

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2019

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice A.D. Jagadish Chandira

Review Application No. 175 of 2018

Dr. M. Senthil

.. Petitioner

Versus

S. Bhooma

.. Respondent

Review Petition filed under Order 47 Rule 1 and 2 read with Section 114 of The Code of Civil Procedure to review the Judgment dated 22.11.2017 made in C.M.A. No. 1045 of 2015 on the file of this Court.

For Petitioner : Mr. K.A. Mariappan
For Respondent : Ms. R. Meenal

ORDER

(Order of the Court was made by R. SUBBIAH, J)

This Review application is filed seeking to review the Judgment dated 22.11.2017 passed by this Court in C.M.A. No. 1045 of 2015 filed by the Review applicant herein. By the Judgment dated 22.11.2017 this Court dismissed the C.M.A. No. 1045 of 2015 filed by the Review applicant and confirmed the order of dismissal dated 10.02.2015 passed in HMOP No. 19 of 2014 before the Family Court, Erode. For better appreciation, the relevant paragraph of the Judgment dated 22.11.2017 which is sought to be reviewed, is as follows:-

15. On perusal of the averments contained in the Original Petition, it is seen that the averments made by the appellant as regards the matrimonial cruelty inflicted on him by the respondent are largely vague, generic and bald. The

various averments made by the appellant in the Original Petition for dissolution of marriage are without any substance. The averments are in the nature of the respondent behaving indifferently towards the appellant, his father and mother; quarrelled with the appellant for no reasons; did not inform about the birth of the child or invited him to attend the birth anniversary of the child etc., Above all, the appellant alleged that the respondent is leading an adulterous life. In para No. 20 of the Original Petition, the appellant had stated that *"on 10.04.2009 at around 4.15 p.m. the petitioner was very unfortunate to see the respondent with a male unknown to the petitioner indulging in an illicit relationship."* Similarly, in para No.34, the appellant had alleged that *"The respondent used to close all the windows and doors and when the petitioner asked the respondent about that, she had told to the petitioner as she was doing that for the fear of more theft in Chennai. But later only the petitioner realised that it was done for her convenience."* Similarly, in para No.36 of the Original Petition, the appellant alleged that *"The petitioner did not hide any of his activities to the respondent. In fact, the respondent and her parents only have hidden the truth to the petitioner about the respondent's pre-marital contacts. This was evidenced by the respondent's elder sister who had confessed to the petitioner over phone for around 20 minutes and told about the immorality done to the petitioner by the respondent and her parents."* It was also alleged that the respondent had been conversing with one "Nandhu" and "Dhanu" over phone for an indefinite period during night hours but she did not reveal the identity of the callers to the appellant. However, we find that in the notice dated 19.03.2010 sent by the appellant, he has not whispered anything as regards the alleged extra marital relationship of the respondent with one Dhamu or Nandu. Even though in the original petition, the appellant had made such averments as if the respondent had conversed with the above said persons in his absence in mobile phone, at the outset, we find that merely because the respondent conversed with some unknown persons over mobile phone, it cannot not be construed that she was having extra marital relationship with any other person other than her spouse. This is more so that the respondent has clearly stated that Dhamu and Nandhu are her relatives and even the appellant is fully aware of the same. Even though in para No.20 of the Original Petition, the appellant had stated that he finds the respondent in the company of another man, such averments were not proved by any acceptable evidence. Similarly, several other averments made by the appellant to show that the respondent indulged in extra

marital life has not been proved by the appellant. Even though the appellant alleged that the sister of the respondent had confessed to him about the so-called illicit relationship the respondent had before her marriage, to prove such averment, the appellant failed to examine the sister of the respondent on his side. While so, we are of the opinion that the appellant has not proved that the respondent is guilty of having extra marital relationship with a person other than the appellant. The burden of proving the averments made in the Original Petition lies on the appellant and we are of the view, on appraisal of the entire materials made available, that the appellant failed to prove such averments made by him in a manner known to law. It is needless to mention that the charge of adultery is a serious charge and it casts aspersions on the character of the spouse and it also affects the reputation of the spouse in the society. The burden of proof of such averments is largely on the person who makes it. It has to be established beyond doubt in a manner known to law. However, in the present case, we find that the appellant failed to prove the allegations of adultery made against the respondent. The Family Court also in para No.126 of the Order held that even though the appellant suspected the morality of the respondent, it was largely not substantiated by him. We are in agreement with such a conclusion arrived at by the Family Court.

16. As regards the averments relating to desertion, the respondent, in her counter statement as well as the reply notice sent to the appellant, had clearly stated that she had no inclination to desert the matrimonial company of the appellant and that her desertion is not voluntary. In fact, it is the contention of the respondent that she was forced and compelled to leave the matrimonial company of the appellant as she was driven out of the matrimonial home by the appellant after subjecting her to harassment. In order to prove these averments made by the respondent in the counter, she examined herself as RW1 and her Uncle was examined as RW2. During the course of her examination, the respondent, as RW1, has narrated the manner in which she was made to desert the matrimonial home by the appellant and the efforts she had taken for joining the appellant. Similarly, RW2 also narrated the various efforts taken by him for a reunion of the couple. Even though the appellant had contended that the respondent, after marriage, had lived only for five months on various spells, the respondent rebutted it by furnishing the period during which she was present in the matrimonial home and the reason for leaving the matrimonial home. During the course of arguments, the learned counsel for the appellant brought to the notice of this Court the

inconsistency in the date on which the respondent left the matrimonial home as well as the date on which she joined the appellant in the matrimonial home. Such inconsistency, in our opinion, will not be sufficient to hold that the respondent deserted the matrimonial company of the appellant voluntarily. The appellant also did not prove, by cogent evidence that the respondent deserted his matrimonial company wilfully without sufficient cause. Even otherwise, after leaving the matrimonial home, the respondent had taken various efforts on her own and through her relatives to join the matrimonial home, which are not disputed by the appellant. Therefore, even assuming that the respondent deserted the matrimonial company on various occasion, such desertion is not with the intention of bringing the matrimonial journey to an end as the respondent had made attempts to keep the matrimonial relationship intact. The appellant also admitted that there were several mediations which took place at the behest of the elders of both sides. In such an event, it is difficult to hold that the respondent had voluntarily deserted the matrimonial company of the appellant without any just or sufficient cause.

17. The learned counsel for the respondent placed reliance on Section 23 (1) (a) of The Hindu Marriage Act to contended that for granting a decree of divorce on the grounds on which it was sought, the Court has to examine that while seeking such relief, any of the spouse do not take advantage of his or her own wrong or disability for the purpose of seeking such relief. In this context, useful reference can be made to the decision of the Honourable Supreme Court in **Chetan Dass** case mentioned supra, relied on by the learned counsel for the respondent, wherein, in para-19, it was held as follows:-

“19. The appellant would not be allowed to take advantage of his own wrong. Let the things be not misunderstood nor any permissiveness under the law be inferred, allowing an erring party who has been found to be so by recording of a finding of fact in judicial proceedings, that it would be quite easy to push and drive the spouse to a corner and then brazenly take a plea of desertion on the part of the party suffering so long at the hands of the wrong doer and walk away out of the matrimonial alliance on the ground that the marriage has broken down. Lest the institution of marriage and matrimonial bonds get fragile easily to be broken, which may serve the purpose most welcome to the wrongdoer, who, by heart wished such an outcome by passing on the burden of his wrongdoing to the other party by alleging her to be the deserter leading to the breaking

point.”

18. In the present case, we find from the various averments made by the appellant that it was the appellant who had taken advantage of his own wrong and sought the relief of dissolution of marriage on the grounds of desertion and cruelty. The various averments made by the appellant in the Original Petition have been satisfactorily disproved by the respondent which disentitle the appellant to seek for the relief of dissolution of marriage. As we have held above, the appellant failed to prove the plea of cruelty or desertion to the satisfaction of the Court. The Family Court also recorded very many reasons to refuse the relief sought for by the appellant by scanning the entire materials placed on record. In our opinion, such a well considered order passed by the Family Court needs no interference.

2. Thus, it is evident that a speaking order has been passed by this Court by considering the submissions made by both sides in extenso.

3. The learned counsel for the review applicant would contend that there are error apparent on the face of the judgment passed by this Court and it warrants interference. He has taken us to the grounds of the review application and contended that this Court has misinterpreted the deposition of RW1, respondent and her Uncle, RW2; the conclusion arrived at by this Court as regards the infliction of mental cruelty on the review applicant by the respondent is contrary to the evidence on record; the non-mentioning of the specific dates on which the respondent had left the matrimonial home had resulted in an erroneous conclusion; the manner in which the deposition of the review applicant was interpreted by this Court to reach a finding as regards his wrong doing is improper.

4. At the outset, we wish to observe that the tone and tenor with which the grounds have been raised by the review applicant, cannot be appreciated. The language used in the grounds of review petition, to project as if the conclusion

reached by this Court is erroneous and it would amount to an error apparent on the face of the record, is intemperate and it cannot be countenanced. It appears that the review applicant does not even know the basic and fundamental grounds to be raised in a review application seeking to review the Judgment passed by this Court. In any event, if the review applicant is in any manner aggrieved by the Judgment of this Court, the only remedy available to him is to assail the Judgment passed by this Court before the Honourable Supreme Court by way of an appeal and it is not open to him to file the instant review application. Therefore, we are of the view that the present review application has been filed with an attempt to re-write the Judgment delivered by this Court. The review applicant only attempts to re-argue the case and to reiterate the grounds which he has agitated in the Civil Miscellaneous Appeal when the said grounds were already considered by this Court in the judgment dated 22.11.2017. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (**Kamlesh Verma vs. Mayawati and others**) reported in (2013) 8 SCC 320 wherein the Honourable Supreme Court, after examining various judgments, has laid down the circumstances, as to when the Court can review its own judgments. The relevant portion of the judgment is extracted as under:

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view

is possible under the review jurisdiction.

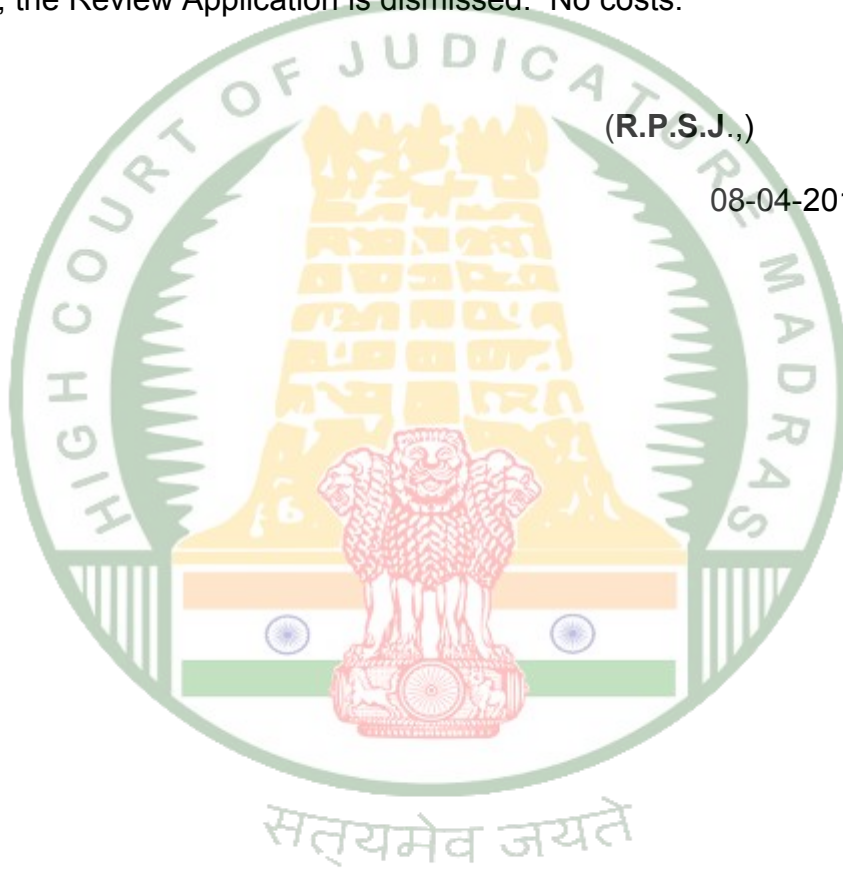
5. In the light of the above decision of the Honourable Supreme Court and upon considering the grounds raised in the review petition, we are of the view that the Review Application cannot be entertained and it is not maintainable. Accordingly, the Review Application is dismissed. No costs.

(R.P.S.J.,)

(A.D.J.C.J.,)

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R. SUBBIAH, J
and
A.D. JAGADISH CHANDIRA, J

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