

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.06.2018

Pronounced on : 26-09-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 2988 of 2017

M. Madan Mohan .. Appellant

Versus

K.R. Rajalakshmi .. Respondent

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Fair Order and Decreetal Order dated 17.08.2017 passed in O.P. No. 3459 of 2011 on the file of Principal Judge, Family Court, Chennai.

For Appellant : Mr. K.G. Krishna Raj
for Ms. S. Shanthakumari
For Respondent : Mrs. Geeta Ramaseshan

JUDGMENT

R. Subbiah, J

This appeal is filed by the appellant/husband aggrieved by the Order of dismissal dated 17.08.2017, dismissing the Original Petition No. 3459 of 2011 filed by him for dissolving the marriage solemnised between him and the respondent on 10.03.2006, on the ground of cruelty.

2.(i) It is the case of the appellant, in OP No. 3459 of 2011 filed by him before the Principal Judge, Family Court, Chennai, that he married the respondent on 10.03.2006 and the marriage was solemnised at S.B. Thirumana Mandapam at Anna Nagar East, Chennai, as per Hindu rites and customs. It is his case that even prior to the marriage, he got acquainted with the respondent through a common friend, who fell in love with a girl and the respondent happened to be her friend. The friend of the appellant and the friend of the respondent, who loved each other, got married at Anna Nagar. In this context, the appellant and the respondent happened to meet each other frequently and this had developed into an intimacy. According to the appellant, the respondent informed him that she passed B.C.A. degree and was living with her brother at Anna Nagar. The respondent further represented that she is working as a Customer Support Executive at Citibank and her parents were staying at Trichy. The appellant further stated that the respondent informed him that her brother is working in a private company at Chennai.

(ii) According to the appellant, due to the close intimacy which he had developed with the respondent, she became pregnant. The appellant also informed his parents about his love affair with

the respondent and the physical relationship he had with the respondent before marriage. Though the appellant and respondent belonged to different community, in view of the fact that the respondent became pregnant even before the marriage, his parents, taking into account the larger interest of their son, the appellant herein, have skipped all the formalities such as enquiring about the family background of the respondent etc., and arranged for an engagement ceremony and thereafter, solemnised the marriage between the appellant and the respondent on 10.03.2006. According to the appellant, before the marriage, the respondent aborted the pregnancy.

(iii) It is the contention of the appellant that neither he nor his parents demanded any dowry from the respondent. On the other hand, the parents of the appellant have met the entire expenditure relating to the marriage with a sole view that the appellant should enjoy a peaceful and blissful married life with the respondent. It is the parents of the appellant who have bought thali chain weighing 9 sovereigns and the Mangalyam was brought by the mother of the respondent's as per their choice by receiving amount from her parents. Above all, the parents of the appellant did not impose any condition during or after the solemnisation of the marriage and they only intended that their son should lead a happy matrimonial life with the respondent.

(iv) According to the appellant, after the marriage, the respondent did not discharge her duties as a dutiful wife, rather, she picked up quarrel even for petty and trivial reasons. After the marriage, the respondent's parents invited the appellant and the respondent purportedly for a marriage reception arranged at their native town at Aranthangi in Pudukottai District since all their relatives could not attend the marriage solemnised between the appellant and the respondent at Chennai. Accordingly, the appellant, his parents and the respondent went to Aranthangi where they were asked to stay in a hotel and on the next day they were taken to Pillaiarpatti where the reception was arranged. On reaching Pillaiarpatti, to the shock and surprise of the appellant and his parents, they came to know the reception was not intended for the appellant and the respondent, rather, it was the 60th wedding day of the parents of the respondent which was celebrated at Pillaiarpatti. Notwithstanding the same, the appellant and his parents attended the 60th wedding day of the parents of the respondent and also presented 2 rings as a good gesture. During the 60th wedding celebration of the parents of the respondent, the appellant and his parents came to know that the younger sister of the respondent has a son aged 4 years and she was 30 years old. On the contrary, the respondent, at the time of marriage, represented that she is only 27 years old. Further, the respondent informed the appellant that she had entered into a contract with respect to the Anna Nagar House and she also paid advance for the entire contract period. Therefore, the appellant, leaving his parental home at Periyar Nagar, stayed along with the respondent at Anna Nagar. During such stay, the appellant came to know that the respondent, without any rhyme or reason pledged her jewels, raised money and found it difficult to redeem it. The appellant also came to know that the respondent did not pay the rent for four months for the house at Anna Nagar. The appellant came to know about the above shortcomings only when a Pawn broker came to the Anna Nagar house besides the owner of the house demanded payment of rent. The appellant therefore was constrained to settle the debts owed by the respondent.

(v) According to the appellant, the respondent became pregnant and this was informed to the parents of the respondent, but they did not give much significance to such information. Since the respondent require some moral support during her pregnancy and as the appellant could not handle the situation individually, he sought his parents help and his parents were also happy and informed him that they could help them if they stay in their house at Periyar Nagar. Therefore, the appellant shifted the matrimonial home to his parents house at Periyar Nagar where a separate portion in the ground floor was provided for the stay of the appellant and respondent with all basic amenities including air conditioned bed room. During such stay, the appellant and his parents have taken utmost care of the respondent well. However, the respondent criticised the appellant with an ulterior motive. Further, considering the health and her advanced stage of pregnancy, the appellant sent the respondent to her parent's house by flight. Even during her stay in her parents house, the appellant sent all healthy food through courier. However, even at her parent's house at Aranthangi,

the respondent could not adjust with her mother and picked up quarrel with her parents. While so, at the behest of her aunts who are residing in United States of America, the respondent was sent to her maternal uncle's house at Karaikudi when she was in the advanced stage of pregnancy. On 24.05.2007, the respondent delivered a girl baby and before the delivery and also after birth of the child, the appellant stayed with the respondent and met all the medical expenses. After the birth of the child, when the appellant intended to nominate his wife, the respondent herein, in all the records maintained by his employer for Provident Fund etc., and for which he asked for her birth certificate, she furnished a birth certificate in which her date of birth was indicated as 18.12.1978. Thereafter, when her mother produced the horoscope of the respondent, her date of birth was indicated as 18.12.1975. When the appellant questioned the above difference in the date of birth, the respondent, without realising her mistake and the legitimate expectation of the appellant to know her date of birth, simply replied that "do you want a young girl for sex". This kind of attitude on the part of the respondent, according to the appellant, had caused him acute pain and agony.

(vi) It is further stated by the appellant that the respondent was in the habit of checking his mobile phone and started calling all the telephone numbers to which he had spoken. Notwithstanding the same, the respondent, by using a different sim card, sent messages to the appellant asking him to come for chatting to testify his genuineness. Such doubts raised by the respondent has caused acute mental agony and hardship to the appellant. Furthermore, the respondent refused to feed the baby, which caused severe health complications to the minor child. On one occasion, for no reason, the respondent attempted to attack the appellant with a knife on his return from the office. As the respondent had to attend to the baby, she left the knife on the table and immediately, the mother of the appellant had hidden the knife for which the respondent shouted by saying that everybody should have such fear. Further, the respondent prevented his parents to have a glimpse of the infant child though they lived in the same building. Even when the appellant goes to bed room to see the child and to spend some happy moment, the respondent used to take the child out of the room with a view to harass and humiliate the appellant. Even when the child completed one year, the appellant decided to celebrate the first anniversary of the child, but it was prevented by the respondent for the reasons best known to her. On one occasion, the respondent quarrelled and shouted at the appellant's mother and his mother prostrated before the respondent by pleading that she should lead a normal life with the appellant.

(vii) It is the case of the appellant that even though he had provided all the amenities required for the comfortable stay of the respondent, he was criticised by the respondent for one reason or the other. The respondent used to listen to radio till 2 'O' clock in the midnight much to the discomfort of the appellant and the minor child. When the child was admitted in the school, she prevented the appellant's father from dropping the child in the school and even prevented his father from speaking to the child. She also tutored the minor child to say that "father is bad and grand parents are also bad" which the child used to utter often without understanding it's meaning. On one occasion, the appellant took his daughter to the upstairs portion where his parents are staying and on seeing this the respondent took a wooden log and dashed the grill gate to break open the gate and made an unpleasant scene, which created acute mental agony and cruelty to the appellant. This incident was also witnessed by the neighbours whereby the appellant was subjected to shame and degradation. In such circumstance, on the complaint given by his father, the police have come to their house. When the police called them to the Police Station, the respondent complained as if the appellant is in affair with another girl without any basis and thereby caused acute matrimonial cruelty to him.

(viii) On 03.04.2011, the respondent picked up a quarrel with her neighbour and when the appellant advised her not to engage in any such quarrel with the neighbour, she refused to heed to such advise given by the appellant. The abnormal behaviour of the respondent, life style and filthy language used by her created unpleasant situation in the matrimonial home. When the appellant informed about such behaviour of the respondent to her aunt residing at United States of America, they simply replied that she was not brought up by her parents properly and they did not care about her. While so, owing to a trivial quarrel, on 29.06.2011, the respondent, at the instigation of her aunt and her

husband, took all the household articles, jewels and left the matrimonial home along with the child. Subsequently, the respondent informed the appellant about her present address. However, the respondent did not allow the appellant or his parents to see the minor child. The appellant had taken many efforts to bring back the respondent but such efforts did not fructify. The appellant has therefore filed the Original Petition for dissolution of marriage on the ground of cruelty.

3.(i) Repudiating the averments made by the appellant in the original petition, the respondent has filed a counter affidavit contending inter alia that she knew the appellant many months before their marriage on 10.03.2006. The respondent admitted that she fell in love with the appellant. As the appellant insisted for a physical relationship before marriage, with a promise to marry her, she became pregnant. Prior to the marriage, the respondent did not suppress anything to the appellant especially when the appellant came and stayed with the respondent in her house at Anna Nagar. Even regarding her age, she did not lie as alleged. As she fell in love with the appellant and she became pregnant before marriage, she apprehended that if her real age is made known, the appellant may leave her in the lurch after her pregnancy. After marriage, on 24.05.2007, a female child was born due to the wedlock between the appellant and the respondent. In any event, after the marriage and birth of the child, raising the issue relating to the age of the respondent is insignificant and it did not call for any consideration by the Court. The fact remains that the appellant and his family members were disclosed about the real age of the respondent even at the first family meeting. At that time, the family of the appellant asked the respondent to produce her birth certificate under the guise that it is required for availing certain benefits in the company where the appellant is employed. As the respondent was frightened about the small mistake she had made, she produced the birth certificate with a small change in the birth year for which she regrets very much. After marriage, the respondent also apologized to the appellant and his family members countless times about this aspect. The appellant knew that the respondent is older than him before the marriage, however, he is raising this issue in this Original Petition to wreck vengeance. The fact remains that the respondent showered love and affection towards the appellant. In fact, on seeing a Television commercial, the appellant wanted the respondent to buy him a RADO watch which she purchased for the appellant at a cost of Rs.23,000/-. The respondent lovingly bought that watch for the appellant which stand testimony to the love and affection she had towards the appellant. This is being pointed out to show the abundant love and affection the respondent had towards the appellant.

(ii) As regards the marriage, the expenses thereof were shared equally by the appellant and the aunt of the respondent residing at United States of America. Even though the appellant was gifted with costly gifts, jewellery and cash, the appellant expected much more. The appellant was also gifted with a gold chain, gold ring, suits and costly perfumes. After the marriage, the appellant and his family were invited to attend the 60th wedding anniversary of her parents at Aranthangi, however, it was distorted by the appellant as if he was invited to attend a marriage reception for him and the respondent. The fact remains that after the marriage, a grand reception was hosted by the family of the respondent at Nathella Sampath Kalyana Mandapam, Chennai on 12.03.2006 and this was suppressed by the appellant in the Original Petition.

(iii) According to the respondent, before the marriage, she stayed in Anna Nagar and the expenses thereof were met by her family. After marriage, it is the responsibility of the appellant to pay the rent. However, the appellant, after paying rent for a month, decided to shift the matrimonial home to Periyar Nagar along with his parents. According to the respondent, as long as the appellant and the respondent stayed at Anna Nagar, they enjoyed their matrimonial life happily. However, after they shifted the matrimonial home to Periyar Nagar, along with the parents of the appellant, the respondent was subjected to harassment. During their stay at Periyar Nagar, the appellant started to behave indifferently towards the respondent. The respondent was criticised by the parents of the appellant even for trivial reasons and the respondent adjusted to those criticisms levelled against

her. Even for her delivery of the child, initially she went to Aranthangi where the hospital facilities were not convenient and therefore, she went to Karaikudi and stayed in her uncle's residence. However, these facts were distorted by the appellant in the Original Petition as if the respondent picked up quarrel with her parents and therefore, she was sent to Karaikudi for delivery. After the birth of the female child, the appellant made multiple references about the money which he had to spend for the child which made the respondent worried. However, the respondent discharged her duties as a dutiful Hindu wife and had taken care of the appellant and his family well. The respondent never quarrelled with the appellant or his parents, as alleged.

(iv) According to the respondent, she was kept under dark as to the whereabouts and dealings of the appellant such as his salary, bank accounts and his employment. Even though the appellant and the respondent were residing in a portion of the house of the appellant's parents, the appellant shifted the residence to an apartment for rent. The appellant mostly spent time with his parents in his house and eventually visited the house where the respondent and the minor child are housed. The appellant would come home where the respondent and the child are residing, secretly only for physical intimacy. The respondent led a lonely life with her child in the apartment and she was also instructed by the appellant not to talk with her neighbours. In any event, from the early days of the marriage, the parents of the appellant, for the reasons best known, attempted to snap the matrimonial relationship between the appellant and the respondent and tried to contract a second marriage for the appellant for which they have consulted a lawyer to file a petition for divorce. Such attempts were made purportedly on the ground that the respondent is elder than the appellant in age. On the other hand, the respondent earnestly made attempts to continue the matrimonial relationship with the appellant. The respondent also denied the allegation that she uttered to the appellant as to whether he wants a young girl for sex when the appellant questioned her age.

(v) The respondent would contend in her counter statement that the rift in the matrimonial relationship, if at all, had caused when the respondent unearthed the extra marital relationship the appellant had with another lady. The appellant used to converse with another woman for long in his mobile phone in the middle of the night. Whenever this was questioned, there was a quarrel for which the appellant alone has to be blamed.

(vii) The respondent would further state that she never prevented the appellant or his parents to play with the child. The respondent never listened to music in radio till 2.00 am, as alleged. The fact remains that it is the appellant who used to view pornographic films till 3.00 am which she disliked. On 03.04.2011, the appellant beat the respondent violently and pushed her out of the house in the late night and locked the gate. The respondent who was driven to the road hit the gate with a log hoping that he would open the gate. While so, the father of the appellant called the police and after their intervention, the respondent and the child were allowed inside the house.

(viii) During the course of their matrimonial relationship, the appellant insisted that the respondent should get money from her aunt at United States of America to purchase an apartment. The aunt of the respondent also agreed for the same and entered into a contract with Alliance Properties to buy an apartment in Chennai for Rs.64 lakhs. Above all, the respondent was also given a property at Aranthangi hoping that it would satisfy the appellant and his family members so that the respondent could sell the property and use the proceeds to purchase the apartment which costs over and above Rs.64 laks. However, as the respondent could not sell the property at Aranthangi, the appellant and his family members harassed and treated the respondent very badly. The appellant is a spend-thrift and he expected the respondent to buy costly items such as sun glasses, clothes, cell phones, electronic items etc., and for this purpose insisted that the respondent should get amount from her aunt at United States of America. The appellant did not purchase clothes or other essential items for the respondent and the baby and the expenses for which were met by the respondent herself. The respondent did everything possible to adjust the matrimonial relationship with the appellant, but he never appreciated her efforts. The parents of the appellant made several attempts to force the respondent to leave the house on her own so that they can contract a second marriage for the appellant. The respondent was thus subjected to ill-treatment and harassment by the appellant and

his parents. The respondent was driven out of the matrimonial home on 29.06.2011 by the appellant and his parents. The appellant did not care to see the respondent and the minor daughter after they were driven out of the matrimonial home. The respondent is ready and willing to live with the appellant in the matrimonial home unconditionally. The respondent therefore prayed for dismissal of the Original Petition.

4. Before the Family Court, the appellant examined himself as PW1 and Exs. P1 to P6 were marked. On behalf of the respondent, the respondent examined herself as RW1 and Ex.R1 to R5 were marked. The Family Court, upon considering the oral and documentary evidence, held that the incidents narrated by the appellant in the Original Petition are not such that it warrants dissolution of the marriage solemnised between the appellant and the respondent on the ground of cruelty. The Family Court also rendered a specific finding that the respondent is always ready and willing to live with the appellant. In such circumstances, the Family Court dismissed the Original Petition filed by the appellant, which has given rise to the filing of the instant appeal at the behest of the appellant.

5. The learned counsel for the appellant would contend that the respondent has suppressed her actual age before the marriage and thereby deceived the appellant. After the marriage, the appellant and his family members were called upon to attend a marriage reception purportedly to be held for the appellant and the respondent, but upon reaching Aranthangi, they came to know that the 60th wedding anniversary of the parents of the respondent had been arranged and thereby the appellant and his family members were put to acute inconvenience. and hardship Before marriage, the respondent had represented to the appellant that she is staying in a rented premises at Anna Nagar for which she had paid the rent for the entire contract period, on the contrary, after marriage, the house owner demanded payment of rent and therefore, he paid the rental arrears on behalf of the respondent. According to the counsel for the appellant, there are many such instances where the respondent, by misrepresentation and suppression of material facts, caused mental agony and hardship to the appellant. As regards the age, the respondent was not consistent in the pleadings. In the reply statement, she has stated that the appellant knew that she is older in age, on the contrary, she regretted for having given the birth certificate with alteration in the year of birth. Further, the respondent never cooked food and thereby made the appellant to starve. The respondent suspected the appellant as if he is having extra marital relationship with another woman and therefore, she periodically checked the mobile phone conversation of the appellant. In this context, the respondent, by changing the sim card, had given missed calls to the appellant and disturbed him from discharging his official work. Above all, the respondent prevented the appellant and his parents to have a glimpse of the child and thereby caused acute mental agony and hardship to the appellant and his parents. By reason of such attitude on the part of the respondent, the appellant was subjected to immense matrimonial cruelty and consequently, the matrimonial relationship between the appellant and the respondent had broken irretrievably beyond repair. Further, from the year 2011, the appellant and the respondent are residing separately and this separation had virtually rendered the matrimonial relationship an otiose.

6. In support of his contention, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in the case of (Samar Ghosh vs. Jaya Ghosh) reported in 2007 (4) SCC 511 to contend that 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 that may lead to mental cruelty. A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the other spouse can also be regarded as mental cruelty. Above all, where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair and the marriage becomes a fiction though supported by a legal tie. In such circumstances, 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.

7. For the very same proportion as to what constitute cruelty, the learned counsel for the appellant relied on the decision rendered by the Honourable Supreme Court in *Raj Talreja vs. Kavita Talreja* reported in (2017) (5) SCJ 418 wherein it was held that cruelty cannot be defined with exactitude and it depends upon the facts and circumstance of each case.

8. The learned counsel for the appellant also relied on the decision rendered in (*Anu Bhandari vs. Pradip Bhandari*) reported in 2018 (3) SCALE 699 and another decision of the Honourable Supreme Court in (*Narendra vs. K. Meena*) reported in (2016) 9 Supreme Court Cases 455 to contend that when the appellant and the respondent are residing separately since 2011, no useful purpose could be achieved to keep the matrimonial tie alive. By relying on the above decisions, the learned counsel for the appellant prayed for setting aside the order of the Family Court and to allow the appeal as prayed for.

9. On the contrary, the learned counsel for the respondent would contend that a bare perusal of the averments made by the appellant in the Original Petition would indicate that the differences or dispute that arose between the appellant and the respondent, during the course of their matrimonial relationship, are not such that it could reasonably be inferred that the respondent subjected the appellant to matrimonial cruelty and on the basis of such vague and bald averments, dissolution of the marriage solemnised between them is not warranted. The instances cited by the appellant in the Original Petition are trivial in nature and it can be mutually sorted out. This is more so that due to the wedlock between the appellant and the respondent, a female child was born and she is now 11 years old. According to the counsel for the respondent, the appellant mainly projected that the respondent had falsely stated about her age which has made his life miserable. Even assuming that the respondent belied about her age, the marriage, in the instant case was not an arranged marriage, rather, the appellant and the respondent have loved each other prior to the marriage. The appellant and the respondent met each other in August 2005. Even prior to the marriage, they had physical relationship which resulted in the respondent becoming pregnant. Therefore, while filing the Original Petition after five years of marriage, the appellant is not justified in citing the so-called misrepresentation made by the respondent, with reference to her age and it is wholly unjustifiable. Even otherwise, the respondent, in her counter affidavit filed before the Family Court had repented for the misstatement made by her with respect to her age. While so, the factum of age of the respondent or she is elder than the appellant has no significance to be attached after their marriage and birth of their child. By harping upon the age of the respondent, the appellant is not justified in seeking for dissolution of the marriage on the ground of cruelty. In any event, misrepresentation with respect to age by the respondent, cannot be brought within the scope and purview of the definition 'cruelty'.

10. The learned counsel for the respondent would further contend that the appellant, alleging cruelty, had cited an incident where the respondent attempted to break open the gate with a big wooden log. In the counter statement, the respondent has clearly stated that she was beaten violently by the appellant and driven out of the house late in the night, after taking away the baby from her and locking the gate. In order to draw the attention of the appellant to open the gate, the respondent had hit the gate with a wooden log and therefore, it is the appellant, who had committed acts of cruelty in driving the respondent out of the house late in the night.

11. The learned counsel for the respondent also would contend that yet another allegation of the appellant is that the respondent insisted for a separate establishment and thereby the appellant was treated cruelly. According to the counsel for the respondent, the appellant only suggested for a separate house owing to the fact that the sister of the appellant is suffering from Obsessive Compulsive Disorder. On the other hand, the appellant and the respondent jointly searched for a

suitable apartment for which the aunt of the respondent contributed considerably. Both the appellant and the respondent have finalised two flats with the promoters. In fact, before finalising the apartment, the appellant also obtained the consent of his father. While so, the question of the respondent demanding separate establishment from the appellant and to live with her by leaving the parents of the appellant does not arise.

12. The other instance cited by the appellant is that on one occasion, the respondent threatened to eliminate the appellant with a knife. However, before the Family Court, when a suggestion was put to the appellant during his cross-examination as to whether the respondent threatened him with a knife, he deposed that she uttered that she want to see pool of blood. Therefore, the allegation that the appellant had wielded a knife and threatened the respondent is nothing but a falsehood.

13. According to the counsel for the respondent, the appellant and the respondent met each other in August 2005. Between August 2005 and 2006, the appellant frequently visited the respondent in her house, had physical relationship with her, with the result, the respondent became pregnant. At the instance of the appellant, the respondent aborted the pregnancy on 25.02.2006, which could be evident from the medical record issued by Ayesha Hospital, marked as Ex.R1. Immediately thereof, on 10.03.2006, within 15 days of aborting the pregnancy, the marriage between the appellant and the respondent was solemnised. Further, at the instance of the appellant, the respondent underwent another abortion on 05.08.2008, which could be evident from Ex.R2. In any event, the respondent in clear terms had expressed her intention to rejoin the appellant in the matrimonial home. The respondent has no intention to reside separately, leaving the appellant. The Family Court, considering the averments made by the appellant in the Original Petition and the evidence adduced in support thereof, has rightly dismissed the Original Petition and it does not call for any interference by this Court.

14. We have heard the counsel for both sides and perused the materials placed on record. As we have highlighted the factual aspects of the case and counter case of the parties, at length, we refrain ourselves from reiterating the same any further. At the same time, only certain facts which are absolutely required for disposal of this appeal are reiterated hereunder.

15. It is not in dispute that the appellant and the respondent befriended each other through a common friend. Their friendship had blossomed into a love affair and they frequently met and developed their relationship. Such relationship resulted in the respondent becoming pregnant. The appellant also informed his parents about his affair with the respondent, the physical relationship he had with the respondent and the consequential pregnancy of the respondent. The parents of the appellant consented for the marriage of the appellant and the respondent and prior to the marriage, the pregnancy was aborted at the instance of the appellant. Admittedly, due to the wedlock between the appellant and the respondent, a female child was born, and she is now aged 11 years. The female child is in the custody of the respondent.

16. According to the appellant, his parents, without verifying the family details of the respondent, had consented to the marriage generously, because the respondent became pregnant before the marriage. This averment, in our opinion, is unnecessary, especially at the instance of the appellant because, he had closely moved with the respondent atleast a year prior to the marriage, had physical relationship with the respondent and therefore, he must have had full knowledge of the family background of the respondent. Therefore, it cannot be gainsaid that the parents of the appellant, without causing any enquiry as regards the family background of the respondent, have blindly accepted for the marriage of the appellant with the respondent.

17. The appellant, after five years of marriage, has filed the instant Original Petition to dissolve the

marriage solemnised between him and the respondent on the ground of cruelty. Therefore, it is essential to examine as to whether the appellant was subjected to matrimonial cruelty, at the instance of the respondent.

18. In the original petition, it was mainly projected by the appellant that the respondent had suppressed her age. According to the appellant, the respondent is elder than him and he came to know about the age of the respondent only when he went to Aranthangi soon after the marriage, where the younger sister of the respondent revealed her age as 30 and she has a 4 year old son. In Para No.8 of the Original Petition, it was stated that the appellant or his parents did not raise the issue as regards the age of the respondent and they have taken it so lightly. However, in the latter portion of the Original Petition, the appellant harped upon saying that the respondent misrepresented as regards her age and thereby his marital life has become mysterious. We are not inclined to give credence to this averment of the appellant that he was subjected to matrimonial cruelty at the instance of the respondent due to the misstatement or suppression of age by the respondent. As rightly pointed out by the counsel for the respondent, the marriage between the appellant and the respondent was not an arranged marriage and it was a love marriage. It is also an admitted fact that even prior to the marriage, the appellant and the respondent had physical relationship with each other resulting in the respondent becoming pregnant. After such pregnancy, the appellant, with the consent of his parents, had hurriedly arranged the marriage. While so, after leading a marital life with the respondent for five years, during which a female child also born, at the time of filing the Original Petition, the appellant has raised the issue with respect to the age of the respondent, which cannot be countenanced. In our opinion, the issue relating to age of the respondent has been raised by the appellant only for the purpose of filing the present Original Petition and to make it as if he was subjected to matrimonial cruelty by the respondent by reason of suppression of her age. In any event, the fact that the respondent is elder than the appellant, cannot be brought within the fold and ambit of the definition 'cruelty' to dissolve the matrimonial tie between the appellant and the respondent.

19. The appellant cited various instances to contend that he was subjected to matrimonial cruelty. Some of the allegations raised by the appellant in the Original Petition is that the parents of the respondent invited them to Aranthangi under the garb of hosting a marriage reception to the newly wedded appellant and the respondent, however, only upon reaching Aranthangi did the appellant and his parents come to know that the 60th wedding anniversary of the parents of the respondent was arranged. Even in the Original Petition, the appellant himself has stated that neither he nor his parents have taken it very seriously and in fact, they happily participated in the function and presented a pair of gold ring to the parents of the respondent. This would only show that the appellant and his parents would know the nature of the function to be celebrated at Aranthanti. In any event, it is not known as to what is sought to be achieved by the appellant by citing this instance in the Original Petition to contend that he was subjected to matrimonial cruelty by the respondent.

20. In the original petition filed before the Family Court, the appellant had made reference to non-payment of rent by the respondent and her default to redeem the jewels pledged by her. It is needless to point out that after the marriage, it is the duty of the appellant to provide all comforts and amenities to the respondent, while so, the fact that the appellant has paid the rent to the owner of the house, which the respondent failed to pay, cannot, at any stretch of imagination, be termed as cruel treatment at the instance of the respondent.

21. According to the appellant, on one occasion, the respondent took a knife and threatened to kill him. However, in the cross-examination, the appellant admitted that the respondent had only uttered that she wished to see a pool of blood. Therefore, this averment of the appellant is also not established and it was rightly appreciated by the Family Court.

22. Yet another instance quoted by the appellant is that the respondent, with a wooden log, banged

the gate in front of the house in the midnight and thereby brought shame and disrepute to the family. On perusal of the chief examination of the respondent as well as the counter affidavit filed before the Family Court, it could be noted that the respondent, on the so-called occasion, was driven out of the house in the midnight and the child was grabbed from her possession. Thereafter, the appellant locked the main gate and thereby prevented her access to the house. According to the respondent, only in order to invite the attention of the appellant and his parents, she was constrained to pick up a wooden log and banged the gate. The fact remains that the father of the appellant called the Police and on their arrival, the appellant and his family members were advised to take back the respondent to the house and only thereafter, they have permitted the respondent to step into the house. In fact, this incident only portrays that it is the respondent, who was subjected to matrimonial cruelty, at the instance of the appellant.

23. The appellant also cited in the original petition that the respondent behaved rudely and indifferently, frequently quarrelled with him, did not permit him and his parents to have a glimpse of the new born child, the respondent refused to feed the baby and that the respondent prevented his father to maintain the plants in front of the portion in her occupation and also that she heard radio till 2 "O" clock in the night and thereby prevented the appellant from sleeping etc., These averments were denied by the respondent in her counter affidavit by narrating the sequence of events, which led to the appellant's complaints. It was specifically denied by the respondent that she never prevented the parents of the appellant or the appellant to have a glimpse of the child or to play with the child. At any rate, we are of the view that these averments of the appellant are not such that they can be taken into account for dissolving the matrimonial tie between the appellant and the respondent or they can be inferred to conclude that the appellant was subjected to matrimonial cruelty at the instance of the respondent.

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 respondent/wife expressed her decision not to give birth to a child for atleast for 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 that the respondent refuses cohabitation and therefore, he was subjected to matrimonial cruelty.

25. Similarly, in the decision relied on by the counsel for the appellant in (Anu Bhandari vs. Pradip Bhandari) reported in 2018 (3) SCALE 699 the Honourable Supreme Court, taking note of the fact that there are about 23 cases filed and pending between the appellant and the respondent, directed the parties to be present before the Court where the parties have arrived at a consensus to dissolve the marriage by mutual consent. In the present case, even though the respondent was subjected to harassment in various forms and manifestations, even according to the appellant, she has not given any complaint either against him or his family members. Therefore, the ratio laid down in the above said Judgment cannot be made applicable to this case.

26. As regards the Judgment of the Honourable Supreme Court in (Narendra vs. K. Meena) reported

in (2016) 9 Supreme Court Cases 455 relied on by the learned counsel for the appellant, in that case, the Honourable Supreme Court, taking note of the separation of the couple for a period of more than 20 years and the fact that the daughter born to them has grown and she herself is working in a private company, concluded that it is not possible for them, at this stage, to get re-united and affirmed the order passed by the Family Court, Bangalore, while setting aside the order of the High Court. Therefore, the above decision cited by the counsel for the appellant cannot be made applicable to the facts of the present case on hand

27. To summarise, on perusal of the entire averments made by the appellant, his examination in chief and the documentary evidence filed by him, we can only conclude that this is not a case where the matrimonial tie between the appellant and the respondent has to be snapped at the instance of the appellant. We are of the firm view that the averments made in the Original Petition did not qualify the parameters required to prove the term 'cruelty' as defined under Section 13 (1) (i-a) of The Hindu Marriage Act and therefore, the Family Court is right in refusing to grant a decree of divorce at the instance of the appellant.

28. In the result, we confirm the Order and Decreetal Order dated 17.08.2017 passed in O.P. No. 3459 of 2011 on the file of Principal Judge, Family Court, Chennai. Resultantly, the Civil Miscellaneous Appeal is dismissed. No costs.

(R.P.S.J.,) (C.S.N.J.,)

26-09-2018

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Index : Yes

To

The Principal Judge,
Family Court
Chennai
R. SUBBIAH, J
and
C. SARAVANAN, J

rsh

Pre-delivery Judgment in
CMA No. 2988 of 2017

26-09-2018