

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM

THE HONOURABLE MRS. JUSTICE BHAVANI SUBBAROYAN

C.M.S.A.No.10 of 2014

&

M.P.No.1 of 2014

K. Pritha ...Appellant / Appellant

..Vs..

R. Muniappasamy ...Respondent / Respondent

The Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree passed C.M.A.No.1 of 2013 dated 06.07.2013 on the file of the I Additional District Judge, Erode in confirming the Judgment and decree passed in H.M.O.P.No.183 of 2010 dated 27.09.2012 on the file of the II Additional Subordinate Judge, Erode.

For Appellant : Mrs. R.Shase
for Mr. M.Guruprasad

For Respondent : Mr.I.C.Vasudevan

J U D G M E N T

The appellant has filed this Civil Miscellaneous Second Appeal to set aside the judgment and decree passed in C.M.A.No.1 of 2013 dated 06.07.2013 by I Additional District Judge, Erode in confirming the judgment and decree passed in H.M.O.P.No.183 of 2010 dated 27.09.2012 on the file of the II Additional Subordinate Judge, Erode.

2.The case of the appellant is that she got married to the respondent on 18.05.2008 as per Hindu Rights and Customs which was performed by the elders of both the families in Janani Thirumana Mandabam, Veerappanchattiram, Erode.

3.The husband namely the respondent herein has filed H.M.O.P.No.161 of 2009 for dissolution of the said marriage on the ground of cruelty by wife, appellant herein and the said petition was withdrawn by the husband after the intervention of the elders of the appellant's family. Then the appellant and the

respondent started living together again and they had visited Ooty for a site seeing tour and they have also celebrated the birthday of their baby, which was born on 07.03.2009, in a grand manner. When they were living together in Chennai, the appellant had to attend her grandmothers death and she left to Erode and when she came back from Erode for Pongal, the respondent did not take care of her and had shown an indifferent attitude and only when she received the summons, she came to know that her husband/respondent herein has filed another H.M.O.P.No.183 of 2010.

4.The appellant has raised various grounds while attacking the order of both the lower Courts. The appellant would submit that both the lower Courts ought to have seen that her husband himself has admitted that after forgetting the past, he has taken the appellant back pending earlier proceedings in H.M.O.P.No.161 of 2009 and started living together happily with her till 30.08.2010 and they had visited Ooty for the site seeing and also conducted their baby's birthday party in a grand manner. She would also submit that there is no iota of truth in the husband's application at all and the Courts below have not considered the fact the the respondent/husband in his divorce petition itself had categorically stated that considering the welfare of the child, he had forgiven the past and living with the appellant and absolutely there is no evidence to show that mental cruelty to the respondent/husband and the Courts below have wrongly held that cruelty has been caused by the appellant, for implausible reasons and granted divorce.

5.The appellant would also submit that there is no necessity for the Courts below to place reliance on Ex. P3 letter, when the husband had condoned the previous act of the appellant and when she has categorically denied the writing of the said letter. The Courts have relied only on the Ex. P3 letter alleged to have been written by the appellant family and granted divorce and the Courts below have not taken into account the birthday celebrated on 07.03.2010 in Ambika Empire and their travel to Ooty, where they stayed for four days happily and on 27.10.2010 they went to Queensland theme park. On 30.08.2010, the respondent/husband had left the appellant in her native place and no cruelty had been proved and established by the respondent /husband against the wife and sought for dismissal of the HMOP and for setting aside the orders of the Courts below.

6. The following substantial questions of law have been raised by the appellant/wife, for consideration in this appeal:-

"a) Whether the Courts below are right in granting divorce on the ground of cruelty when the previous Act was condoned by the

respondent/husband as per Section 23(1) (b) Hindu Marriage Act 1955?

b) Whether the Courts below are right in granting divorce when the same is not proved beyond pleadings and evidence?

c) Whether the accusations made by the respondent/husband in the divorce application constitute mental cruelty for sustaining the claim of divorce?"

7. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.

8. On perusal of the petition in H.M.O.P.No.183 of 2010, it could be seen that the marriage between the parties has been taken place on 18.05.2008 and it is being an arranged marriage and the expenses which has been shared by both the parties, were not denied by the parties.

9. The respondent/husband in his petition in H.M.O.P.No.183 of 2010 has contended that within few days of the marriage, the appellant and her parents were treating the husband in a very bad manner and ill treated him and have imagined certain things and written a very filthy letter to the husband, which has caused him mental cruelty and the wife was suspicious in nature and the wife's family has scolded the husband as he is not a proper male and the family of the husband was full of robbers. The respondent/husband has also produced all the letters alleged to have been written by the appellant/wife and her father. Only for 20 days, the husband and wife lived in the husband's house and then they shifted their residence to K.K.Nagar, Chennai and living there in a rental house for 5 months. At that time, when the sister or the parents of the husband visited, the wife showed indifference attitude towards them and also threatened the husband that if his sisters/parents visited their house, she will not live with him and she will go away to her parents house and always used to quarrel regarding the distance of the husband's office from the house and she tortured him to see another house nearby Perambur, after the wife became pregnant, there were some problem between husband and wife and between both the parents and family and hence no proper bangle wearing ceremony (valaikappu) has been conducted in January 2009. When the girl baby was born, the wife and the family did not inform the same to the husband and only after 10 days, they have

informed the same to her husband's friend and not informed to the husband, which made a big impact on the husband's prestige. Hence the respondent/husband had no other option, has filed H.M.O.P.No.161 of 2009 for the dissolution of marriage.

10.It could be also seen that when the HMOP was pending, the wife and her parents had dramatically came and requested the husband stating that they will not do such sort of things in future and requested the husband to take back the wife and live together. As per the said assurance given, the husband has also withdrawn the said petition on 07.06.2010. After some time when the husband and wife started living at chennai, the wife immediately alleged to have stated that only for harassing him she came back to live with him and not to lead a happy life with him and if the husband did not listen to the wife's request, she will immediately try to commit suicide and send all the family members of the husband to jail and she did not allow the husband to take care of the child. Hence, after the said incident, the husband filed the present HMOP petition for dissolving the marriage took place between the parties.

11.The wife also filed a counter statement in which, she has denied certain allegations of the husband and she would allege that the husband's family did not give respect and only the husband's side persons namely the sisters and mother had joined together and tortured her and did not allow her to lead the matrimonial life happily and send her back to her parents house and only for certain hidden facts, the husband has filed this petition. She would also submit that the family of the husband used to scold her often that she is not a proper daughter-in-law to the said family and treat her as a servant to the family and she would get tortured, if she does not do any work ordered by them and they were not happy with the girl baby born. Whenever the husband used to come to her native place, he never stayed in the wife's house instead he stayed in hotel and even he created some problems to the wife and their parents, as if the wife did not agree to the conditions of the husband. She would further submit that all the 35 pounds of gold jewelery and other household articles were taken by the husband's family and only on bad intention, the husband has suppressed all the real facts and filed this petition.

12.The appellant/wife would also submit that only on the inducement of the husband's family members, the husband has filed this petition and he has also not given back the educational certificates of the wife. She would further contend that the husband has harassed the wife under Dowry Prohibition

Act. She has given all the replies against the husband and also prayed for dismissal of the petition of divorce and prayed for direction to respondent/husband to take back the wife and the child and to lead a happy matrimonial life.

13. The appellant/wife filed an additional counter wherein she has denied the allegations regarding the threatening statements of the wife that she will commit suicide and send his family to jail and other allegations. She would also submit that when the earlier petition was pending, the husband himself called the wife for restitution of constitutional rights and only after that, the wife started living with the husband till 12.12.2010 and they also went around Ooty and other places and they also enjoyed their life. Only on 30.08.2010, when the husband called the wife to attend his father's death ceremony, she did not go and only after that the husband did not take the wife back and on 11.09.2010, the wife along with her father went to Chennai house, but the husband did not come back to the Chennai house and she was there in the said house in Perambur till 31.12.2010 and when her grandmother died, she went to Erode, and after attending the ceremony she came back to Chennai but the entire house has been vacated and all her jewels and educational certificates were taken away by the husband.

14. The trial Court, after the trial and after hearing the parties, has given a finding that the case of the husband that the wife has caused mental cruelty is proved based on the witnesses and evidences and documents and hence allowed the said petition and accordingly, dissolved the marriage between the parties. The same was also confirmed by the first Appellate Court.

15. It could be seen from the evidences that there were certain letters written by the appellant/wife and her father scolding the husband in a bitter words and filthy manner stating that the husband is not a proper male at all and his family is full of robbers and the said letter against the husband, who was working as Project Leader in Polaris Software Lab, Chennai, has caused a lot of mental torture to the husband and hence, the husband filed a petition for divorce and only after the intervention of the elders that the wife will not do such acts in future, believing the same, the husband forgiven her and taken her back. But after coming back to Chennai, the wife did not change her attitude but started behaving the same way and tortured him by stating that if he does anything against her wishes, she would commit suicide and she would also send the husband's family members to jail and she also tried to commit suicide 4 times, which was simply denied by the wife. When the said letter was produced before the lower Court and when the

same was put against her, the wife has submitted that the handwriting in the said letter looks like her handwriting and it also belongs to her father's handwriting, but denies the writing of the same. The wife would also submit that they were living happy life after the withdrawal of the H.M.O.P, for that, she has also stated that they have celebrated the daughter's first birthday in a grand manner on 07.03.2010.

16.At this point of time, the learned counsel for the husband would point out that after the said function, the husband's father death ceremony had come on 30.08.2010, and for which, the husband invited the wife to be the part of the ceremony but the wife did not attend the said ceremony and stay back in her parents house and hence, he did not take her back when he went back to Chennai.

17.The learned counsel for the husband would submit that being the part of the family, it is the duty of the wife to attend the husband's father death ceremony along with the husband. Since she has not attended the said ceremony, the same caused mental trauma to the husband, She has also gone to Erode to attend her grandmother's death. The husband's counsel would submit that when she has not able to do the duty of the daughter-in-law to the father-in-law, but she has gone to her grandmother's death ceremony which itself would show that she was not interested in attending the husband's family functions.

18.There are contradictory submissions by the wife that when she left the house and came back they did not have any problem with each other and they were living happily in their house. In her evidence she has accepted that after the withdrawal of the earlier petition, her husband was taking care of her very well and she did not have grudge and any difference of opinion with the husband's mother, uncle, sisters and brothers and she happily went to Ooty and came back and only after that she had given a complaint to Commissioner of Police, wherein she has stated that her husband and his family members and his relatives have harassed her. It could be seen that, in her evidence, she has stated that she was living with the husband happily and went around Ooty and the husband also gifted her new mobile phone worth Rs.14,200/-. If that being so, what was the reason for her complaint before the Commissioner of police, that her husband and his family members were harassing her.

19.The appellant would also submit that she was happily living and when she came back, they have no problem before giving complaint against the husband and the lady Commissioner convinced both the parties and she advised them and send them out. When there was a false complaint given by the wife against the husband, since she was living happily, the same amounts to

cruelty against the husband. But the husband's statement is that since she did not come for his father's death ceremony and she did not allow him to take care of the baby, which made him feel such cruelty and when they were living together the wife's parents, without even getting the permission from the husband, taken away the baby along with them to Erode. It could be seen that, only the act of the wife has made the husband to file this divorce petition. Even though the wife has submitted that she did not give any complaint against him and it is only a complaint to find out the whereabouts of the husband for his absence from the house when she went back on 11.09.2010, when the husband did not come back home, and nothing more than that, it could be seen from the evidence that she has already left to Erode and even the husband was being tortured by her and only, at that time the husband has made a decision by not taking the wife back and hence he was not available in the house at that time the wife came back to his house at Perambur.

20.The contention of the wife in her counter that the jewels have been taken away by the husband must be a false, since in her evidence she has stated that, she has not given any complaint to the police regarding the jewels, since the jewels were in her house. It is only on the inducement of the house owner, the said house was vacated by the husband and it was known to her, but she has given a false complaint.

21.The appellant/wife's counsel would submit as per Section 23(1)(b) of Hindu Marriage Act 1955, the husband's claim for filing another petition on the same grounds was not maintainable. He would also rely on the decision of the Hon'ble Supreme Court reported in 1975 (2) SCC 326 (Dr.N.G.Dastane vs. Mrs.S.Dastane), wherein the Hon'ble Apex Court has held that even though the condonation was not pleaded as a defence by the respondent therein/wife, it is the duty of the Court, in view of the provisions of, Section 23(1)(b), to find whether cruelty was condoned by the appellant therein/husband and also held that the respondent therein/wife was guilty of cruelty, but the appellant therein/husband condoned the cruelty and the subsequent conduct of the wife/respondent therein was not such as to amount to revival of the original cause of action.

22.The case on hand is different from the case pointed out above and relied on by the learned counsel for the wife. The case here is that when the wife was causing cruelty to the husband, he filed a petition for divorce and later, when the wife came and requested for pardoning and made him believe that she has changed her attitude and so, he accepted her and taken her back and renewed their life. Even after starting the new life, the wife did not change even a bit and she started harassing him again and again. When she was living happily with

her husband she has also given complaint to the commissioner that the husband and his family members have ill-treated her and also harassed her. The statement that the husband has taken away the jewels was also a false one which was admitted by her and it was a proof for the wife's intention of causing trouble to the husband and the husband has not tortured her. The wife's statement was that the husband himself, after the reunion has bought a mobile phone to the wife, which would show his intention of living a happy life but the wife did not follow the same but has an intention of inflicting some mental torture towards the husband. It is also seen that the husband after the reunion, called the wife for attending the death ceremony of his father and as per Hindu customs, the husband and wife should jointly do the ceremony to the death persons, having the belief that the soul will accept the said rituals happily when done by family members. But the wife did not attend the death ceremony, which has caused the husband, a mental pain since after a long time of problem when she has joined and living with him and starting a new life, adamantly not attending the function, has also made him to rethink of living together. When the wife had the equal right to have her own likes and dislikes, it is the duty of the wife to follow the husband, when they themselves try to start a new life after trying to forget the old incidents. If the wife wanted to reunite, she ought to have travelled together with the husband in all his happiness and sorrowful events when she was been living in her parents house and she has time to attend her grandmother's death ceremony equally it also applies to the husband also that he also expects the wife to attend the said ceremony.

23.The wife's contention is that she went along with the respondent around Ooty and had grandly celebrated the birthday ceremony of their baby and these are the incidents to prove that they were trying to revive the relationship and the respondent's contention that there is no cooperation from the wife, which made the husband to initiate once again the matrimonial proceedings to dissolve the marriage. The learned counsel for the wife would contend that when he had condoned the previous act of the wife, he cannot rely on the same once again because the husband himself stated that they made him to believe that she has completely changed, but as soon as they started the new life she started showing her true colours again which made him to take the decision of filing another H.M.O.P., for dissolution of marriage.

24.The cruelty, which is a ground for dissolution of marriage, may be defined a willful and unjustifiable character which cause danger to life bodily or mentally or to cause a reasonable apprehension of such danger. The learned counsel for the husband pointed out that in the decision relied on by the

wife, reported in 1975 (2) SCC 326 (cited supra), the Hon'ble Supreme Court has held as follows:-

"It is urged on behalf of the appellant (husband in that case) that when there is no evidence of condonation, while argument of the wife/respondent therein is that condonation is implicit in the act of cohabitation and is proved by the fact that when the spouses parted, wife/respondent therein was about three months pregnant. Even though condonation was not pleaded as a defence by the respondent therein/wife, it is the duty of the Court, in view of the provisions of, Section 23 (1) (b), to find whether the cruelty was condoned by the appellant. That Section casts an obligation on the Court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if the Courts are satisfied " but not otherwise", that the petitioner has not in an manner condoned the cruelty. It is, of course, necessary that there should be evidence on record of the case to show that the husband had condoned the cruelty. "

25. The Hon'ble Apex Court also held that condonation of cruelty, therefore, means 'forgiveness' and 'restoration' and the evidence does not consist in the mere fact that the spouses continued to share a common home during or some time after the spell of cruelty and Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. The condonation is different and forgiveness is different. Condonation as per Section 23 (1) (b) of the Act means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed.

26. Here, in this cases, the husband has eventhough forgiven the wife and has taken her back and leading a life, the subsequent conduct of the wife forfeited the conditional forgiveness, thereby reviving the original cause of action for judicial separation on the ground of cruelty. It is alleged that the wife treated the husband with cruelty and when she was living with the husband happily, the wife has given a complaint with false contents and malicious accusations against the husband and his family members that has caused him a mental injury. These incidents were enough that cruelty was committed by the wife and also the statements that all her jewels have been taken away by the husband which she herself has

contradicted and admitted that jewels are with her, would also prove that the wife's indifferent and contradictory act.

27. In Harendra Nath Vs. Suprova (AIR 1989 Calcutta 120) it has been held by the Hon'ble Calcutta High Court Division Bench, that such allegations were admittedly made by the wife prior to this proceeding in her application under Section 125 of the Code of Criminal Procedure. But even if there was no such allegation made prior to the initiation of this proceeding, such allegation made in the written statement itself and in the deposition can and should be taken note of in matrimonial proceedings without driving the petitioner to another proceeding on the ground of such cruelty. While ordinarily a lis is to be determined on the cause of action accruing on the date of the initiation of the lis, it is nevertheless well settled that it is open to a Court, including a Court of appeal, to take notice of events which have happened after the institution of the suit and afford relief to the parties where it is necessary to do in order to shorten litigation or to do complete justice between the parties.

28. In this case, even though the wife's contention that they were happily living and going around the place in the Ooty without any disturbances cannot be accepted as true statement because from her own evidence, it could be seen that before she coming back to the parent's house, she had given complaint against the husband and her parents to the Police Commissioner stating that the husband and family members are torturing her and beating her and she has also given oral complaint and that complaint was also withdrawn after pacification done by the police and she in her statement submitted that after the withdrawal of the first complaint, the husband has treated her properly and again she has given complaint against the husband's family members, including mother, sisters, brothers to the Police Commissioner, which itself will prove that she has not acting prudently, which is contradictory to the statement given earlier by her. When there is cruelty committed by the wife again and again, the husband could not live with her and filed another HMOP for dissolution of marriage between them. When the appellant/wife has continued her torturing attitude and has not changed her way, there is no other go to the husband to file the HMOP for dissolution of marriage, which this Court feels a valid one and the reasons stated by the husband has to be looked into. Accordingly, the Court comes to the conclusion that there is no possibility of reunion and hence, the appellant's contention that for frivolous reasons the husband has filed this HMOP, is not accepted.

29. It is to be seen that when there are many serious allegations have been levelled against the husband, his parents

and other family members by the appellant/wife, the appellant's counsel submits that inspite of the same, the appellant/wife is ready and willing to live with the respondent/husband. The respondent's counsel, after getting instructions from his client, submitted that the respondent/husband is not willing to live with the appellant/wife and has been paying maintenance amount to the wife and daughter as per the order of this Court and the chance of reunion has been ruled out. It has been clearly proved by the act of the appellant/wife in the past that she and her family members will inflict cruelty on the husband even after reunion. The act of cruelty is admitted by the wife herself in her evidence.

30. In view of the above findings, the substantial questions of law have been decided against the wife and in favour of the husband. Since there is no possibility of reunion, the prayer of appellant cannot be granted.

31. At this juncture, the learned counsel for the appellant/wife also produced a copy of the judgment dated 09.09.2016 made in Crl.R.C.No.251 of 2016 and submitted that in the said Revision, the respondent/husband admitted that he was earning salary of Rs.74,690/- p.m and after deduction of Rs.12,955/- p.m, his monthly net salary, at that time, was Rs.61,735/- p.m and in view of the same, this Court ordered to enhance the interim maintenance awarded by the trial Court to Rs.6000/- p.m to the wife and Rs.8000/- p.m to the daughter. Even though the respondent's counsel stated that the respondent/husband has been paying the maintenance amount to the appellant/wife, learned counsel for the appellant submitted that initially the husband was paying the maintenance amount, but after some time, the husband discontinued the payment and at present, the wife says she is not receiving any maintenance amount.

32. In view of the above position, the respondent/husband is directed to continue to pay a sum of Rs.14,000/- p.m (Rs.6000/- to wife and Rs.8000/- to daughter) as ordered by this Court in Crl.R.C.No.251 of 2016 every month on or before 10th of that month. Apart from that, the respondent/ husband is also directed to look into the educational expenses of the daughter when she pursues higher education. The respondent/husband is also directed to deposit a sum of Rs.5,00,000/- (Rupees five lakhs only) in a Fixed Deposit in the name of the daughter, in any one of the nationalised bank proximate to the residence of the daughter, for her marriage expenses, within a period of 3 (three) months from the date of receipt of a copy of this order. Since the daughter is aged only 10 years, the said sum of Rs.5,00,000/- (Rupees five lakhs only) to be deposited in a Fixed Deposit, should be renewed periodically, along with

interest accrued thereon and the same can be withdrawn by the daughter only at the time she attains majority.

33. Accordingly, this Civil Miscellaneous Second Appeal is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

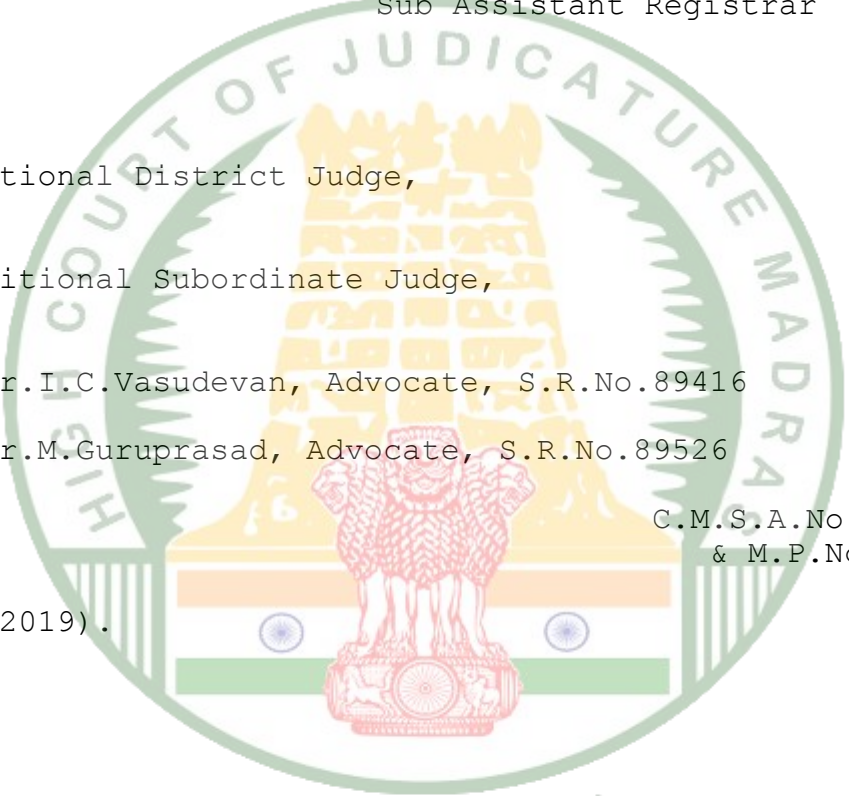
1. I Additional District Judge,
Erode.
2. II Additional Subordinate Judge,
Erode.

+1 cc to Mr.I.C.Vasudevan, Advocate, S.R.No.89416

+1 cc to Mr.M.Guruprasad, Advocate, S.R.No.89526

C.M.S.A.No.10 of 2014
& M.P.No.1 of 2014

SJ(CO)
SSM(11/06/2019).



सत्यमेव जयते

WEB COPY