

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.S.A.No.10 of 2018 and
C.M.P. No.7984 of 2018

Nirojaram ... Appellant/ Respondent

Vs.

S.Saminathan ... Respondent/ Petitioner

Prayer:

The Civil Miscellaneous Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 21.04.2017 in C.M.A.No.17 of 2016 on the file of the learned II Additional District Judge, Salem, confirming the Judgment and Decree dated 22.12.2015 in H.M.O.P.No.45 of 2013 on the file of learned I Additional Subordinate Judge, Salem.

For Appellant : Mr.K.Selvaraj

For Respondent : Mr.K.Nagarajan

J U D G M E N T

The appellant, who is the wife of the respondent, has filed the present Civil Miscellaneous Second Appeal, challenging the Judgment and Decree dated 21.04.2017 in C.M.A.No.17 of 2016 on the file of learned II Additional District Judge, Salem, who had confirmed the Judgment and Decree dated 22.12.2015 in H.M.O.P.No.45 of 2013, which was passed by the learned Additional Subordinate Judge, Salem.

2. The case of the respondent / husband is that he got married to the appellant / wife on 24.05.2010 at Maramangalam village, as per the customs prevailing in their house. The respondent was working as a teacher in Uthangarai and the appellant / wife was studying First Year B.Sc at Sri Sakthi Kailash College at Salem. In the meanwhile, the respondent got

transferred to Anupur male School in Ayothiyapattinam and started to live there in a rented house. Further, the appellant got conceived, at that time, on 06.06.2010, both the appellant and the respondent met with an accident and as per advice of the Doctor, the appellant underwent abortion. A misunderstanding arose between the parties and the appellant started suspecting the character of the respondent, as if he is having illegal connection with their landlord's daughter and often picked up quarrel.

3. It is the further case of the respondent that the appellant also left the matrimonial home and only after a panchayat held the appellant used to return back and complaints were also given by the respondent with regard to the assault made by the family members of the wife on 09.01.2011. After the appellant left her matrimonial house, the respondent / husband filed H.M.O.P.No.3 of 2011 for Restitution of Conjugal rights under Section 9 of the Hindu Marriage Act and the appellant / wife immediately filed a D.V.O.P.No.24 of 2013 before the learned Additional Mahila Judge, Salem. The H.M.O.P.No.3 of 2011 filed by the husband for restitution of conjugal rights was allowed, however, the learned Judicial Magistrate had ordered the respondent to pay a sum of Rs.4,000/- as maintenance amount and Rs.2,000/- towards rent amount. After the said act of the appellant, who initiated criminal proceedings, the respondent / husband had filed a petition seeking divorce on the ground of cruelty and divorce was also granted. Aggrieved against the same, the appellant / wife is before this Court.

4. Per contra, it is the case of the appellant / wife that her parents have spent lot of money for her education and marriage, but, the respondent had developed illicit intimacy with the landlord's daughter, due to that fact quarrel arose and the appellant was tortured in many ways. Thereafter, unable to bear the ill-treatment and torture, the appellant had lodged a police complaint before Veeranam Police Station and even now, she is ready and willing to join the husband. Hence she seeks this Courts indulgence to set aside the order passed by the lower appellate court as well as the lower court.

4. The learned counsel for the appellant submits that the lower appellate court as well as the lower court had erred in holding that there is no cruelty on the part of the respondent upon the appellant and raised the following substantial questions of law for consideration:

'1. Whether the courts below erred in relying on the finds and judgments of the Criminal Court for granting the Decree of Divorce?

2. Whether the courts below erred in granting divorce on the ground of mental cruelty against the wife merely because

she had initiated legal / criminal action against her husband?

3. Whether the courts below erred in allowing the Divorce Petition against the provisions of Section 13(i) (ia) of the Hindu Marriage Act, 1955?'

5. Heard the learned counsel for the appellant as well as respondent and perused the documents placed on record.

6. The lower court has come to the conclusion that the appellant/wife had committed cruelty against the respondent/husband and the same was proved and therefore, had allowed the petition filed seeking divorce on the ground of cruelty. The lower court had taken note of the appellant's statement before the learned Additional Mahila Judge, Salem that she has no intention to live with the respondent and the marriage solemnised was dissolved by an order dated 22.12.2015. Immediately, aggrieved by the said order, the appellant / wife herein has filed an appeal before the learned Additional District Judge, Salem. The said learned Judge after hearing and examining the parties and considering the evidences, had confirmed the Judgment of the lower court. As against the same the appellant/wife has filed this appeal.

7. From the beginning, it is seen that the appellant / wife was always suspecting the character of the respondent / husband and used to abuse him in filthy language and the wife's family members had assaulted the respondent. The appellant started filing petitions one after the other before the police station as well as before the Court, which definitely caused mental agony on the respondent/husband, who was working as a school teacher, could not concentrate in his job. That apart, during the DVOP Proceedings, the appellant had asserted that she is not willing to live with the respondent. In view of the same, the respondent pleaded to allow his petition filed for divorce. Eventhough the appellant had denied the said allegation of cruelty, she has not proved anything contra by letting in any evidence during the said divorce proceedings, whereas, in the appeal she expressed her opinion that she is willing to live with the husband.

8. On perusal of the records, it could be seen that the appellant / wife had insisted the respondent / husband to stay in her house as 'Veetumappilai' at Valavandhi. The parents of the appellant had also consented. The appellant was not allowed to stay with the respondent. Only after some Panchayat held, the appellant's parents came and left the appellant in the matrimonial home. That apart, when the respondent's mother and sister came to enquire about the health of the appellant, they were treated in a bad manner and the appellant had picked up quarrel with them. Thereafter, the appellant had consumed

phenoyl and she was taken to her house by her parents. On 18.08.2010, the appellant again came back to her matrimonial house and in housewarming function held in one of the relative's house, the respondent was talking to his sister, at that time, the appellant came and shouted and abused the respondent in front of other relatives, which caused a deep agony in the minds of the respondent. Again on 13.09.2010, the appellant had voluntarily left the matrimonial home when the respondent went and searched for her, it was found that she was staying in one of her friend's Padma's house. Again the appellant had left her matrimonial house on 12.11.2010 without any reason. Hence the respondent / husband has filed a complaint before All Women Police Station, Kondalampatty and Yercaud. On 21.11.2010, Yercaud Police had registered a case and gave CSR No.198/2010. On 09.01.2011 at 10.00 p.m., the family members of the appellant had come to Valaisur and attacked the respondent on 10.01.2011 and the respondent had given a complaint before Veeranam police station and on 11.01.2011 to the Superintendent of Police, Salem and D.S.P. Of Police Salem. The D.S.P., had enquired the matter and advised them to lead a peaceful life. Instead of living together, the appellant had filed a DVOP against the respondent has caused mental agony to the respondent.

9. The evidence of the appellant that when the appellant was living with the respondent, the respondent had taken away all her jewels was not proved. When the respondent issued a legal notice dated 19.11.2010 on receipt of the said notice, the appellant had rushed to the respondent's house but found the house was locked and on information from the near by house, it was learnt that the respondent left the house with all house hold articles and the appellant did not know the whereabouts of the respondent / husband, is not acceptable without there being a proof for the same. If the appellant had gone to the house of the respondent and enquired his parents, she could have very well contacted the respondent or known his whereabouts. Ateast at the time when DVOP petition was pending, she could have very well expressed her willingness to join the husband but did not do so. The court below rightly found that the appellant was not willing to live with the respondent from her own evidence. It is also found that the cruelty committed by the appellant / wife was not to be taken as an simple issue by the respondent, who had suffered a lot, because of the appellant's attitude, as she used to always leave the matrimonial house without informing and the respondent has to go in search of her, due to the said behaviour, he could not concentrate in his profession.

10. The cruelty committed by any person may be physical or mental, if it is physical, there will not be any problem to find out the physical violence inflicted on the other person. If it is mental cruelty, it is a difficult one to measure. If one party proves that the other party has treated with cruelty, it causes reasonable apprehension in the mind of the party, who suffered it and it is very harmful to live with the said wife or husband. So, mental cruelty alleged has to satisfy the Court by pleadings and evidence and if there is a demand of dowry also has to be proved. From the above instances, it shows alarming effect on the respondent that cruelty has caused hardship to him.

11. The Hon'ble Supreme Court in Samar Ghosh v. Jaya Ghosh 2007(4) SCC 511 tried to enumerate instances that constituted mental cruelty. These instances were only illustrated and not exhaustive.

'They said:

...(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.

(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.

(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....'

12. Here in this case, the appellant was always running away from the respondent and the used to abuse him with filthy language, which is proved by the relevant evidences and the same cannot be tolerated by the respondent. When the respondent/husband had expressed his willingness to join the appellant/wife and lead a normal happy life by way of filing a petition for restitution of conjugal rights, it was allowed by the lower court on 22.03.2013, the appellant has not complied with the order in H.M.O.P.No.3 of 2011, instead of joining the matrimonial life, the appellant had filed DVOP seeking maintenance and other reliefs. If really the wife was in search of the husband, she would not have filed a petition, viz., DVOP, for maintenance, but would have definitely sent a notice or given a complaint / petition before the All Women Police Station to unite them, but the wife has not taken any single steps to unite with the husband. In the absence of any such intention to

take appropriate steps for reunion with the respondent, this Court is not in a position to accept such a plea that still the appellant wants to live with the respondent. When there is a willful intention not to stay with the respondent, inspite of the order being passed for restitution of conjugal rights, the appellant cannot now plead for setting aside the order granted by both the courts.

13. After going through the evidences, materials available on record, both the courts have come to the conclusion that the wife is not ready for reunion with the husband and to lead a happy married life, even after restitution was ordered, the wife instead had driven the husband to the police station and to Court by filing complaints and taking action against him by way of filing petition under Domestic Violence Act, which definitely prove that the appellant / wife had no intention to lead a happy married life with the respondent.

In view of all the above reasons, this Court is not inclined to allow the present Appeal filed by the appellant / wife and the same is dismissed. Accordingly, the Judgment and Decree dated 21.04.2017 in C.M.A.No.17 of 2016 on the file of the learned II Additional District Judge, Salem is confirmed. The substantial questions of law raised by the appellant are answered accordingly. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(Arbitration)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The learned II Additional District Judge,
Salem

2. The learned I Additional Subordinate Judge,
Salem

3. The Section Officer,
VR Section, Madras High Court,
Chennai

+lcc to Mr.K.Selvaraj , Advocate SR.No. 99627

+lcc to Mr.K.Nagarajan , Advocate SR.No. 99230

C.M.S.A.No.10 of 2018 and
C.M.P. No.7984 of 2018

A.SK(16/03/2020)