IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.166 of 2015

Lakshmi Kandhaswami ..Appellant/Petitioner

Vs

B.V.Kandhaswami ..Respondent/Petitioner

PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the Decree and Judgment dated 11.11.2014 passed in O.P.No.2416 of 2010 on the file of the III Additional Family Court at Chennai.

For Appellant : Mr.P.B.Balaji

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

"கடன் பட்டார் நெஞ்சம் போல் கலங்கினான் இலங்கை வேந்தன்" wrote Tamil poet Kambar who composed Ramayanam in Tamil. Kamban described the grief of Ravanan who was loosing the battle as that of mental suffering of borrowers. Borrowing, is part of lives of most of the people. If necessary, borrowing has to be made for business, treatment, celebration of marriages and other family expenses. However, the loans have to be repaid promptly failing which the creditors would initiate proceedings lawfully before Courts apart from adopting illegal methods by some of the creditors.

2.Borrowing though normal act in life, it should be resorted to as last option, as borrowing would be associated with dangers of recovery proceedings, harassment and threatening employing thugs by the creditors.

3.Borrowing should be made according to the repaying capacity of the borrower. Indiscriminate borrowings would make one to be caught in a various circle of loans which he can not repay forcing him to end his life. If the borrowing exceeds ones capacity or borrowings are made from usurious lenders, it would certainly cause pain, sorrow, suffering and mental agony at the instance of creditors. Many families continue to commit suicide due to non-payment of loans and because of harrassment given by usurious creditors. Many heinous crimes including abduction, murders, sexual offences etc., are committed by creditors for non-payment of loans. Many families are shattered by loans. Not only borrowers, their family members are often abused, shamed, threatened, humiliated, intimidated and manhandled by creditors or their agents. Therefore, people should avoid availing loans at higher rates of interest or “KANDHUVATTI”.

4.It is not only beating of wife is cruelty so also exposing the wife and child to threat of third party creditors. In this case, wife has come before this Court as she is aggrieved over acts of uncontrolled borrowing by husband resulting in lack of security apart from exposed to threatening, shaming by creditors causing mental cruelty to her.

5.The appellant and the respondent got married on 01.09.1996 and a girl baby was born on 18.08.2000. Firstly, it is the case of the appellant that the respondent used to return home during odd hours in intoxicated condition and he used to nag the appellant which could not be tolerated by the appellant. Secondly, after marriage, he changed his name viz., from Mr.B.V.Kannan to Mr.B.V.Kandhaswami on 28.06.1999 for the reasons best known to him. Thirdly, the respondent sold forty sovereigns of gold jewels given to the appellant at the time of marriage and spent the said profits. Fourthly, she would submit that though the respondent was employed in Chennai for a few months, after marriage, he stopped going to office.

6.Further, the respondent started borrowing money from various parties and relatives and availed loans from various financial institutions and from banks. He obtained credit cards from HSBC, ICICI Bank, ABN Amro Bank, SBI and failed to repay the amount. Consequently, several creditors came to the appellant's place in respondent's absence and threatened bringing rowdy elements and created ugly scenes in front of their house to recover the loans. These things used to happen during nights. Therefore, the appellant was compelled to stay in her parent's house from January 2000 onwards.

7.The conduct of the respondent caused mental agony to the appellant and she was unable to withstand the harassment made by the creditors by employing rowdy elements. The respondent was out of reach and he could not be traced. The parents of the appellant were compelled to sell their properties and settle the loans availed by the respondent to various creditors so that harassment could be stopped.

8.Even though the respondent left the residence, he started borrowing money showing the address of the appellant's parents at No.4/2, Mahadevan Street, West Mambalam, Chennai as if he was living with the appellant whereas the respondent was living in some other address along with his mother from

07.06.2007 onwards and the appellant was unable to know the whereabouts of the respondent. Even his mother disowned him on the ground of intolerable behaviour and that the respondent is indulging in fraudulent activities. Therefore, giving the above details, the appellant was compelled to file the divorce petition.

9.The respondent entered appearance and filed counter denying all the allegations. However, he admitted that he sustained heavy loss in his business and it is only he who asked the appellant to leave the house. He also stated that he is doing catering contract business and he is likely to settle all the debts availed from various creditors.

10.The appellant was examined as PW1 and she categorically stated about the incidents of harassment and the behaviour of the respondent. He appeared before the Family Court only on 19.04.2014 and subjected himself for cross examination for sometime and for continuation of cross examination, he never appeared before the Court , thereafter. Inspite of that, the trial Court dismissed the divorce petition on the ground that borrowing loans by the respondent/husband for starting business would not amount to cruelty. The said dismissal of the divorce petition is being challenged before this Court by the wife.

11.Mr.P.B.Balaji, learned Counsel for the appellant would submit that the respondent has been served and he has not agreed to appear before this Court. Though his name appears in the cause list, neither the Respondent appeared in person nor he entered appearance through his Counsel. Therefore, this Court proceeds to decide the matter based on merits as per the available records.

12.It is the specific case of the appellant that the respondent subjected the appellant to various harassments and mental cruelty by his conduct viz.,

(i)Returning home during odd hours in an intoxicated condition.

(ii)Changed his name from Mr.B.V.Kannan to Mr.B.V.Kandhaswami without giving any reason.

(iii)He stopped going to office

(iv)He started business obtaining loans from many creditors and and through credit cards from the banks viz., HSBC, ICICI Bank, ABN Amro Bank, SBI and failed to repay the amount.

(v)The respondents obtained loans from third parties giving the address of Appellant's parents.

(vi) Creditors threatened Appellant and her children.

(vii)Creditors created unruly scenes in front of her house during night.

13.It is admitted by the respondent while adducing evidence that he borrowed money. Even in the counter affidavit, he stated that he borrowed money from various creditors and he could not settle the amount because of the loss sustained in business and now, it is likely to be settled. Borrowing money is not new for starting a business and it is required to be repaid. However in this case, inspite of sustaining loss, the respondent kept on doing different business and continue to sustain loss. It seems the borrowings mounted due to non payment of loans. One should be prudent to stop the business once he sustains loss in an attempt to reduce the loss. If loans are not settled, creditors would adopt all methods to recover the loan. However, if rowdy elements employed by the creditors, come to appellant's the house often asking for repayment of the money borrowed by the respondent, then it would definitely amount to cruelty. Any borrowing has to be settled properly. If there is an outstanding loan and the respondent is unable to settle the amount, then he should be with his family to answer the creditors whenever a creditor enquires or seeks repayment. However, as a lady, it should have been extremely difficult for the appellant to withstand the problems created by the borrowers who would visit her house at nights with rowdy elements, as the respondent was always unavailable.

14.If the respondent is responsible for such harassments, definitely, it would amount to mental cruelty and loss of image in third parties esteem, especially in the minds of neighbours and relatives. Moreover, creating a scene in odd hours in the night would have definitely brought untold mental agony and misery and made it difficult for the appellant to lead a normal life. Ultimately, if the respondent keeps borrowing money from various parties and fails to settle the money, leaving the appellant at the mercy of various creditors, certainly it is nothing but cruelty especially mental cruelty. With a fond hope, the appellant would have got married to the respondent that he would provide a normal life and safeguard her throughout the life. However, it seems, respondent not only failed to lead decent life but also provide safe life to the appellant and her child.

15.It is the admitted case of the respondent that he had borrowed and he is likely settle the said amounts. If really, he intended to settle loans, he would have appeared before this Court and would have stated that the entire amounts would be settled and there would be no problem for leading a normal life.

However, the respondent failed to give such assurance. Therefore, the reason given by the trial Court that borrowing money for business would not amount to cruelty has to be set aside.

16.Moreover the respondent is residing separately from 07.06.2007 onwards and it is admitted by respondent himself in Paragraph Nos.10 and 11 of the counter affidavit that he only asked the appellant to leave the house. The said statement would also prove that the respondent was not residing along with the appellant in the parent's house of the appellant which would also amount to desertion.

17.A married person has got a moral and legal duty to maintain his child and wife, whereas the respondent failed and neglected to lead a normal life by maintaining the appellant/wife and child. In view of the above reasons, the appellant proved that the respondent caused mental cruelty to the appellant apart from committing desertion.

18.In the result, the appeal is allowed by setting aside the Judgment and decree passed by the Family Court and the marriage solemnized between the appellant and the respondent on 01.09.1996 is hereby dissolved on the ground of "cruelty" and "desertion". No costs.

Sd/-
Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The III Additional Principal Judge,
III Additional Family Court,
Chennai.

+1cc to Mr.P.B.Ramanujam, Advocate SR.NO.63676

AKM/17.02.21/ 5P-3C/

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