

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.290 of 2018

A.D.Rajeswari ... Appellant/Respondents

Vs.

S.Dinakaran ... Respondent/Petitioner

PRAYER : Appeal filed under Section 19 of Family Courts Act, 1984 against the judgment and decree dated 17.05.2017 made in F.C.O.P.No.152 of 2016 on the file of the Family Court, Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.Lakshmanasamy

JUDGMENT
(Delivered by M.M.SUNDRESH.,J)

This appeal is preferred by the appellant, who was the wife of the respondent, being aggrieved over the decree for divorce granted on the ground of desertion and cruelty.

2. The marriage has been conducted between the appellant and the respondent on 27.08.2007. A girl child was born on 20.05.2008. According to the respondent, the appellant left the matrimonial home. She also gave a complaint on 11.04.2012 before the All Women Police Station. A subsequent complaint has been given under Ex.P4 against the respondent, his sister and mother. This complaint has been registered thereafter and taken on file. Pending trial, she also gave a complaint to the higher officials of the respondent. It has been further stated therein that the proposed transfer could not be given.

3. The appellant filed counter affidavit denying the allegations. It has been stated that the respondent made a dowry demand, he physically assaulted her. Under those circumstances, she gave a complaint against the sister and the mother of the appellant. She is ready and willing to live with the respondent.

4. Before the Family Court, Erode, the respondent marked Exs.P1 to P4 and examined himself as P.W.1 while the appellant examined herself as R.W.1.

5. The Family Court took into consideration Ex.P4 in which the appellant has stated that she is living separately for more than five and half years. Accordingly, both on the ground of cruelty and desertion, the decree has been granted.

6. The learned counsel appearing for the appellant submitted that the Family Court was not correct in granting the decree. The appellant has got right to give a complaint. Ex.P4 has been marked only to stop the respondent from getting transferred. She is always ready and willing to live with the respondent. Thus, the appeal will have to be allowed.

7. The learned counsel appearing for the respondent submitted that the Family Court considered the relevant materials in granting decree. Not only Ex.P4 but the evidence of the appellant was also considered. Under Ex.P4 it has been stated by her that she is not living with the appellant for five and half years. This appeal has been filed after the expiry of the statutory period. During the interregnum, the respondent got re-married. This factum has also been raised in the counter affidavit filed in the petition seeking condonation of delay. Thus, the appeal will have to be dismissed.

8. We have perused the affidavit filed by the respondent at the time of condonation of delay. In the said affidavit, he has specifically stated about the factum of marriage held on 08.09.2017. The marriage was conducted after the period of limitation. Now, the respondent is living with the second wife after the decree for divorce granted by the Family court.

9. Ex.P4 is not in dispute. The said document states about two things, namely, (i) the period of five and half years in which the appellant was living away from the respondent and (ii) the complaint given by her to the employer of the respondent making allegations against him and thus stating that he should not be transferred in view of the pending criminal case. In the evidence also, she stated that she is not ready and willing to

live with the respondent at present. The Family Court has rightly taken into consideration all these aspects in granting the decree for divorce.

10. Thus, we do not find any perversity in the order passed by the Family Court warranting interference and the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected C.M.P.No.3064 of 2018 is closed.

Sd/-
Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

ssm

To

The Family Court,
Erode.

+1cc to Mr.M.Guruprasad, Advocate SR.106827

C.M.A.No.290 of 2018

PM(CO)
CB(16/06/2020)