



WEB COPY

C.M.A.(MD)No.665 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **04.09.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A. (MD)No.665 of 2019

and

C.M.P. (MD)No.8135 of 2019

S.Jeyaramachandran

... Appellant/Petitioner

Vs.

Kanaka

..Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 28 of the Hindu Marriage Act, 1955 to allow this Civil Miscellaneous Appeal by setting aside the order and decree made in H.M.O.P.No.245 of 2017 dated 08.10.2018 on the file of the Family Court, Sivagangai.

For Appellant : Mr.V.Kannan

For Respondent : Mr.C.Jeyaprakash

JUDGMENT

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

Heard Mr.V.Kannan, learned counsel appearing for the appellant and Mr.C.Jeyaprakash, learned counsel, appearing for the first respondent.

2. By consent of both parties, this appeal is taken up for final disposal.

3. This Civil Miscellaneous Appeal under Section 28 of the Hindu Marriage Act, 1955 is directed by the appellant / husband against the judgment and decree in H.M.O.P.No.245 of 2017 dated 08.10.2018. The appellant / husband filed a petition for divorce on the ground that the respondent / wife committed the acts of cruelty. The learned family Court had carefully examined the case of the appellant and that are of the respondent / wife, oral and documentary evidence and has recorded a factual finding that the appellant / husband was not able to establish by evidence the allegations of cruelty made in the divorce petition. In the absence of any such oral and documentary evidence, we are of the considered view that the Family Court was fully justified in dismissing the petition for divorce.



4. We are informed by the learned counsel for the respondent that the respondent does not have any employment and there is a minor girl child, who she has to take care of, and the petition filed for grant of maintenance for the respondent and the minor child under Section 125 Cr.P.C., is still pending before the learned Magistrate and no orders have been passed and during the pendency of the proceedings the appellant / husband has not paid any maintenance either to the respondent wife or to the minor child. Considering the fact that the appellant / husband was not able to establish by oral and documentary evidence the allegations of cruelty, we declined to interfere with the judgment and decree passed by the learned family Court.

5. For the above reasons, this Civil Miscellaneous Appeal fails and dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-)

To

1.The Judge,
Family Court, Sivagangai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai(2 Copies).

+1 CC to M/s.C. JEYA PRAKESH, Advocate

(SR-85442[F] dated 05/09/2019)

+1 CC to M/s.V.KANNAN, Advocate (SR-85742[F] dated 06/09/2019)

ORDER MADE IN
C.M.A. (MD) No.665 of 2019
04.09.2019

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ES/01.10.2019/2P/6C