

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.11.2013  
Delivered on : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.S.A.No.40 of 2013

S.Varadharajan ....Appellant/Petitioner

Vs

S.Latha ...Respondent/Respondent

Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act r/w Section 100 of C.P.C., aggrieved by the judgment made in CMA.No.45 of 2012 on the file of Principal District Judge at Tiruppur dated 03.07.2013 dismissing the appeal and confirm the order of the Principal Subordinate Judge, at Udumalpet made in HMOP.No.23 of 2008 dated 18.10.2010.

For Appellant : Mr.J.Selvarajan  
for Mr.Vimal B.Crimson

For Respondent : Mr.V.Nicholas

JUDGMENT

The Appellant and Respondent got married on 01.07.1999 at Palani and thereafter on 11.07.1999 a reception was arranged at Udumalpet.

2. The Appellant and Respondent after the marriage both were stayed at Udumalpet for quite some time and thereafter migrated to Chennai since the Appellant is working in "Hyundai Motor Company" at Sriperumbudur Kanchipuram district and used to go to the office from Chennai to Sriperumbudur. There are no children out of the said wedlock.

3. The case of the Appellant is that while staying at Chennai after marriage both were not lived happily due to difference of opinion between them and the Respondent herein ill-treated the Appellant and further fails to care him being as a dutiful wife, and it is her responsibility to take care of the husband, whereas the Respondent in failed to do so and thus the

Respondent caused mental cruelty to the Appellant.

4. The Appellant is working in Sriperumbudur which is far away from Chennai and he has to travel daily for more than 50 Kms therefore he has to start by 6 am and reaches Sriperumbudur by 9 am so that Appellant has to start from home early by 5 am and returns home late 9 pm as a dutiful wife she is bound to provide food and other things to the Appellant, but she failed to care and provide regular morning coffee while Appellant started to the work. And also whenever the Appellant returns from the work she reluctant to open the door and purposely stayed inside and not even bother to prepare food and several occasions the Appellant goes to bed even without food, however the above stated allegation not denied by the respondent in the counter.

5. The Appellant treated the Respondent/wife with love, care and affection, not with cruelty, on the evidence of the Appellant and the Respondent it is clearly establish that he treated the Respondent/wife with love and affection and not cruelty as alleged by the Respondent in her evidence. Admittedly the Appellant out of love and affection and in the interest of the Respondent's future welfare, on 09.01.2004 had taken ICICI Prudential Life Insurance Corporation life time pension policy (Ex.A2) and nominated his wife as nominee and on 20.01.2004 Ex.A3 had taken life time pension policy under the same name and nominated the Respondent as nominee and again on 09.01.2004 Ex.A4 had taken at the same company and nominated his wife as nominee and Ex.A3 post office Provident Fund Account and nominated his wife as nominee. Further till now he has not cancelled these nominations of the respondent and also not replaced anybody, even though the Respondent deserted him. Now being a dutiful husband the Appellant has performed well towards the Respondent wife. These facts have not been challenged by the respondent during the cross examination of her and this shows that there is no cruelty caused by the Appellant towards the Respondent.

6. The Appellant in his petition filed before the trial court he averred that the Respondent wife deserted from the year 2003 and this factor was not specifically denied by the Respondent either in the counter nor in the evidence therefore the desertion of the Respondent is clearly established.

7. The Appellant and Respondent have a difference of opinion hence there was no compatibility between Appellant and Respondent soon after the marriage took place within a year both

reached the stage of separation and they were living separately for more than 15 years and non-compatibility and therefore the possibility of re-union does not arise between Appellant and Respondent and thus the marriage has been irretrievably broke down.

8.The Appellant after the marriage both unable to lead the matrimonial way of life and also the scope and concept of the marriage has been not full filled and both side family members tried their best to re-union whereas all the efforts ended in vain and failed and except no other go the Appellant filed petition seeking to dissolve the holy marriage before the trial court and the grounds sought for divorce was not appreciated by the trial court and also the Lower Appellate Court confirm the decree and judgment of the trial court not even considering the evidence and materials, However the Respondent so for not interested in re-union till date and she didn't prefer to file Restitution of conjugal rights and thus it clearly shows the Respondent is disinterested in re-joining with the Appellant.

#### 9.SUBSTANTIAL QUESTIONS OF LAW

The present Civil Miscellaneous Second Appeal was heard on the following substantial questions of law:-

- a) Whether the First Appellate Court is right in confirming the order of dismissing the application seeking for the grant of divorce, without going through the pleadings?
- b) Whether the Courts below are correct in answering the issues raised before it?
- c) Whether the First Appellate Court is right in dismissing the appeal, when the act of cruelty has been proved through documentary evidence?
- d) Whether the Lower Appellate Court wrongly appreciated the facts which lead to the wrong conclusions resulted in wrong verdict?
- e) Whether the courts below are correct in passing the final order that the mental cruelty of wife meted out to the husband can still hold the matrimonial life in the eye of law?
- f) Whether the cruelty of the wife leading to matrimonial breakage is valid in the eye of law?

10.Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and

value system etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

11.No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i)On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii)On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) 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 may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and

tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(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.?

12. Since the parties to the proceedings are living separately for the past 13 years and more and this Hon'ble Court is empowered to frame yet another substantial question of law under Section 100 of the Code of Civil Procedure Code, for consideration.

13. The Courts below have recorded concurrent factual findings to the effect that the grounds assigned in the first appeal have not been established. But, the fact remains that there is no possibility for re-union, Respondent has not filed any application seeking for restitution of conjugal rights. Presently both of them are living separately and apparently, there is no intention of having the nuptial life restored.

14. The learned counsel for the appellant also added that for about 13 years by now, both the parties have been living separately and there is no possibility for re-union and mediation was conducted by this Court on various occasions, which not yield any fruit. Hence, a decree of divorce may be granted as per various decisions of the Hon'ble Supreme Court, on the ground of irretrievable break down of marriage. The

learned counsel for the appellant having relied on several decisions of this Court and also by the Hon'ble Apex Court, to prove his contention and this Court also perused the decisions for a careful consideration.

15.This Court perused the evidence of the respondent/wife. During her cross-examination, she also admitted that she never took any step at her instance or at the instance of her family members to have the matrimonial bond exist.

16.The admissions made by the wife during cross examination are strange and shocking. There is clear cut admission that the husband did not demand dowry and there was no cruelty on account of the demand of dowry either by the respondent or by his family members.

17.The Courts below have recorded concurrent factual findings to the effect that the grounds assigned in the petition have not been established. But, the fact remains that there is no possibility for re-union. Neither of the parties hereto, has not filed any application seeking for restitution of conjugal rights. Presently, and in fact, both of them are living separately and apparently, there is no intention of having the nuptial life restored.

18.The Hon'ble Supreme Court in V.Bhagat v. D.Bhaagat, (1994) 1 SCC 337 it has been defined that the mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and sufferings as would make it not possible for that party to live with the other.?

19.In another decision, the Hon'ble Apex Court reported in (2006) 4 Supreme Court Cases 558(Naveen Kohli v. Neelu Kohli), it is held that even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again?

20.The Hon'ble Supreme Court, in the case of Samar Ghosh v. Jaya Ghosh, reported in (2007) 4 SCC 511, has spelt out some of the instances which could be considered as mental cruelty. It is specifically mentioned in the judgment itself that the law is not exhaustive of, what mental cruelty is and what is not mental cruelty, which is only illustrative and not exhaustive.

21.Finally, we have to consider whether there is any possibility for redemption of the matrimonial life of the parties, when admittedly the parties have been living separately for more than a decade, i.e. right from the date of petition for divorce. The appellant's contention that the respondent's two earlier marriages ended in failure has been spoken of by the latter in her oral evidence.

22.All the above instances do really substantiate the acts of mental cruelty and lay a firm foundation for grant of divorce. Hence, in our considered view, it is established from the instances pleaded and proved by evidence, both oral and documentary, in support of the appellant that the Court below, has not looked into these evidence based on the legal propositions and the established rule of law.

23.On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

24.The Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. To define the cruelty in one case may not amount to cruelty in other case.

25.The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and

electronic media and value system etc, What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate on its peculiar facts and circumstances while taking aforementioned factors in consideration. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of mental cruelty.

26. That 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.

27. With regard to the separation of the parties in recent past, this Court had stated that there is no point for re-union except to grant a decree for divorce, which has been reported in (2012) 2 MLJ 833 (U.Sree v. U.Srinivas), it is held that. In short, it would be difficult for the parties to bury the past and to begin a new relationship of husband and wife. For the past 13 years both parties have remained separately. 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 which is a positive act of oppressive mental cruelty, in our consider opinion. There is no chance for both parties to live together in future. In such a context, 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.

28. When the parties cannot live in peace, no purpose will be served in keeping the parties tied by the bond of marital relationship. While granting the relief, a Court of Law should not shy away from the realities.

29. It is also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by

the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court.

30. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life.

31. They have been continuously living separately without sincere attempt or any intention to have re-union between them. Hence, the continuance or allowing the existence of marriage between them will not serve any purpose and hence, their marital relationship has to be put to an end by dissolving their marriage, which could be obtained by grant of a decree for divorce.

32. In the result, this Civil Miscellaneous Second Appeal is allowed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Principal District Judge at Tiruppur.

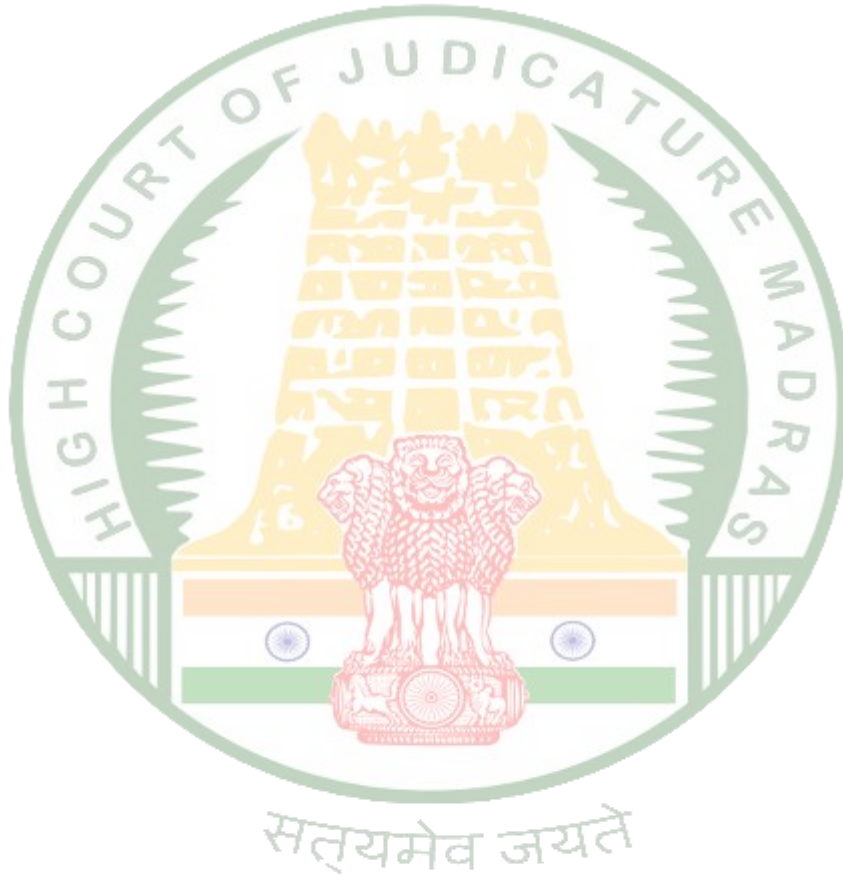
2. The Principal Subordinate Judge, Udumalpet.

3. The Section officer  
VR Section, High Court, Madras 104.

+1 cc to Mr.V.Nicholas, Advocate sr 25046.  
+1 CC to Mr.Vimal B.Crimson, Advocate sr 25285.

C.M.S.A.No.40 of 2013

CNR (CO)  
SP(21/03/2019)



WEB COPY