

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.M.A. Nos. 2734 & 356 of 2017

Malathi ...Appellant/Respondent
in both CMA's

Vs.

E.M.Ravisankar ... Respondent/Appellant
in both CMA's

Prayer:

Appeals filed under Section 19(1) of the Family Courts Act, 1984 against the fair and final order dated 04.10.2016 made in (i) I.A.No.18 of 2012 in F.C.O.P.No. 33 of 2012; and (ii) F.C.O.P.No. 33 of 2012, on the file of the Family Court, Salem.

For Appellant : Mr.T.Murugamanickam,
(in both CMA's) Senior Counsel for
M/s.Zeenath Begum

For Respondent : Mr.S.Parthasarathy,
(in both CMA's) Senior Counsel for
Mr.N.Damodaran

COMMON JUDGMENT

(Delivered by M.M.Sundresh,J.)

C.M.A.No.2734 of 2017 has been filed by the appellant/wife being aggrieved over the order passed by the Family Court in I.A.No.18 of 2012 in F.C.O.P.No.33 of 2012, whereby the respondent/husband was directed to return the properties of the appellant/wife, which were in his custody.

2. C.M.A.No.356 of 2017 has been filed by the appellant wife being aggrieved over the order passed by the Family Court in F.C.O.P.No.33 of 2012, granting decree of divorce in favour of the respondent/husband on the ground of cruelty alone.

3. Before advertng to the submissions made by the learned Senior Counsel for the parties, the background facts are required to be analysed.

4. The marriage between the appellant and the respondent was solemnized on 01.09.2004. A male child was born on 18.06.2005. The respondent filed a petition for restitution of conjugal rights on the file of Sub-Court, Erode in HMOP No. 93 of 2008. This was ordered ex parte on 23.08.2010. Thereafter, an application was filed by the appellant to set aside the ex parte decree and the same was allowed on 23.10.2012. In the mean while, the respondent filed a petition for divorce on 21.12.2010. In view of the above, the respondent withdrew the earlier petition filed seeking restitution of conjugal rights on 17.01.2013.

5. The order under appeal was challenged before this Court on 08.12.2016. An application filed in CMP No. 22733/2017 on 19.12.2017 seeking to raise a plea that the petition filed for divorce is not maintainable as it has been filed only under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, and, therefore, not on the ground of cruelty.

6. It is the case of the respondent that the appellant has been continuously harassing him and his family members by way of cruelty. She did not rejoin the respondent after giving birth to a male child. Only under those circumstances, the petition was filed seeking restitution of conjugal rights. Notwithstanding ex parte order passed, the appellant was not willing to rejoin, but, for the reasons well known to her, filed a petition to set aside the same.

7. Few days after the filing of the aforesaid petition for restitution of conjugal rights, the appellant gave a criminal complaint for the offences under Section 498A and 406 IPC. In fact, it was the endeavour of the appellant to bring into the fold of the pending criminal case the parents of the respondent, brother and sister also. Challenging the same, the respondent filed a petition under Section 482 of the Cr.P.C. This court directed the accused to file appropriate application before the Family Court. Under those circumstances, the respondent filed a petition before the Family Court, inter alia, alleging mental cruelty and desertion, apart from invoking Section 13(1)(1-A) of the Hindu Marriage Act for not re-joining even after an order was passed for restitution of conjugal rights.

8. The appellant has contended before the Family Court raising very many allegations. While denying the averments made in the petition filed by the respondent, she has alleged that the respondent is man of many vices. He is a gambler, drunkard

and womanizer. Allegations have been made against the mother-in-law to the effect that she was trying to administer a local herb to abort the child. As against father-in-law, she has stated that he made wrong advances against her to the knowledge of the mother-in-law.

9. The Family Court passed an order granting decree of divorce on the ground of cruelty alone. After coming to the said conclusion, the Family Court considered the allegations made by the appellant, particularly with reference to the petition filed by him for restitution of conjugal rights and a subsequent petition filed by her coupled with her conduct. Incidentally, the Court below took into consideration all the allegations made by the appellant as a whole. Accordingly, it was held that the allegations, being serious in nature, were not proved and, therefore, the same lends credence to the case of the respondent. Thus, the petition was allowed insofar as the cruelty is concerned. Challenging the same, the present appeals is before us.

10. Learned Senior Counsel appearing for the appellant would contend that the petition itself is not maintainable since it has been filed by invoking Section 13(1-A) of the Hindu Marriage Act. He submitted that though such a contention has not been raised by the appellant, particularly in the light of the pleadings made by the appellant on the presumption that the petition is filed only for cruelty, the same being the clear question of law, can be raised for the first time. That is the reason why the petition has been filed in CMP No. 22773 of 2017 though not raised along with the grounds of appeal at the time of filing.

11. Learned Senior Counsel also submitted that once it is held so, the petition filed for divorce based upon the decree obtained for restitution of conjugal rights is not maintainable since one year has not lapsed. Secondly, it is submitted that the Family Court has mis-directed itself by wrongly placing the onus on the appellant. It is for the respondent to substantiate his case with respect to the cruelty if the contention raised already is rejected before this Court. In any case, no person can take advantage on his own wrong. To buttress his submission, learned Senior Counsel placed reliance upon the judgment of this court in *Anantha Padmanabhan @ Balu v. Sassicala* reported in (2008) 4 CTC 253.

12. Learned Senior Counsel appearing for the respondent would submit that it is not correct to state that the petition has not been filed for divorce on the ground of cruelty. It is only a typographical mistake. A petition has to be seen as a whole. The cause of action is to be seen from a plain reading

of the entire petition. The cause of action is nothing but a bundle of facts which if answered would result in getting the final position in favour of the petitioner (respondent herein).

13. He further submitted that the Family Court took into consideration all the allegations made by the respondent vis-a-vis the one raised by the appellant. Therefore, the order for divorce was granted on the ground of cruelty, by taking note of the fact that the respondent has proved his case and the appellant has not substantiated the baseless allegations made by her. Thus, no interference is required especially when the Court of first instance considered the entire material available on record by a speaking and exhaustive order.

14. On the first submission made, we find that a specific plea has been raised by the respondent alleging cruelty on the part of the appellant. The pleadings are to be read as a whole. As rightly submitted by the learned Senior Counsel appearing for the respondent, the cause of action is nothing but a bundle of facts. If proved, it would only lead a party to get the relief. Admittedly, in the case on hand, the parties have clearly understood each others case. That is the reason why the appellant has countered the allegations with respect to cruelty, while raising herein allegations placing cruelty on the part of the respondent. In such view of the matter, we are of the view that the contentions raised by the learned Senior Counsel for the appellant cannot be countenanced. Perhaps that is the reason why the appellant consciously did not raise this plea before the Family Court and also while filing the appeal before this Court. This plea has also been raised for the first time by way of filing a petition before this Court. There is an element of wisdom behind the Legislature in not allowing the counsel to appear before the Family Court, the proceeding ought to be taken as summary in nature and, therefore, strict rules of pleadings are not required to be gone into, especially when the personal rights of the parties are involved.

15. Therefore, looking from any angle we are not in a position to agree with the submissions made by the learned Senior Counsel appearing for the appellant with respect to the maintainability of the petition, especially when the appellant has subjected herself to the jurisdiction of the Court and then made all her submissions, produced materials and let in evidence with respect to cruelty as alleged.

16. After all we have to see the substance as against the procedural law. Moreover, a wrong quoting of a provision by itself cannot be a ground to decline the relief when parties have understood each other's case in clear terms.

17. On the other issues raised by the learned Senior Counsel also we do not find any merit. In the case on hand, the respondent showed his bonafides by filing a petition for restitution of conjugal rights, it is the appellant who filed a petition to set aside the same. As observed by us, what is important is her intention to rejoin as against the allegations and counter allegations. Suffice it to state that she was not inclined to rejoin with the respondent at that point of time.

18. Secondly, immediately after the respondent filed the petition for restitution of conjugal right, the appellant filed a complaint before the jurisdictional police. She did not stop with that. She was trying to implicate her in-laws also in the said complaint. The Family Court taking into consideration all these factors, while coming to the conclusion that the materials available on record, including the pleadings, are necessarily to be seen, further held that for proving the allegations of cruelty, certainly the conduct, behaviour and attitude of the appellant also will have to be seen as a factor. The allegations made by her are necessarily to be taken note of. When a party makes an allegation, it is for the party to substantiate to the satisfaction of the Court. In this case on hand, the appellant has made strong allegations against the respondent, his parents and others.

19. Insofar as the respondent is concerned, she has made an allegation that he is a womanizer, drunkard and gambler. These factors can be taken into account at least for holding that she is not ready and willing to rejoin with the respondent. Though the Court below declined to pass an order on the ground of desertion, these factors would be sufficient enough to hold as to how the appellant has thought about the respondent and her in-laws. It may be her perception, but this may lead to the conduct as well. It is the specific case of the appellant that her mother-in-law under the guise of giving her some herbs, proposed to terminate her pregnancy. However, the Court below found no material to substantiate it. Secondly, her allegation that father-in-law has made advances is also not supported by any evidence. Therefore, we do not find anything wrong on the part of the Family Court in taking into consideration all these factors along with the other averments made by the respondent which were found to be proved.

20. In such view of the matter, we are of the view that the order passed by the Family Court in F.C.O.P.No.33 of 2012 does not warrant any interference, and the same is confirmed by dismissing C.M.A.No.356 of 2017.

21. Insofar as the appeal in C.M.A.No.2734 of 2017 which has been filed against the order passed in I.A.No.18 of 2012 in

F.C.O.P.No. 33 of 2012 is concerned, the Family Court has merely directed the respondent/husband to return the articles listed out by the appellant/wife, which are not disputed, to her. In fact, it is the stand of the respondent that the said articles have been returned to the appellant/wife. Even qua return of articles, we do not find anything wrong in the conclusion arrived at by the Family Court.

For the foregoing reasons, the appeals are dismissed. No costs. Consequently, connected CMP Nos. 2550 & 22733 of 2017 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssm

To:-

1. The Judge,
Family Court, Salem.
2. The Section Officer,
VR Section, High Court,
Madras-104

+lcc to M/s.Zeenath Begum, Advocate, S.R.No.27933

C.M.A.Nos.2734 & 356 of 2017

RV(CO)
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