



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMSA (MD)No.18 of 2017

and

CMP (MD)No.4478 of 2017

Ramesh Kumar

... Appellant/Respondent/Petitioner

Vs.

Kavitha

... Respondent/Appellant/Respondent

Prayer : This Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act, 1955, to set aside the judgment and decree passed by the court of the Additional District and Sessions Court, Virudhunagar in HMCMA No.6 of 2015 on 10.04.2017 in reversing the well considered the judgement and decree passed by the Sub Court, Virudhunagar in HMOP No.3 of 2013 on 30.04.2015.

For Appellant : Mr.G.Marimuthu

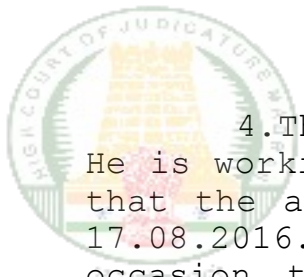
For Respondent : Mr.P.Mahendran

ORDER

The appellant Ramesh Kumar got married to the respondent Kavitha on 18.02.2010 at Virudhunagar as per Hindu rites and customs. A male child was born on 07.06.2011. Alleging commission of cruelty by the respondent, the appellant filed HMOP No.3 of 2013 before the Sub Court, Virudhunagar. The appellant examined himself as P.W 1 and marked Exs.P1 to P9. The respondent examined herself as R.W 1 and marked Ex.R1. The learned trial Judge by order dated 30.04.2015 allowed the HMOP and dissolved the marriage. Aggrieved by the same, the respondent herein filed HMCMA No.6 of 2015 before the Additional District Judge, Virudhunagar. The first appellate court by order dated 10.04.2017 allowed the appeal filed by the respondent herein and reversed the decision of the trial court. Challenging the same, this civil miscellaneous second appeal has been filed at the instance of the husband.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the appellant contended that the first appellate court was not justified in reversing the well considered decision of the trial court. He faulted the approach of the first appellate court for faulting the husband for not filing the cross objection against mere findings. He drew the attention of this court to the criminal case filed by the respondent in HCSE No.1 of 2018. He also contended that Exs.P2, P8 and P9 could not have been overlooked on the ground that they came into existence after the institution of the HMOP.

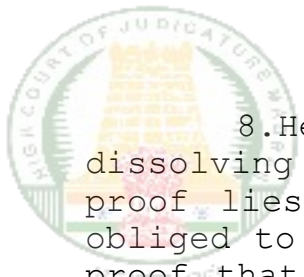


4.The appellant is now presently in Government employment. He is working as a Revenue Inspector. It has also come to be known that the appellant has contracted marriage with one Krishnaveni on 17.08.2016. That is why, this Court endeavoured on more than one occasion to secure some lump sum settlement for the respondent herein and for the child. But, the appellant is adamant and stated that he will not pay beyond Rs.3.00 lakhs.

5.This Court is of the view that this offer is woefully low. As rightly contended by the learned counsel appearing for the respondent, the Madras High Court in the decision reported in (2013) 4 MLJ 494 (Shantakumari @ Santhi vs. R.Venkatasubramani) held that the second marriage of the husband during the pendency of these proceedings cannot be taken advantage of by the husband and that in view of Section 23 of the Hindu Marriage Act, the appellant cannot be allowed to take advantage of his own wrong. In this case, the appellant had been granted decree of divorce on 30.04.2015. But then, the appeal had been filed on 03.07.2015 and numbered as HMCMA No.6 of 2015. Hence, the marriage of the appellant with the said Krishnaveni on 17.08,.2016 cannot be taken advantage of by the appellant. This observation with regard to the second marriage of the appellant with the said Krishnaveni is made only for the purpose of this appeal and the same cannot be operate to the prejudice of the appellant in the criminal case for bigamy said to have been registered against the appellant.

6.This Court carefully went through the evidence on record and also the Judgments passed by the courts below. The HMOP was filed on 17.01.2013. The learned Trial Judge has not taken a serious note of the various allegations made by the appellant in his HMOP. What swayed the mind of the trial judge was that the respondent herein/wife gave complaints which were marked as Ex.P2 and P8. Admittedly both Exs.P2 and P8 came into existence after the institution of the HMOP. When the husband had gone to the court for divorce, the wife is bound to react. Therefore, the wife had chosen to lodge a counter complaint through Exs.P2 and P8. The trial Judge had also taken note of the fact that the respondent/wife has not expressed any willingness to re-join in her counter. HMOP was allowed and divorce was granted taking note of these two aspects, namely, lodging of complaint by the wife vide Exs.P2 and P8 and not expressing her willingness to rejoin in her counter. The learned trial Judge had also come to the conclusion that since the marital relationship between the parties had irretrievably broken down, there would be no purpose in keeping the marriage alive.

7.The approach of the trial court was rightly interfered with by the first appellate court. The first appellate court rightly noted that the trial judge after considering all the allegations set out in the original petition observed that they do not constitute any sufficient cause for dissolving the marriage. The adverse finding rendered by the trial Judge was not taken exception to by the appellant before the first appellate court.



8. Here is a case where the husband has gone to the court for dissolving his marriage with the wife. Therefore, the burden of proof lies only on the husband. All that the trial court was obliged to see was whether the husband had discharged the burden of proof that lies on him. The silence of the wife with regard to reunion cannot be taken advantage of by the husband. This cannot be put against the wife. Even if the wife had expressed her readiness and willingness to rejoin the husband, if the husband had proved his allegation of cruelty within the meaning of section 13(1) (i-a) of the Hindu Marriage Act, 1955 Act, the stand of the wife becomes totally irrelevant.

9. The first appellate court was therefore right in faulting the trial court for allowing the HMOP filed by the husband merely on the ground that there was failure on the part of the wife to express her willingness for reunion. Of course, any court of law is not only having the power but also the duty to take note of the subsequent developments. But, in this case, the complaints given by the wife before the police and before the District Collector, Ramanathapuram cannot be put against her. The wife did not lodge any complaint prior to the institution of the divorce petition. Complaints were lodged as a counter blast and after the HMOP was filed.

10. This Court can visualise the pain of the wife who is having a young child to support. The husband was only in a private employment when they got married. A male child was born. Thereafter, the husband joined Government service and that too in the Revenue Department. The husband now sought to divorce the wife. In these circumstances, the wife would definitely be disturbed and therefore, she chose to lodge police complaints as well as a complaint before the departmental superior. These are legitimate reactions of any abandoned wife. That cannot be put against her. The trial court went miserably wrong in placing reliance on Exs.P2 and P8 for granting divorce in favour of the husband. This Civil Miscellaneous Second Appeal has been filed only by the husband who is aggrieved by the reversal of the decision of the trial court by the first appellate court.

11. No substantial questions of law arise for determination in this appeal. It stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

sd/
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Additional District and Sessions Judge, Virudhunagar.



2.The Sub Judge, Virudhunagar.

Copy to :

The Record Keeper, V.R.Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

**CMSA (MD) No.18 of 2017
and
CMP (MD) No.4478 of 2017
01.11.2018**

skm

MK (04.06.2019) 4P 5C