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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.01.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.M.A. (MD) No.29 of 2016

and

C.M.P. (MD) No.502 of 2016

Rekha ... Appellant / Respondent

vs.

T.Kumar ... Respondent/ Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, against the judgment and decree, dated 16.10.2015, made in H.M.O.P.No.184 of 2012 on the file of the Family Court, Madurai.

For Appellant : Mr.V.Sitharanjandas

For Respondent : M/s.Chamundi Bose

JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This Civil Miscellaneous Appeal is preferred by the wife, as against the decree granted by the Family Court, Madurai, dissolving the marriage between the appellant and the respondent in H.M.O.P.No.184 of 2012 filed by the respondent/husband on the ground of unsound mind under Section 13(1)(iii) of Hindu Marriage Act, 1955.

2.The marriage between the appellant and the respondent took place on 07.02.1999 at Madurai. The respondent is a Doctor, practicing medicine. The appellant gave birth to a male child, out of the wedlock, on 30.07.2001. It is also admitted that earlier, the appellant delivered a still born child in July'2000. The appellant and respondent were living together for quite some time and even according to the respondent/husband, they were living together till December'2009. The respondent/husband sent a legal notice on 30.11.2011 seeking divorce on mutual consent and thereafter, filed the petition for divorce on the ground of mental illness of the appellant under Section 13(i)(iii) of Hindu Marriage Act, 1955.

3.The brief facts that are set out in the petition filed by the respondent/husband for granting a decree of divorce are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

(a) Right from the beginning of the marriage life, the respondent/husband found severe abnormalities in the



appellant's/wife's behavior and the abnormalities were of such nature that caused mental agony and inflicted mental cruelty upon the respondent/husband. Since the abnormality persisted for a long time, the respondent/husband realised that the abnormality was on account of mental disorder suffered by the appellant/wife.

(b) The mental abnormalities listed by the respondent/husband are as follows:

1) When the respondent and the appellant were travelling from Madurai to Bangalore in Madurai-Bangalore Express train in II Class compartment, there was a young girl seated just opposite to the appellant and respondent. The appellant complained to the respondent that it would be impossible for her to go to sleep, because a girl was just sitting opposite to her berth.

2) The appellant used to remain in her room in upstairs, despite the respondent and his mother calling her to come down to have breakfast or lunch.

3) The preparation of breakfast or lunch was not done by the appellant/wife in a regular and orderly fashion and the appellant/wife made respondent's/husband's mother to cook the food.

4) When the husband's relative, an elderly couple, who could not attend the wedding, came home to see the respondent and the appellant, the appellant did not come forward to greet them or talk to them. Despite the respondent/husband calling her, she did not respond and the respondent was embarrassed and it was an insult to the respondent.

5) The appellant/wife and her mother came to the hospital, where the respondent/husband was working and created a horrible scene in the corridor of the hospital at Bangalore, in response to the complaint of the respondent's/husband's mother about the odd behaviour of the appellant/wife.

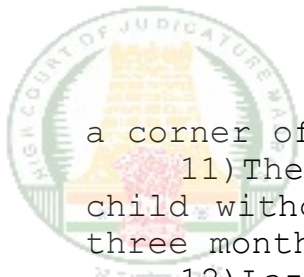
6) After conceiving the first child, the appellant used to consume tablets without the consent and knowledge of the respondent/husband, who is a medical practitioner. On account of the indiscriminate consumption of tablets by the appellant/wife, a still born child was delivered by the appellant/wife.

7) During the month of November'2000, the appellant did not receive the respondent's friends and their respective wives, when they came to the respondent's house and the appellant refused to make coffee for them.

8) The appellant/wife never mingled with anybody and always preferred to be alone all the time. The appellant/wife distanced herself not only from the respondent's in-laws, but also from the society in general.

9) The appellant/wife was doing repeatedly certain things, such as, washing the hands for 5 to 6 times continuously, checking the locks 3 or 4 times obsessively, etc. The appellant used to switch on and off the lights again and again and this sort of odd behavior is due to a condition, called Post Partum Psychosis.

10) The appellant did not take care of the child and on one occasion the respondent noticed his child's face smeared with motion (stools). The appellant used to keep the wet napkins of her child in



a corner of the room for two days.

11)The appellant used to visit her parent's house with the child without any definite plan and used to stay there for two to three months at a stretch.

12)Laziness and slothness were the appellant's way of living. When the child grew up, the child was also dull and moody and the child psychiatrist revealed that the young boy was yearning for mother's love and affection. A psychiatrist, after examining the appellant, diagnosed that the appellant was suffering from a condition "OCD" with predominantly compulsive depression.

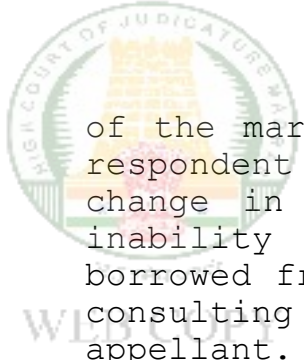
13)The appellant never agreed to prepare any specific item of food requested by the respondent and for their son. The appellant was always telling that she was not a servant to the respondent. The appellant neglected the child and on one occasion, when the child returned from school found the door of his home closed and the respondent had to come to the home to let him inside.

14)The respondent was shocked to note that the appellant changed her cloths near the open window, which was in full view of balconies of 5 other houses that faces the window and she did not care to put on the screen.

15)The respondent took the appellant to a psychiatrist to understand the problem faced by her and to cure the defect. On medical consultation, it was found that the appellant was suffering from mental disorder ever since she was 13 years old and the appellant's parents had not disclosed her mental condition before marriage. A consultant psychiatrist at Bangalore prescribed certa medicines. In view of her mental disorder, it is impossible to lead a matrimonial life with the appellant. Hence, he issued a notice on 30.11.2011 seeking divorce on mutual consent. Since there is no response, petition is presented.

4.The appellant/wife filed a detailed counter denying each and every allegations that were made by the respondent/husband against the appellant/wife in the petition for divorce. It is the specific case of the appellant/wife that the appellant/wife and respondent/husband were living together till October'2011 for more than 12 years. It is further stated by the appellant/wife that she hailed from a decent family in Pattiveeran Patti Town in Dindigul District and that by nature, she was very shy and timid. Except that the appellant could not speak freely and continuously, because of the stammering in her speech, she was quite alright and the respondent married her, when the appellant was doing II year B.A. degree in a reputed College at Coimbatore.

5.The appellant/wife denied almost every incident that was alleged by the respondent/husband in the petition and complained that she was treated only as a servant maid along with her co-sister by name, Shanthi. The appellant also stated in her counter that the mother of respondent used to tease her everyday and talk harshly towards the appellant. It was only due to the change in the attitude of the respondent's mother, the respondent shifted his practice to Coimbatore. Since the respondent was not consulted before the fixing



of the marriage of the appellant's brother, it is stated that the respondent started behaving hardly. It is also stated that the change in the attitude of the respondent was mainly due to the inability of the respondent to pay back a sum of Rs.7,00,000/- borrowed from the appellant's brother, by name, Dhinesh and for not consulting the respondent in relation to the family affairs of appellant. The respondent was very much disappointed when his demand for partition could not be considered as the appellant had already released her share in favour of her brother.

6.It is also the case of the appellant that the reason behind the filing of the petition was to punish the appellant's brother and her mother, who did not agree to purchase a house to the respondent, denied partition and have demanded the return of Rs.7,00,000/-. The specific case of the appellant/wife is that the allegations against the wife about her mental illness are made only for the purpose of the petition and that the respondent/husband, who deserted the appellant/wife for other reasons, has come forward with the frivolous petition for divorce with false allegations.

7.Before the Family Court, Madurai, the respondent/husband examined himself as PW-1 and marked Ex-P1 to Ex-P9. The respondent/wife examined herself as RW-3 apart from examining two other witnesses, as RW-1 and RW-2 and did not mark any document. The lower Court relied upon the document, Ex-P8, to hold that the appellant was suffering from a mental disorder. It was further observed by the lower Court that the respondent/wife was suffering from mental depression and that therefore, she was unable to discharge her duty as a dutiful wife. It was also observed by the lower Court that the parties were not living happily due to the mental depression suffered by the respondent/wife. From the evidence of RW-1 and RW-2, the lower Court, further observed that the appellant suffered with stammering of speech and could not freely move with others, which would indicate that she could not maintain her family and child. Finally, the lower Court concluded that the respondent/husband can not be expected to live with the appellant/wife due to her mental abnormalities. In the result, the petition filed the respondent/husband was allowed and a decree for dissolution of marriage was granted on the ground of cruelty and unsound mind. Aggrieved by the same, the appellant/wife filed the above Civil Miscellaneous Appeal.

8.The learned Counsel for the appellant/wife submitted that the lower Court has granted decree for divorce without even appreciating the scope of Section 13(1)(iii) of Hindu Marriage Act, 1955. Though the documents Ex-P8 and Ex-P9 were considered by the Family Court, it is contended by the learned Counsel for the appellant/wife that the Doctors who issued the certificates have not been examined and the very certificates itself have not been proved. It is also contended by the learned Counsel for the appellant that the lower Court has given a finding that the appellant was suffering from mental disorder, warranting divorce without any evidence. It is



reiterated by the learned Counsel for the appellant that the real reason behind the filing of the petition for divorce is due to the misunderstanding arose between the families and that the appellant was forced to leave the matrimonial home. The learned Counsel for the appellant would contend that the lower Court has erroneously given a finding, as if the appellant was not inclined to get custody of the child or ask for restitution of conjugal rights.

9. The main ground in the petition for divorce is unsoundness of mind, but the same was not established, as the husband has not placed any material evidence showing any mental abnormalities during the period, when they were living together. With reference to Section 13(1)(iii) of Hindu Marriage Act, the learned Counsel for the appellant submitted that the lower Court miserably failed to consider the fact that the ingredients of Section 13(1)(iii) of Hindu Marriage Act, have not been established in this case.

10. The only issue that arose for consideration is whether the respondent has made out a case for getting divorce by dissolving the marriage between the appellant and the respondent on 07.02.1999 on the ground that the appellant has been suffering from mental disorder. Section 13(1)(iii) of Hindu Marriage Act, 1955, reads as follows:

"13. Divorce. (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

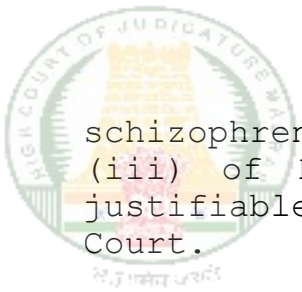
(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.-In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it require or is susceptible to medical treatment;"

11. From the reading of the statutory provision, namely, Section 13(1)(iii) of Hindu Marriage Act, 1955, unless a person is of unsound mind, which is not curable or the mental disorder is of such a kind, that the other spouse cannot reasonably be expected to live with companion, divorce cannot be granted. The mental disorder is incurable abnormality, but means mental illness, due to arrest or incomplete development of mind or a psychiatric disorder or any other disorder of disobedient mind, like,



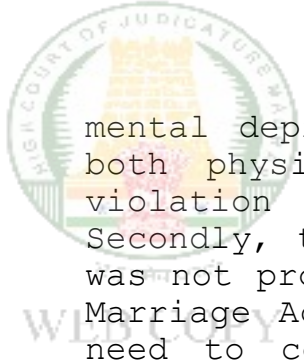
schizophrenia. Having regard to the plain language of Section 13(1) (iii) of Hindu Marriage Act, this Court is unable to find any justifiable cause or reason to support the decision of the Family Court.

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12. In the present case, the lower Court has not even considered the issue, having regard to the scope of Section 13(1) (iii) of Hindu Marriage Act. It is to be noted that the allegations or averments made in the petition did not specify any incident of grave nature, attracting Section 13(1) (iii) of Hindu Marriage Act. The respondent has narrated some of the incidents and complained that those incidents would show the mental abnormalities of the appellant, when the appellant and the respondent were living together as husband and wife. The lower Court has accepted the document, Ex-P8, which is only a medical report and prescription given by a Doctor. The disorder, due to the depression is not explained in the document, so as to find the disorder as one to enable the respondent to get a decree for divorce on the ground of mental illness. The Family Court, as a matter of fact, has found that there was no proof that the appellant took treatment for any disorder before or after marriage. Merely because, the appellant admitted that she could not move freely with other persons, as she was stammering in her speech, the conclusion of the lower Court that the conduct of the appellant was due to her mental abnormality or mental illness is perverse.

13. The incidents narrated by the respondent/husband in the petition was neither proved by any independent witness nor by examining the Doctor. The Family Court, however, proceeded, as if the incidents of abnormalities narrated in the petition have been proved by the respondent/husband. The Family Court, thereafter, held that the kind of mental depression as seen from the appellant's conduct would show her inability to discharge her duties as a dutiful wife. The Family Court has taken into account the fact that the respondent/wife had not taken any steps to get custody of the child nor filed any application for restitution of conjugal rights. Though it is stated by the appellant that the appellant and respondent were living together till 2011, the respondent himself admits that they were living together till November'2010. The petition was presented on 04.11.2011 as seen from the decree copy. It is stated by the appellant that the respondent left her in her brother's house in October'2011. During cross examination, PW-1 admit that the appellant left house in October'2011, but would state that she went on her own. Respondent issued notice on 30.11.2011 for consent divorce. The respondent/husband was not willing to take the appellant back and that the appellant was in fact consistent in her case, that she was always willing to live with her husband and son with a promise that she would discharge her duties as dutiful wife and take care of the respondent/husband and son.

14. The Family Court has rendered a finding, as if the appellant/wife was unable to lead a happy married life due to the

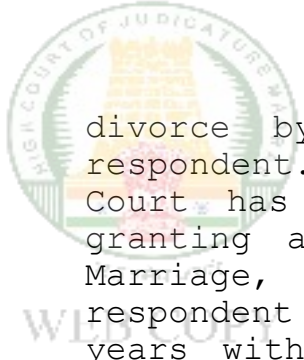


mental depression suffered by her and that the appellant suffered both physically and mentally. First of all, in this case, no violation or physical cruelty was alleged even in the petition. Secondly, the psychiatric problem alleged by the respondent/husband was not proved to be harmful or attract Section 13(1)(iii) of Hindu Marriage Act, 1955. The respondent is a Doctor. He never felt any need to consult a psychiatrist before 2009. The description of mental condition is stated to be due to Obsessive Compulsive Disorder (OCD). The husband admit in evidence that after taking medicine, there was improvement in the appellant. The abnormalities alleged was not at all proved in this case. When the appellant/wife has denied each and every allegations, that were made against her in the petition, it is the duty of the respondent/husband to prove that the appellant/wife behaved abnormally and that such abnormalities of the appellant would attract Section 13(i)(iii) of Hindu Marriage Act, 1955 . In a case, where dissolution of marriage is sought for on the ground of mental illness, the respondent/husband has to prove the mental abnormalities of the appellant/wife to such extent, so as to make him reasonably believe that he cannot live with his wife anymore.

15.From the evidence of respondent/husband, this Court is able to see that the respondent/husband has not come forward with truth. In the petition filed by him, the respondent/husband mentioned about the indiscriminate consumption of tablets by the appellant/wife. In the petition, it is seen that the respondent/husband has stated that the appellant was in the habit of consuming some medicine without any prescription or without consulting the respondent, who is also a Doctor. Quite contrary to that, during the course of evidence, the respondent/husband says that the appellant was consuming tablets to terminate pregnancy. Though the respondent/husband stated that the appellant left the matrimonial home in 2009, during the cross examination, he admits that the appellant left the matrimonial home in 2011 on her own. Even though the respondent is a Doctor by profession, he did not file any other document, except Ex-P8 to prove that the appellant was suffering from a mental disorder medically known as Obsessive Compulsive Disorder(OCD). However, there is no further evidence suggesting that OCD is incurable or a serious mental condition to live with her companion.

16.From the evidence, this Court is able to see that the appellant and respondent were living together as husband and wife till 2011. It is also admitted that the respondent was living together with the appellant alone in a separate house with child. Except a few incidents upto July'2001, the respondent/husband did not point out any other incident or event that has prompted him to seek divorce on the ground of mental illness of the appellant/wife.

17.From the available pleadings and material records, particularly, the evidence of PW-1, this Court is unable to subscribe to the view taken by the Family Court, Madurai, granting



divorce by dissolving the marriage between the appellant and respondent. As it has been reiterated by various precedents, the Court has to come forward with the definite conclusion before granting a decree of divorce under Section 13(1)(iii) of Hindu Marriage, Act, 1955. As pointed out earlier, the appellant and respondent were living together as husband and wife for about 12 years without any break. The respondent/husband is working as a Doctor. No abnormality in the behaviour was noticed during interrogation, when the appellant was present before this Court, when this Court made an attempt to save the marriage. Since the respondent failed to prove any mental abnormalities warranting divorce, by proper evidence, this Court is of the view that the judgment of the Family Court, Madurai, is unsustainable. The Family Court in the course of discussion considered mental cruelty as a ground. In the absence of specific pleading, the Family Court is not expected. Some of the allegations in the petition about cruelty as a result of mental abnormalities cannot be taken as plea to seek divorce on the ground of mental cruelty.

18.As a result, this Civil Miscellaneous Appeal is allowed and the judgment of the Family Court, Madurai, in H.M.O.P.No.184 of 2012, dated 16.10.2015 is set aside. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

To

The Judge, Family Court, Madurai.

Copy to:

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V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.V.SITHARANJANDAS, Advocate, SR.No. 43552

+1cc to Mr.CHAMUNDI BOSE, Advocate, SR.No. 43553

C.M.A. (MD) No.29 of 2016

30.01.2019