and 3929 of 2011, on the file of the learned Principal Judge, Family Court at Chennai, dated 09.03.2013. As far as F.C.O.P.No.3374 of 2009 is concerned, it was filed by the Husband, who is appellant in both the Civil Miscellaneous Appeals. Further, the F.C.O.P.No.3374 of 2009 was filed under Section 13(1)(i-a) of Hindu Marriage Act, 1955 by the husband

for the relief of dissolution of Marriage. F.C.O.P.No.3929 of 2011 was filed by the wife who is the respondent herein and the said petition was filed under Section 9 of the Hindu Marriage Act, 1955 seeking relief of Restitution of Conjugal Rights.

2.Originally F.C.O.P.No.3929 of 2011 was filed before the Learned Subordinate Judge, Poonamallee, and the same was numbered as H.M.O.P.No.231 of 2009, but the same was later transferred to the file of the learned Principal Family Court, Chennai and renumbered as F.C.O.P. 3929 of 2011. The parties concerned in both the cases are one and the same and the matter was tried together and the issues framed in both the original petitions were answered by a Common Judgment dated 09.03.2013 by the learned trial Court. As the petition filed by the husband in F.C.O.P.No.3374 of 2009 was dismissed and the petition filed by the wife in F.C.O.P.No.3929 of 2011 was allowed, the husband has filed both the Civil Miscellaneous Appeals challenging the Decree and Common Judgment passed in F.C.O.P.Nos.3374 of 2009 and 3929 of 2011. As far as the petition in F.C.O.P.No.3374 of 2009, the husband examined himself as PW-1 and marked Exhibits P1 to P16. At the same time, the Petitioner in FCOP No.3929 of 2011 was examined herself as RW 1 and Exhibits R1 to R6 were marked. Since two decrees were passed by the learned trial Court, the husband herein has filed C.M.A.Nos.1330 and 1331 of 2013 as Appellant.

3.For the sake of convenience, the husband hereafter would be referred as appellant and the wife would be referred as respondent. The grounds raised by the appellants are more or less similar and the main contention of the appellant is that the learned trial Court has failed to look into the fact that the respondent has no intention for the resumption of her conjugal relationship with the appellant. However, she filed such application with an intention to prevent the appellant from seeking divorce on the ground of desertion. The learned trial Court failed to note that the respondent was staying away from the appellant the mental trauma suffered by the appellant over the acts of the respondent and intentional abuse by the Respondent was not considered. The other grounds of the appellant would be that in spite of the fact that the mental cruelty suffered by the appellant at the hands of the respondent even though was proved that was not considered. On the other hand, the Learned Trial Court was erred in holding that the appellant had not proved his case. Further, the learned Trial Court failed to consider that the respondent lived in the joint family only for two weeks, so she could not have occasioned to ill-treatment in those two weeks as they were busy in visiting temples and the residence of the relatives and also for getting

visa.

4.By referring the grounds raised in the Miscellaneous Appeal the learned Counsel for the appellant has contended that the appellant alone was abused by the family members and even by the respondent. Moreover, she and her family members refused to cooperate for the celebration of the Seemantham during the pregnancy of the respondent. The Learned Counsel for the appellant would also submit that since the Judgment of the learned Trial Court is passed without proper appreciation of evidence, the learned counsel for the appellant prays for the intervention of this Court and pray that the appeals filed by the appellant are to be allowed.

5.The brief facts of the case as submitted by the learned senior counsel for the appellant are that the spouses of the instant cases got married on 07.09.2007 at Sowbakiya Mahal, Koyambedu, Chennai-106, as per the Hindu rites and customs. In pursuance of the marriage the spouses lived together in the parental home of the appellant for a very short period and left United Kingdom. Apart from that the specific case of the appellant is that while they were living together, the respondent never used to talk to the appellant and informed him that she did not like the appellant as he had less hair on his head. Apart from that the respondent was having the habit of often enquiring the details of the property and the financial position of the appellant. Further the respondent never had shown her love and affection towards the appellant. Apart from that the respondent behaved at the appellant with an intention to have absolute control over his financial matters emotions and sexual desires. In March, 2008 both of them came to India and after four days the appellant i.e. on 01.04.2008, left to United Kingdom to continue his avocation. Unfortunately, the respondent started to have quarreled with the appellant through phone. For the Valaikaapu function the appellant was not informed though in May, 2008 the appellant returned to India and invited the respondent and his parents to perform Seemantham but same was declined by the respondent. However, on 06.09.2008 the respondent gave birth to a male child.

6.The learned senior counsel for the appellant vehemently contended that in spite of the mediations, the respondent did not come forward to get united with the appellant. Apart from that it is further contended that the respondent instead of accepting the call of the Appellant for the tonsure to his son that was intentionally rejected by the respondent and she failed to accept the suggestion of the appellant to go Tirupathi for

the tonsure function, instead it was done in a local saloon by the respondent. The call of the appellant to perform Ayush-Homam for the child was also refused by the respondent. In the later stage, the respondent used to make allegation as against the father of the appellant and on several other days, the appellant was humiliated at the hands of the respondent. So the learned counsel for the appellant insisted this Court that the marital relationship between the spouses was irretrievably broken down and absolutely no possibility for re union and therefore he prays for the dissolution of the marriage.

7. However, the learned counsel for the respondent-wife would submit that though the respondent was living at the matrimonial home hardly for about a period of only two weeks, the respondents suffered with harassment. Apart from that as she got pregnant when she was in U.K. with the appellant, on account of that only she returned to India and started to stay with her parental house that too on the direction of the appellant. At this juncture, the learned counsel for the respondent would submit that though the appellant returned to India on 18.05.2008 the appellant simply stayed with his parents and did not take the respondent to the matrimonial home. Even at the time of child birth, no proper care was taken and shown by the appellant at the respondent. Even though a suggestion was put forth by the kinsmen of the appellant for setting up of a separate family for the spouses, the same was not fulfilled by the appellant. In the meanwhile, some letter correspondence was exchanged by the spouses and in the reply telegram given on 29.08.2009 she expressed her willingness to join with the appellant. However, as no fruitful action was taken by the appellant; the respondent was constrained to file the petition for the restitution of conjugal rights. Further he prays this Court for the dismissal of the both Civil Miscellaneous appeal.

8. On the side of the appellant, the learned Senior Counsel relied on the following citations as reported in

(i) AIR 1995 BOMBAY 246 (DB) (Rajan Vasant Revankar v. Mrs. Shobha Rajan Revankar), it is stated as follows:

"(A) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Cruelty - What amounts to.

Though the word 'cruelty' has not been defined in the Hindu Marriage Act, 'cruelty' contemplated under Cl. (ia) of S.13(1) neither attracts the old English doctrine of danger, nor the statutory limits embodied

in the old S.10(1)(b) of the Hindu Marriage Act. After the Amendment of 1976, 'cruelty' contemplated by S.13(1)(ia) is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent or that it has become impossible for the spouses to live together.

AIR 1994 SC 710 and AIR 1975 SC 1534, Rel. on.

(Para 7)

(B) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Cruelty - On the first wedding night wife telling husband that he has so ugly face and persons with ugly face have also an ugly mind - This is not an incident of cruelty as understood in matrimonial law. (Para 24)

(C) Hindu Marriage Act (25 of 1955), S.13(1)(ia) - Cruelty - Wind, reckless and scandalous allegations by wife against the husband's mother, his two married sisters and brother-in-laws - Allegations repeated in subsequent letter - They amount to 'cruelty'."

(ii) (2002) 1 SCC 308 (Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi), it is held as follows:

"Desertion" in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

- 1.the factum of separation;
- 2.the intention to bring cohabitation permanently to an end - animus deserendi;
- 3.the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period. (Para 7)"

(iii) (2003) 6 SCC 334 (Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate)

"8.The allegations made in this case do not appear to have been the result of any sudden outburst. On the other hand, such injurious reproaches, accusations and taunts as were found to have been made in this case lend credence to the fact that the husband was persisting in them for sufficiently a long time humiliating and wounding the feelings of the wife to such an extent as to make it insufferable for the wife

and to live in matrimonial home any longer with the husband. The Division Bench of the High Court, in the course of its judgment in FCA No. 57 of 1994, particularly in paras 31 to 38 adverted to the nature and details of the allegations as culled out from the written statement extensively and meticulously and considered them in the light of the settled principles of law governing the same before affirming the judgment of the trial court which also recorded findings against the respondent after a detailed discussion of the relevant materials on record in paras 26 to 30 of the judgment in M.J. Petition No. 382 of 1983. On going through them we are convinced that the findings of the courts below are well merited and fully justified on the materials available on record and that they are neither shown to suffer any infirmity in law nor substantiated to be based on no evidence or vitiated on account of any perversity of approach to call for a different conclusion in our hands and interfere with the concurrent verdicts recorded by them.

9. The learned senior counsel for the appellant husband, as indicated supra, also was mainly trying to contend that once those allegations were unconditionally withdrawn by filing an application for amendment on 17.8.1988 which came to be also allowed by the trial court on 16.9.1988 and the amendments actually carried out on 5.10.1988, they could not have provided any basis for consideration in the case any longer to record any findings against the appellant. The plea on behalf of the appellant now made, as had been before the courts below, is that those allegations must be considered to have never been on record and not available for being referred or relied upon for any purpose. This aspect also, in our view, is found to have been considered at length and in its proper perspective by both the courts below before rejecting the claim projected on behalf of the appellant husband. Apart from observing, from the nature of the allegations and details disclosed that those statements were made by the appellant himself and only at his instance and on instructions, the courts below were of the view that the reply filed on 17.1.90 in court to an application filed by the wife seeking permission to engage her lawyer (mistakenly referred to as appellant's application) and their contents substantially reaffirming what has been stated earlier in the written statement but got withdrawn by subsequent amendment rendered even the so called

withdrawal to be of no significance or consequence and that it does not appear to have been genuine, too. Cogent and convincing reasons have been assigned by the courts below, in this regard and we are unable to come to a different conclusion on the indisputable factual developments noticed and relied upon by the High Court in paras 40 to 48 of its judgment for rejecting the claim of the appellant in this regard. The slender claim of alleged condonation was also rejected by the High Court, rightly by placing reliance on the repetition of many such allegations in the reply dated 17.1.90. In this connection, it would be of interest also to notice the observations of the learned trial judge in the order passed on 16.9.88 on the application for amendment filed by the appellant for withdrawal of certain allegations from the written statement. The respondent-wife who sent her response to the appeal filed by the appellant, in the form of an affidavit also enclosed to the same, the affidavit in reply dated 17.1.90 filed by the appellant in the trial court and a copy of the order dated 16.9.88 noticed above passed on the applications for amendment of the written statement. At paragraph 17 of the order dated 16.9.88, it is found observed as follows:

"17. It must be made clear that the amendment of the written statement cannot have any reference to anything that had happened prior to the filing of the petition on which the petitioner can place reliance although such matters may have been covered by the statements now deleted. It may be remembered that the petitioner is not withdrawing her allegations. It has also to be remembered that the petitioner has not acted upon unilateral withdrawal of the allegations by the respondent by his letter dated 14.8.1986. "

10. In the light of all these, it is futile to claim on behalf of the appellant that the withdrawal of allegations unilaterally by the appellant, by filing an application for amendment of the written statement wiped out completely all those allegations for all purposes.

11. That apart, in our view, even the fact that the application for amendment seeking for deletion of the accusations made in the written statement was ordered and amendments carried out subsequently does not absolve the husband in this case, from being held liable for having treated the wife with cruelty by

making earlier such injurious reproaches and statements, due to their impact when made and continued to remain on record. To satisfy the requirement of clause (i-a) of Sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitute the required mental cruelty for purposes of the said provision, in our view, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the Courts perhaps need consider the further question as to whether their continuance or persistence over a period time render, what normally would, otherwise, not be a so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonable conclude that the maintenance of matrimonial home is not possible any longer. A conscious and deliberate statement leveled with pungency and that too placed on record, through the written statement, cannot so lightly be ignored or brushed aside, to be of no consequence merely because it came to be removed from the record only. The allegations leveled and the incidents enumerated in the case on hand, apart from they being per se cruel in nature, on their own also constitute an admission of the fact that for quite some time past the husband had been persistently indulging in them, unrelented and unmindful of its impact. That the husband in this case has treated the wife with intense cruelty is a fact, which became a fait accompli the day they were made in the written statement. They continued on record at any rate till 5.10.1988 and the indelible impact and scar it initially should have created, cannot be said to have got ipso facto dissolved, with the amendments ordered. Therefore, no exception could be taken to the courts below placing reliance on the said conduct of the appellant, in this regard, to record a finding against him."

(iv) (2007) 1 MLJ 698 (A.Viswanathan v. G.Lakshmi @ Setha), it is stated as follows:

"In a Trial under Section 13(1)(i-a) of Hindu Marriage Act, 1955 on grounds of "cruelty" only

material facts as to cruelty need to be pleaded and insistence of pleading evidence is impermissible. Various baseless allegations in matrimonial proceedings would certainly constitute acts of mental cruelty."

(v) (2011) 4 L.W. 428 (DB) (Subramanian v. C.Kuppammal), it is stated as follows:

"Hindu Marriage Act (1955), Section 13/Cruelty, Allegation of adultery, Complaint to Police Station, if amounts to.

Respondent made an allegation that the appellant had illicit intimacy with the servant maid, and he started living with her in her house - She had also alleged that only because of the illicit intimacy of the appellant with the servant, she had to leave the matrimonial home.

A conscious and deliberate statement levelled with pungency and that too placed on record, through the counter statement, cannot be ignored - Allegations levelled against the appellant, per se is cruel in nature - In his petition for divorce, the appellant had stated that the allegations of adultery made against him by the respondent amount to cruelty and the complaint lodged by the respondent against the appellant before the Police amount to cruelty - Court below utterly failed to consider the same and it has not focussed its attention on the real facts in issue - Respondent's baseless allegation of adultery is an act of cruelty."

(vi) 2012 SCC Online MAD 728 (DB) (P.Nirmala v. K.Muruguselvam)

(vii) (2014) 7 SCC 640 (Malathi Ravi, M.D. v. B.V.Ravi, M.D.), it is held as follows:

"For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not

in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation."

9. On the other hand the Learned counsel for the Respondent would rely on the citations reported in 2010 (14) SCC 301 (Gurbux Singh v. Harminder Kaur), it is stated as follows:

"A. Hindu Marriage Act, 1955 - S. 13(1)(i-a) - Divorce - Grounds - Cruelty - A few instances of abuse whether amounts to cruelty - Appellant husband only mentioned one stray incident of respondent wife abusing his parents in divorce petition - Held, though even a single act of violence which is of grievous and inexcusable nature satisfies test of cruelty, married life should be assessed as a whole - A few isolated instances over certain period do not amount to cruelty - On facts, held, marriage cannot be dissolved on such instances.

B. Hindu Marriage Act, 1955 - S. 13(1)(i-a) - Mental cruelty - Onus - Reiterated, particular conduct may affect differently on different persons in different set of circumstances - To some it may or to some it may not amount to cruelty - Thus, onus to prove that particular conduct or behaviour resulted in cruelty is on the person who claims relief - Evidence Act, 1872, Ss. 101 and 114."

10. We have heard Mrs. Hema Sampath, learned senior counsel for M/s. R. Meenal, learned counsel for the appellant and Mr. R. Ganesh Ram, learned counsel for the respondent in both the Civil Miscellaneous Appeal and perused the materials available on records.

11. The Hon'ble Supreme Court in the judgment cited supra reported in (2010) 14 Supreme Court Cases 301 very clearly held what is the mental cruelty, which is mentioned as below:

"12. In Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511, a three-Judge Bench of this Court while considering Section 13(1)(i-a) of the Act laid down certain guidelines. The analysis and ultimate conclusion are relevant which reads as under: (SCC pp. 545-47, paras 98-101)

"98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of "mental cruelty" within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party

cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of

her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

12. From a cursory perusal of the decisions above stated would lead to an irresistible conclusion that the term 'mental cruelty' cannot be given a liberal meaning and all cases where there is an allegation of mental cruelty cannot be painted with the same brush. The Court has to be cautious and ascertain whether the allegation of 'mental cruelty' is supported with substantial material circumstances and is not a bald allegation raised for the sake of raising a claim.

13. We also hasten to add that the Courts ought be loathe and reluctant to interfere with cases where 'mental cruelty' is not discernible on the face of the matter. When a case of 'mental cruelty' is pleaded, the onus is quite heavy on the party alleging the same to prove and substantiate it.

14. When we look at the case on hand objectively, we are unable to satisfy ourselves as to how a case of 'mental cruelty' has been made out by the Appellant. The allegations made by the Appellant at best disclose that there was a friction between the parties that further got aggravated by the fact that the Appellant and Respondent were staying away from each other due to the avocation of the Appellant. Subsequent to the birth of the child, there were minor misunderstandings that snowballed into something bigger. The allegations raised by the Learned Senior Counsel to substantiate her case only reveal that there were misunderstandings and ego-battles between the parties and nothing substantial.

15. These facts were considered elaborately by the lower court and the Court has found that the claim of the Appellant is not sustainable. There is nothing on record to suggest that the Appellant and Respondent tried to cohabit with each other and the marriage has broken down irretrievably. When there are two options available before a Court, one to break a marriage and to save the marriage, the Court will generally opt for the latter and not the former. Exception being that the marriage is irretrievably broken down and cannot survive.

16. It is the case of the Appellant that the respondent has not come forward to live with him without any valid cause in spite of his sincere efforts to get united with her in order to live with her as husband and wife. Further, as per the arguments advanced by the learned senior counsel for the appellant that the failure of the respondent only made him to file such a petition for divorce. It is relevant to note here that though the appellant has given voluminous evidence in the perusal of the same did not find any valid reason to hold that the marriage is irretrievably broken down. Apart from that the factual events referred by the appellants have not touched the judicial conscience of this Court that the marital relationship with the spouses was irretrievably broken.

17. It is seen from the records that the incidents referred by the appellant would disclose that the elders of both family members have not taken keen efforts to make the appellant and the respondent to get reunited. As far as the culture of our country that the marriage is not only a holy ceremony, but it unites two different human lives into one. Further, the mediation of elders of both families, if it is in its true spirit would give dramatic changes in the mind of the spouses not only to realize what is happening around them, but also would make them understand what will be the worth of human life that too as husband and wife. It cannot be denied that mutual understandings and adjustments between the spouses could be developed in case if they have been given proper mediations by the interested kinsmen with the object of making the spouses to get united not only for their welfare, but for the welfare of their child too. Here, this Court is not able to find the interested kinsmen of both the parties have done their noble job of mediations.

18. Apart from that it is for the appellant as who sought divorce to justify his stand that the same was taken by him by considering the future life of the child. It cannot be

appreciated that the child of single parentage would always be fruitful to the country with bright future. Whenever, the application for the divorce is dealt with the prime consideration of this Court is not only with the life of the spouses alone, but the life of the minor children too. Then only the same could be termed as Substantial Justice. Therefore, the reasons and the grounds raised by the appellant herein are not sufficient to hold that the marriage and the marital relationship with the parties concerned is irretrievably broken down. In such a background it will not be justifiable to hold that the Appellant has made out a case that his marital relationship with the respondent is irretrievably broken down. Hence both the appeals fail and accordingly it is liable to be dismissed.

19. Undisputable fact of the matter is that the Learned Senior Counsel for the Appellant has not been able to establish satisfactorily to make out a case for grant of divorce. We are satisfied that the findings of the Court below is not perverse or against the law declared in the decisions cited supra. Hence, the present Appeals are bereft of merit and are liable to be dismissed.

20. In the result, both the Civil Miscellaneous Appeal Nos.1330 and 1331 of 2013 are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Principal Family Court, Madras.

2. The Section Officer,
V.R. Section, High Court, Madras-104.

+2cc to Mr. R. MEENAL Advocate, S.R.No. 13510

Pre-Delivery Judgment made in
C.M.A. Nos. 1330 and 1331 of 2013 and
M.P. Nos. 1 and 2 of 2013 and
CMP. No. 10085 of 2017

SSV (CO)
TR (12/03/2018)