



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 08.04.2019

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

CMA(MD)No.873 of 2014

V.Stephen Robert

...Appellant

vs.

Arokia Margret Mary

...Respondent

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 55 of Indian Divorce Act against the judgment and decree passed in I.D.O.P.No.74 of 2013 on the file of the II Additional District Judge, Trichy dated 03.01.2014.

For Appellant : Mr.Karthick Subramanian

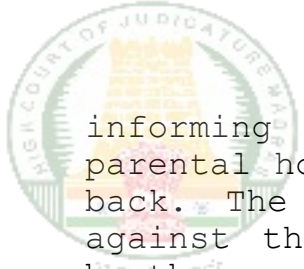
For Respondent :Mr.Karunanithi

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree passed in I.D.O.P.No.74 of 2013 on the file of the II Additional District Judge, Trichy dated 03.01.2014.

2.I.D.O.P.No.74 of 2013 was filed by the appellant/husband on three aspects namely cruelty, adultery and desertion. In the said I.D.O.P., the learned counsel for the appellant/husband has contended that the appellant and the respondent were married on 10.02.2002. Through their wedlock, they got two children in the year 2003 and 2009 respectively. The appellant has narrated the certain facts regarding the presentation given to the respondent/wife at the time of marriage and sharing of food expenses. Further, the learned counsel for the appellant has stated that at the time of filing the said I.D.O.P, the appellant was working at Saudi Arabia and the respondent/wife was working as Police Constable.

3.It is further contended by the learned counsel for the appellant is that the appellant and the respondent lived only for 10 days along with the appellant's parents. Thereafter, they started their separate living. When the appellant started working as Mechanic in Palpannai Trichy, at that time the respondent is having affair with one Ramesh. The same was questioned by the appellant/husband, the respondent/wife has refused to answer, whereas the respondent started harassing the petitioner by picking up frequent quarrels and also by using filthy language. The appellant as husband on 10.07.2003 left for Kuwait and the respondent went to parents house. The appellant has sent Rs.39,68,285/- on several dates and the respondent has also purchased a land in her name with the appellant's money. Thereafter, the appellant returned back to India permanently and they lived for 3 months. Once again the respondent started ill treating the appellant in different manner and left the matrimonial home without



informing the appellant. Thereafter, the respondent went to her parental home along with the children and jewels and never returned back. The respondent/wife has also preferred a false complaint against the appellant/husband, his mother, his elder and younger brothers and brother-in-law at the All Women Police Station, Lalgudi, for which F.I.R was registered. Hence, the appellant herein has filed the I.D.O.P.No.74 of 2013 praying that there is no scope and chance for reunion and hence, he has no remedy other than the dissolution of marriage on the grounds of cruelty, adultery and desertion.

4.In the said I.D.O.P., the respondent has not received notice and the said petition was decided based on the evidence furnished by the appellant himself. The appellant was examined as P.W.1. There are seven documents were marked as Exhibits P.1 to P.7 on the side of the appellant.

5.The trial Court after verifying the documents and also evidence placed by the appellant, has given a finding that one of the ground relied by the appellant is adultery, whereas as per Section 11 of Divorce Act, the adulterer or adulteress have to be the co-respondent in a petition filed seeking for the relief of divorce on the grounds of adultery. Hence, the relief of adultery cannot be granted as the appellant has not included the adulterer as a respondent in the case and has failed to prove the aspect of adultery, hence the relief of adultery cannot be claimed by the appellant. Regarding the cruelty only copy of the F.I.R has been filed and that is also based on the complaint given by the respondent. The averments made in the said complaint reveals that the appellant has committed cruelty on the respondent. Hence, the trial Court after verifying the said F.I.R, has come to the conclusion that the appellant ought to have contested the criminal case and ought to have prove his innocents then only he can approach the Court on the ground of cruelty. The trial Court has also observed the fact that when the respondent was thrown out of the home as per Exhibit P6, the copy of F.I.R., the appellant cannot relied upon the ground of desertion. The F.I.R., Ex.P.6 was filed by the appellant and the same was not proved by him. The trial Court has concluded that where the respondent remained exparte, it is the duty of the Court to see that the appellant has established his case or not. It does not mean that the Court is stepping into the shoes of the respondent. In this case the appellant has failed to establish the grounds of adultery, cruelty as well as desertion and hence, the trial Court has dismissed the I.D.O.P. Against which the appellant has preferred this Civil Revision Petition.

6.The grievance of the appellant is that the petition filed under cruelty can be proved only by examining the respondent and the order of the trial court has to be set aside by once again and contest the case on merits by examining the respondent who is the life partner of the appellant.



7. On the other hand, the learned counsel for the respondent/wife has contended that since the appellant has no case for seeking such relief, there is no need to proceed the order of the trial Court further. The learned counsel for the respondent has further contended that the respondent/ wife is willing for reunion.

8. Since it is a matrimonial dispute, the relief sought for by the appellant is one for divorce under three grounds viz., desertion, cruelty and adultery. It is also observed that both the parties have preferred F.I.R and the criminal proceedings were also taken. Without hearing the appellant and without examining the respondent, the order passed by the trial Court is not based on merit. Hence, the order of the trial Court is set aside, since the respondent is also willing for reunion. The issues in the said I.D.O.P can be decided by referring the matter to Mediation Centre.

9. Considering the facts and circumstances of the case and also considering the submission made by both counsel, this Court finds that they were living for long years and also got two children. Merely dismissing the I.D.O.P. would not serve any purpose for arriving at any settlement. Hence, the trial Court is directed to give an opportunity to both the parties to contest the case by suggesting for Mediation.

10. With the above observation, this Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The II Additional District Judge, Trichy

2. The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.KAMARAJ, Advocate (SR-60195[F] dated 10/04/2019)

msa

CMA (MD) No. 873 of 2014
08.04.2019

CS: (31/05/2019) 3P 4C