

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

C.M.S.A.No.34 of 2010

S.Rajendran .. Appellant / Respondent / Petitioner

Vs

K.Geetha ... Respondent / Appellant / Respondent

Prayer : Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 16.12.2008 made in C.M.A.No.1 of 2008 on the file of the Principal District Court, Coimbatore, reversing the judgment and decree dated 31.10.2007 made in H.M.O.P.No.103 of 2005 on the file of the Sub-Court, Udumalpet.

For Appellant : Mr.N.Manokaran

For Respondent : No Appearance

JUDGMENT

This Appeal is directed against the judgment and decree dated 16.12.2008, passed in C.M.A.No.1 of 2008, by the learned Principal District Court, Coimbatore, reversing the judgment and decree dated 31.10.2007, passed in H.M.O.P.No.103 of 2005, by the learned Sub Court, Udumalpet.

2. Learned counsel for the appellant/husband submitted that the learned first appellate Court, while reversing the judgment and decree granted in favour of the husband praying to grant divorce, ought to have seen that they were in matrimonial life only for a period of 4 months and thereafter, they were separated and they have been living separately for about 15 years. It is further submitted that for all these years, neither the respondent/wife moved any application for restitution of conjugal rights nor given any consent expressing her readiness and willingness for matrimonial life with the appellant/husband, therefore, by taking note of all these facts, the learned trial Court has rightly come to the conclusion that the marriage solemnized between the appellant and respondent on 01.09.2003 reached the deadlock and accordingly, it has granted divorce as sought for by the appellant/husband. However, the

learned first appellate Court, without even giving any reasonable finding on this issue, has reversed the judgment and decree of the trial Court. It is further contended that as the parties have been separated for about 15 long years, there will not be any remote chance of reunion and thus, on this basis, the judgment and decree passed by the learned first appellate Court reversing the judgment and decree passed by the learned trial Court is liable to be set aside.

3. Although Legal Aid counsel was appointed by this Court on 19.12.2018 on behalf of the respondent/wife, he has not appeared before this Court on 27.06.2019 and 28.06.2019, therefore, this Court is constrained to dispose of the case on the basis of the available materials before it as this appeal is of the year 2010.

4. Admittedly, the marriage between the appellant/husband and the respondent/wife was solemnized on 01.09.2003 and it is also an admitted fact that they lived together only for a period of four months as their marital life came to an end on 18.01.2004 itself. Thereafter, for about 15 long years, they have been living separately. In view of the difference of opinion and domestic quarrel, the appellant/husband filed H.M.O.P.No.103 of 2005 on the file of the learned Sub-Court, Udumalpet. Pending HMOP, the respondent/wife filed a complaint before the Police Station demanding her belongings and jewels from the appellant/husband. In the presence of police officials, the appellant/husband also surrendered the entire belongings of her and to that effect, she was also given receipt. The said receipt was marked as Ex.P.3 before the trial Court. The above said facts were also admitted in the counter affidavit filed before the trial Court. Examining all these facts, the learned trial Court, by taking note of the fact that the respondent/wife had not even filed a petition for restitution of conjugal rights, had rightly granted the divorce. Besides, the trial Court had also observed that there is nothing on evidence to show that the respondent/wife had expressed her willingness to resume her matrimonial life. However, the learned first appellate Court without even taking note of the well-reasoned findings of the learned trial Court mechanically reversed the judgment and decree passed by the learned trial Court.

5. The Hon'ble Apex Court in Parveen Mehta Vs. Inderjit Mehta [(2002) 5 SCC 706] held that, for the purpose of Section 13(1)(i-a) of the Hindu Marriage Act, cruelty is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the later that it is not safe for him or her to continue the matrimonial relationship with the other and mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural

pattern by the other. Paragraph Nos.21 and 22 thereof are extracted below:-

21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

22. Judged in the light of the principles discussed above what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; the respondent had been trying to persuade the appellant and her parents to agree to go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed

away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behavior of the appellant. Further, the conduct of the appellant in approaching the police complaining against her husband and his parents and in not accepting the advice of the superior judicial officer Mr.S.K.Jain and taking a false plea in the case that she had conceived but unfortunately there was miscarriage are bound to cause a sense of mental depression in the respondent. The cumulative effect of all these on the mind of the respondent, in our considered view, amounts to mental cruelty caused due to the stubborn attitude and inexplicably unreasonable conduct of the appellant

6. In yet another judgment, the Hon'ble Apex Court in Samar Ghosh Vs. Jaya Ghosh [(2007) 4 SCC 511], while dealing an issue whether the mental cruelty is a ground for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, held that refusal of wife to have intercourse for considerable period without there-being any physical capacity or valid reason would amount to mental cruelty. Besides, it is further held that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair and by holding so, the Hon'ble Apex Court granted divorce. For better appreciation, relevant portion of paragraph No.101 is extracted below:-

101.....(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.

7. In the light of the above, in the present case, it is to be noted that both the parties have been living separately for the past 15 years, therefore, it would be difficult for them to bury the past and to begin a new relationship as Husband and Wife. During these years, they developed their own life style, remained in isolation and grown in their own thoughts. Marriage tie between the parties has become emotionally dead and the same is beyond repair because of the emotionally dead relationship. Thus, in my considered view, there is no chance for both parties to live together again as they have been living separately for more than 15 long years. In such a context, I am of the considered view that the decree of Divorce is the only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion.

8. Accordingly, in such view of the matter, the judgment and decree passed by the learned first appellate Court reversing the judgment and decree passed by the learned trial Court granting divorce in favour of the appellant/husband is set aside. Consequently, for the reasons stated above, the Civil Miscellaneous Second Appeal is allowed. No Costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Judge, Coimbatore.

2. The Sub-Court, Udumalpet.

+1 cc to Mr.N.Manokaran, Advocate, S.R.No.54220

C.M.S.A.No.34 of 2010

VG-1 (CO)

SSM(07/11/2019)