



WEB COPY

CMA(MD)No.309 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD)No.309 of 2019

and

C.M.P. (MD)No.3975 of 2019

Rameshkumar

... Appellant/Petitioner

Vs.

Nithiyakalyani

..Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 28 of the Hindu Marriage Act, to set aside the judgment and decree in H.M.O.P.No.223 of 2017 on the file of the Family Court, Sivagangai, dated 07.01.2019 and allow this appeal by granting divorce in favour of the appellant / husband.

For Appellant

: Mr.S.Kameshwaran

For Respondent

: Ms.A.Banumathy

JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.S.Kameshwaran, learned counsel appearing for the appellant and Ms.A.Banumathy, learned counsel appearing for the respondent.

2. This appeal is filed under Section 28 of the Hindu Marriage Act, challenging the judgment and decree in H.M.O.P.No.223 of 2017, dated 07.01.2019. The said petition was filed by the appellant / husband seeking for a decree of divorce on the ground of cruelty and unsound mind under Section 13(1)(i-1)(iii) of the Hindu Marriage Act, by dissolving the marriage, which was solemnized on 22.08.2005 between the appellant and the respondent.

3. The Family Court, Sivagangai dismissed the petition on the ground that the appellant was unable to prove that the marriage has to be dissolved on the ground of cruelty and unsound mind. During the pendency of these proceedings, compromise has been arrived at between the parties. The unfortunate situation is that the respondent / wife, when she delivered a baby in the year 2006, she developed medical complication and has been bed ridden. The appellant / husband has not been living with the respondent / wife since 2006 and he is employed in Singapore as an Engineer.



4. The respondent / wife is under the care and attention of her parent viz., Meenakshisundaram and also her brother. It is stated by the appellant / husband by way of an affidavit, dated 30.10.2019 that he has spent substantial sums of money for the medical expenses of the respondent / wife and also paid a sum of Rs.15 lakhs by two demand drafts dated 06.07.2018 and 09.08.2018 as full and final settlement of the maintenance claim of the respondent / wife. Since the respondent / wife is not able to speak, stand or walk, her father namely, Meenakshisundaram has represented her and has entered into an agreement to revoke the marriage on 06.07.2018.

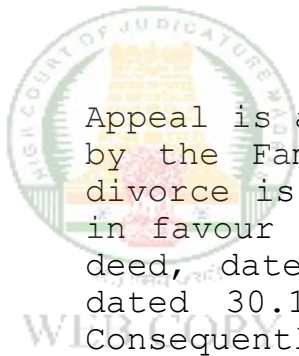
5. The appellant, Rameshkumar is present in Court and the respondent, represented by her father, is also present in Court.

6. The learned counsel for the respondent / wife has produced a certificate, dated 11.10.2017 stating that the respondent wife is under the care of Appolo hospital for symptomatic epilepsy as a sequelae of hypoxic ischemic encephalopathy. She requires anti convulsant ploytherpy. She also has significant cognitive deficits as sequelae and required assistance for all activities of daily living.

7. The copy of the marriage cancellation agreement dated 06.07.2018 has been filed in the typed set of papers and original was also produced before us for perusal. In the third page of the said agreement, the father of the respondent / wife has signed having served two cheques for total sum of Rs.15 lakhs. We have also spoken to the appellant / husband, who has stated before us that he will unconditionally abide by the undertaking given by him in the affidavit, dated 30.10.2019, pertaining to the education of his son Harish, who is presently studying 9th standard in the Leaders Academy, Karaikudi, Sivagangai District under the care and attention of his grandparent, namely Meenakshisundaram. For better appreciation, we quote paragraph 6 of the said affidavit here:-

"...6. I humbly submit that my son Harish is studying 9th standard CBSE in the Leaders Academy, Karaikudi, Sivagangai District. I am spending money for my son's education, medical and other expenses as on date. I will undertake full responsibility of my son that includes his future education, medical expenses and all other expenses. If further submit that in future I will take him to Singapore."

8. In the light of the agreement arrived at between the parties, this Court is inclined to grant decree of divorce in favour of the appellant / husband. Thus, by recording the marriage cancellation deed dated 06.07.2018 and the affidavit filed by the appellant / husband dated 30.10.2019, this Civil Miscellaneous



Appeal is allowed. Consequently, the judgment and the decree passed by the Family Court, Sivagangai is set aside. The petition for divorce is allowed and the decree of divorce is accordingly granted in favour of the appellant / respondent. The marriage cancellation deed, dated 06.07.2018 and the affidavit filed by the appellant, dated 30.10.2019 shall form part of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

The Family Court,
Sivagangai.

+2 CC to Mr.S. KAMESHWARAN, Advocate (SR-95622[F] dated 01/11/2019)

ORDER MADE IN
C.M.A. (MD) No.309 of 2019
30.10.2019

VB(06.12.2019) 3P 4C