

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.03.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

C.M.A.No.78 of 2018
and
C.M.P.No.1078 of 2018

R.Velmurugan ... Appellant/Respondent

vs.

M.Malarvizhi ... Respondent/Petitioner

Appeal filed under Section 28 of the Hindu Marriage Act against the judgment and decree dated 05.09.2017 in H.M.O.P.No.936 of 2012 on the file of the Additional Family Court, Coimbatore.

For Appellant : Mr.A.Thiyagarajan

For Respondent : Ms.Mathuvanthi

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The respondent filed a petition in H.M.O.P.No.936 of 2012, seeking divorce on the ground of cruelty. Marriage between the parties was solemnised on 05.11.2003. According to the respondent, the appellant was questioning the character of the respondent apart from questioning the paternity. The child itself was born through IUI obtained from the donor. This was done with the consent of the appellant. Under those circumstances, the respondent filed a petition seeking divorce on the ground of cruelty.

2.The Court below declined to accept the evidence rendered by the appellant coupled with the fact that it is he who conceded for the aforesaid method and therefore, it is not open to him to question the character of the respondent nor the

manner in which the child was born and granted divorce. Challenging the same, the present appeal has been filed.

3.Learned counsel appearing for the appellant would submit that there is no sufficient material to substantiate the allegations made. The Court below ought not to have put the onus on the appellant to disprove that there was no cruelty. Therefore, the appeal will have to be allowed.

4.The Court below has considered the evidence of P.Ws.1 and 2 as against R.W.1 apart from considering Exs.P1 to P10 and Ex.R1 to R11. Admittedly, the child was born through the medical process. There is no material available on record that the appellant did not give consent to it. The Court below, on evidence, found that the appellant was questioning the character of the respondent without any basis. Therefore, the reasoning adopted by the Court below that the attitude of the appellant constitutes cruelty cannot be found fault with.

5.In such view of the matter, we are not inclined to interfere with the judgment and decree passed by the Court below. Accordingly, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

mmi

To

The Judge, Additional Family Court,
Coimbatore.

+1 cc to M/s.Mathuvanthi Mathavan, Advocate, Sr.No. 26938

+1 cc to M/s.A.Thiyagarajan, Advocate, Sr.No. 26928

C.M.A.No.78 of 2018

RSI (CO)
CSL/14.06.2019