

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.179 of 2017

D. Qubart

.... Appellant/Petitioner

vs

S. Leema Roslin

.... Respondent /Respondent

Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act to set aside the judgment and decree dated 22.12.2015 made in D.O.P.No.69 of 2014 on the file of Principal District Court, Tiruppur and allowing the appeal.

For appellant :: Mr.M. Guruprasad

For Respondent :: No appearance

JUDGMENT

Mr.D. Qubart, H/o Ms.S. Leema Roslin, residing at Door No.B-16, Anna Nagar, Edayarpalayam, Coimbatore, Coimbatore Taluk has filed this appeal, challenging the correctness of the impugned judgment and decree dated 22.12.2015 passed in D.O.P.No.69 of 2014, praying for dissolution of the marriage solemnized between them on 19.02.2012 at St.Anothinar Church, Puliyakulam, Coimbatore under Section 10(1)(x) of the Indian Divorce Act, 1962.

2. The grounds taken by the appellant/husband in D.O.P.No.69 of 2014 for grant of divorce were that the appellant is a B.C.A degree holder and served in Gemini Communications as Senior Customer Support Engineer and thereafter, due to his parents ill-health, he resigned the job, whereas, the respondent/wife is M.Sc and M.Phil degree holder and is serving as a Lecturer in Ramanathan Engineering College, Vijayamangalam and the marriage was solemnized on 19.02.2012.

3. It is the complaint of the appellant/husband that she went out of the matrimonial home on her own on 13.10.2012 and

started living with her parents and refused to come to appellant/husband for re-union. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. More over, the respondent, being a lecturer, working in Ramanathan Engineering College, deliberately and wantonly refused to cohabit with the appellant/husband, as a result, consequently caused continuous mental cruelty. Therefore, the appellant/husband was under the compulsion to file divorce petition under Section 10(1)(x) of Indian Divorce Act, 1962, for dissolving the marriage between them, solemnized on 19.02.2012.

4. A detailed counter affidavit has been filed by the respondent/wife stating that the appellant/husband was happy at the initial days of married life, but gradually, the appellant/husband changed his attitude and reduced the love and affection towards the respondent/wife. The appellant/husband used to demand dowry along with his parents and to bring her share of properties from her maternal home and hence she was unable to live with the appellant/husband.

5. On October 2012, and the appellant/husband along with his parents quarrelled with the respondent/wife, as a result, the respondent/wife left the matrimonial home on 13.10.2012 and started living with her parents. After reaching her parental home, the respondent/wife gave birth to a male child. The respondent/wife also informed the appellant/wife about the baptism(naming ceremony) of the child named 'Sarah'. The appellant/husband never cared for the child also for the respondent/wife and now the respondent/wife is living in a rental house and facing lot of problems.

6. Though after enquiry, the trial Court found that the respondent/wife has expressed her willingness to come and live the appellant/husband, she has not let in any evidence or produced any document much less an affidavit opposing grant of divorce to the appellant/husband, it simply refused to grant divorce. As against the judgment, the appellant/husband filed the present appeal.

7. The learned counsel for the appellant/husband stated that when the marriage was solemnized on 19.02.2012 and after living with the appellant/husband for eight months, the respondent/wife left the matrimonial home on 13.10.2012 and continuously was staying with her parents and also gave birth to a child and not even showing the child to the appellant/husband. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The Apex Court in *Amar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC 511 has laid down guidelines for grant of divorce.

Out of 14 grounds, Ground Nos.12, 13 and 14 clearly indicate that unilateral decision of refusal to have intercourse for considerable period without there being any physical capacity or valid reason may amount to mental cruelty.

8. As the aforementioned three criterias laid down laid down by the Apex Court is squarely and clearly applies to the present appellant/petitioner. The trial Court ought not to have refused the prayer, sought for by the appellant/husband and dismissed the case.

9. Again taking support from the decision of the Apex Court in 2002 (5) SCC 706 Parveen Mehta vs Inderjit Mehta , the learned counsel for the appellant/husband would submit that Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. While dealing with the mental cruelty, it is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence.

10. But inference can be drawn from the attendant facts and circumstances taken cumulatively in the present case. It is the admitted case of the respondent that from 13.10.2012 after leaving matrimonial home, she was living only with her parents and till date she has not even visited the appellant/husband.

11. Judging in the light of the principles laid down by the Apex Court in the case of Amar Ghosh vs Jaya Ghosh reported in (2007) 4 SCC 511, what we have to find is right from the date of matrimonial relationship from the parties. Therefore, when the appellant/husband was deviated from 13.10.2012 by the respondent/wife and not coming and living with the appellant/husband, it is a clear case that the respondent/wife has deserted on the appellant/husband and she is not responding the appellant/husband's request to come and cohabit with him for a period of seven years. This conduct of the respondent/wife clearly establishes that she is not willing to live with the appellant/husband and it supports the case of the appellant/husband and a decree of divorce is to be granted.

12. Though service is completed, the respondent/wife has neither chosen to conduct the case by engaging a counsel nor appeared before this Court in person, which clearly shows that the respondent/wife has not cared for the prayer sought for by the appellant/husband.

13. It is the grievance of the appellant/husband that after marriage was solemnized on 19.02.2012, within a short span of eight months, the respondent/wife left the matrimonial home on 13.10.2012 and till date they are living separately. When there has been long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. This has been laid down as one of the guidelines by the Apex Court in *Amar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC 511 for grant of divorce. The relevant portions are extracted hereunder:

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

14. In view of the long period continuous separation, the grievance of the appellant/husband that he has been deviated by the respondent/wife stands good. Moreover, the Apex Court in the case of 2002 (5) SCC 706 *Parveen Mehta vs Inderjit Mehta* held as follows:

Cruelty for the purpose of [Section 13 \(1\) \(ia\)](#) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other. सत्यमेव जयते

Judged in the light of the principles discussed above what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; the respondent had been trying to persuade the appellant and her parents to agree to go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant

even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behavior of the appellant. Further, the conduct of the appellant in approaching the police complaining against her husband and his parents and in not accepting the advice of the superior judicial officer Mr.S.K.Jain and taking a false plea in the case that she had conceived but unfortunately there was miscarriage are bound to cause a sense of mental depression in the respondent. The cumulative effect of all these on the mind of the respondent, in our considered view, amounts to mental cruelty caused due to the stubborn attitude and inexplicably unreasonable conduct of the appellant.

15. A cursory reading of the judgment of the Apex Court also shows that the respondent/wife left home on 13.10.2012, i.e., right from the beginning, the matrimonial relationship between the parties was not normal because the respondent/wife stayed in the matrimonial home only eight months. Moreover, the respondent/wife was staying away from the appellant/husband from October 2012 onwards, which clearly shows that she is not willing to come and take part in the matrimonial home.

16. Therefore, as last but not the least she has not taken care of or interest to appear before this Court to defend the impugned judgment, such conduct of the respondent/wife also clearly shows that she is not prepared to live with the appellant/husband. Therefore, judging in the light of the principles discussed above, this Court, taking note of the conduct of the parties that the respondent/wife has been living with her parents from 13.10.2012 is of the considered view that she is not willing to live with the appellant/husband.

17. Therefore, this court finds no hesitation to grant

divorce to the appellant/husband and the civil miscellaneous appeal stands allowed. The marriage solemnized between the appellant and the respondent on is hereby dissolved. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/
Sub Asst. Registrar

sr

To

The Principal District Judge,
Tiruppur.

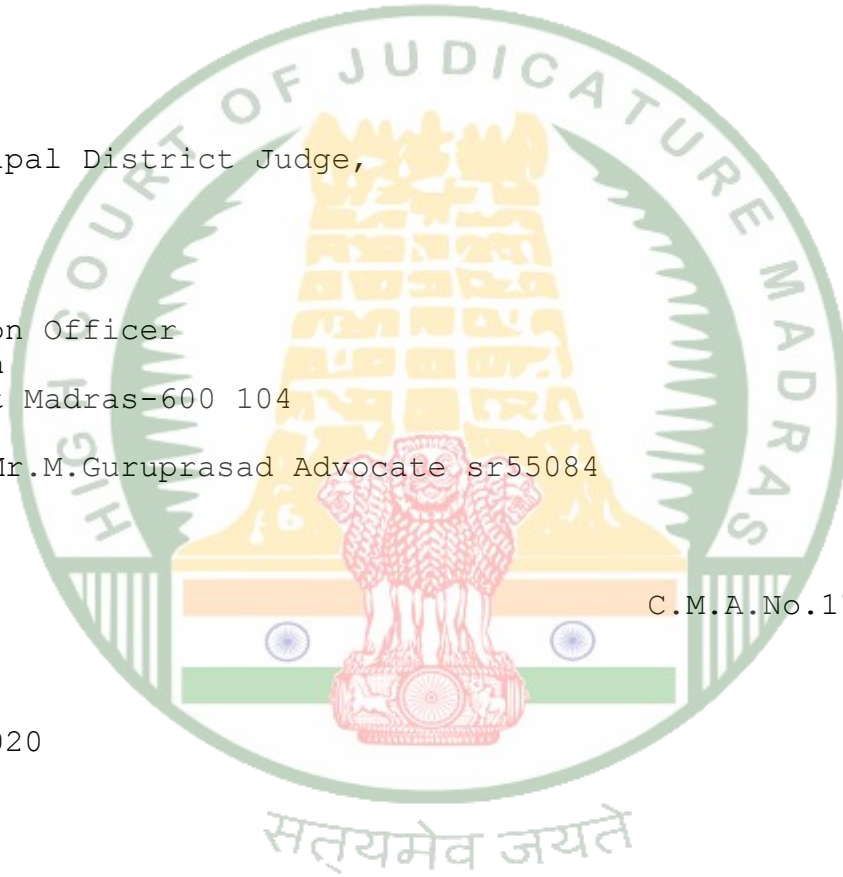
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