

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.NO.218 OF 2018

N.Karikalan ... Appellant/Petitioner

A.Surya ... Respondent/Respondent

PRAYER :

Appeal filed under Section 19 of Family Courts Act, 1984 against the judgment and decree dated 15.11.2017 made in F.C.O.P.No.65 of 2017 on the file of the Family Court, Erode.

For Appellant : Mr.R.Prabakar

For Respondent : No Appearance

JUDGMENT

(Delivered by M.M.SUN DRESH.,J)

This appeal is preferred by the appellant aggrieved over the judgment and decree rendered in F.C.O.P.No. 65 of 2017 by which the petition filed for divorce on the ground of cruelty at the hands of the respondent was dismissed.

2. Heard the learned counsel appearing for the appellant. Despite service of notice and the name of the respondent having been printed in the cause list, none appeared. In fact, this Court passed an order to verify as to whether any vakalat has been filed or not. It has been stated that no such vakalat has been filed on behalf of the respondent and, therefore, we are proceeding to decide the matter on merits.

3. The appellant and respondent married on 27.05.2007. A female child was born on 26.09.2011. It is the case of the appellant that a sum of Rs.2.5 lakhs has been received from the appellant by the brother of the respondent for the purpose of conducting the marriage. He gave the money by obtaining loan. However, the loan obtained was not repaid. When asked, the

appellant was insulted. The respondent used to quarrel with the appellant very frequently. Due to the non-payment of loan, the appellant was forced to keep his avocation. Even the baby shower function was conducted by the appellant. None from the family of the respondent came for the function. Though she has stated under Ex.P4 that she would change her conduct, she has not done so. She used to go to the house of her brother and mother very frequently leaving the appellant and the child. The appellant and the child are being taken care of by his sick mother, who is suffering from cancer. The respondent gave a complaint against the appellant alleging that the appellant has been demanding dowry and harassing the respondent. Thus, under those circumstances, the appellant sought for a decree for divorce.

4. The respondent denied the allegations made. It has been stated that the complaint has been given for the purpose of preventing the appellant from harassing the respondent. It is not correct to state that money has been received by the family members of the respondent. The respondent is always ready and willing to live with the appellant. The baby shower has been conducted by the respondent's family at the house of the appellant. Thus, the petition will have to be dismissed.

5. Before the Family Court, the appellant and the respondent examined themselves as P.W.1 and R.W.1. The appellant marked five documents under Exs.P1 to P5. Ex.P4 is the document in which the respondent has stated that she would live with the appellant peacefully hereafter.

6. The Family Court found that there is no material to substantiate the allegation of the appellant with respect to the loan given by him to the brother of the respondent. The complaint given by the respondent is a normal happening in the family. The other disputes between the husband and wife would not entitle the appellant to get a decree of divorce. Much credence cannot be given to Ex.P4. Accordingly, the petition was dismissed.

7. The learned counsel appearing for the appellant submitted that the respondent never used to get along with the family of the appellant, including himself, the child and his mother. The fact that the mother of the appellant is a cancer patient is not in dispute. She did not dispute Ex.P4. The complaint which has been given for dowry demand is factually incorrect. The Family Court did not consider this aspect in the correct perspective. Even now, the respondent is living separately. She has not even bothered to visit the child. Thus, the petition will have to be allowed.

8. From the submissions made, it appears that the child is living with the appellant. There are two factors which are not in dispute, namely, the complaint given by the respondent making certain allegations against the appellant and the document executed by her under Ex.P4. These two documents would clearly show that it is the respondent who left the matrimonial home and thereafter agreed to live with the appellant. The further fact that the appellant's mother is suffering from cancer is also not in dispute. We may also note that usually the baby shower ceremony would be conducted in the house of the lady. However, in this case, it was conducted in the house of the appellant. This factor has not been denied or disputed. There is absolutely no evidence to show that the respondent's family was present for the said function. The complaint given by the respondent was with respect to the demand of dowry for which there is no evidence. The respondent has also not taken any steps to be with her daughter. The Family Court, in our considered view, has not taken note of all these aspects while dismissing the petition filed by the appellant.

9. On the other hand, the Family Court brushed aside the document Ex.P4 and observed that the problems created by the respondent are usually happening in the family. The complaint given and the document returned by the respondent would show that the dispute went beyond the family. That apart, despite service of notice on the respondent, she has not chosen to appear before this Court either in-person or through counsel.

10. In such view of the matter, we are inclined to set aside the order passed by the Family Court, Erode in O.P.No. 65 of 2017. Accordingly, the appeal stands disposed of. Consequently, the appellant has been granted decree of divorce. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(AD I-MDU)

//True Copy//

Sub Assistant Registrar

ssm

To

The Presiding Officer,
Family Court,
Erode.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104.

+1cc to Mr.R.Prabakar, Advocate, S.R.No.106182

C.M.A.No.218 of 2018

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