

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19.08.2020

JUDGMENT DELIVERED ON : 25-09-2020

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

CIVIL MISCELLANEOUS APPEAL NO.134 OF 2016

V.R.Rajkumaran ... Appellant/Claimant

Versus

B.S.Lavanya .. Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19 of The Family Court Act against the order and decree dated 30.11.2015 passed in O.P. No. 336 of 2007 on the file of III Additional Family Court, Chennai.

For Appellant : Mrs.Sudha Ramalingam

For Respondent : Mr.P.V.Sudhakar

JUDGMENT

R. SUBBIAH, J

This appeal is taken up for hearing through video-conferencing.

2. The appellant is the husband and the respondent is his wife. The appellant-husband has come forward with this appeal questioning the validity and correctness of the order and decree dated 30.11.2015 passed in O.P. No. 336 of 2007 on the file of III Additional Family Court, Chennai, by which, the Family Court refused to grant a decree of divorce and dismissed the Original Petition filed by him.

3. The case of the appellant-husband, as culled out from the Original Petition filed by him before the Family Court, is as follows:-

(i) The marriage between the appellant and the respondent was solemnised on 27.08.2004 at Good Shepherd House, Nungambakkam, Chennai, as per Hindu rites and customs, in the presence of family members and relatives of both sides. At the time of marriage, the appellant-husband had completed M.Com., GNIIT and M.B.A. and was working in City Bank. The respondent-wife was a M.Sc., M.B.A. holder and was working in City Bank Associates, Chennai. Due to the wedlock between them, a male child was born on 27.11.2005, named as R.Sharaj. The matrimonial life was peaceful and blissful till September 2005 and when the respondent-wife conceived, she was sent to her parents' house for delivery of child. Thereafter, it was stated that the respondent-wife behaved indifferently towards the appellant-husband. Further, three months after the delivery of the male child, the appellant-husband called upon the respondent-wife to join him in the matrimonial home, but she refused. The appellant-husband also came to know that the respondent-wife left her job from City Bank without even informing him and had taken up a job in ABN Amro Bank with duty hours from 12.00 noon to mid-night. According to the appellant-husband, the respondent-wife ought not to have taken up such a nature of employment, inasmuch as it will affect her health to a great extent, besides she could not look after the new born child. When the appellant-husband advised her to atleast change her timing of the job, she refused to hear him.

(ii) According to the appellant-husband, seven months after delivery of the child, the respondent-wife came to the matrimonial home with the child, but on the next day, she left the matrimonial home. Once again, the respondent-wife came to the matrimonial home during the month of August 2006 and stayed only for a period of three months. During such stay, the respondent-wife behaved like a hysteric patient and quarrelled with the appellant-husband even for trivial issues. She used to take lot of pills and shout at the appellant-husband for reasons unknown. When the appellant-husband enquired about the tablets that she had taken, the respondent-wife did not respond. In one occasion, when the appellant-husband questioned the attitude of the respondent-wife, she threatened that she would commit suicide and will throw the blame on him. Such an attitude of the respondent-wife was also witnessed by the mother of the appellant-husband. In yet another occasion, the respondent-wife physically assaulted the appellant-husband in front of his mother. On seeing such an attitude of the respondent-wife, the appellant-husband's mother had suffered acute stress and inconvenience.

(iii) It was stated that during October 2006, the child was diagnosed to have been suffering from Chikankuniya and at that time, the appellant-husband and his mother had taken care

of the child. However, after the child recovered, the respondent-wife wanted to go to her parents' house and accordingly, the appellant-husband permitted her to go to her parents' house along with the child. Whenever the appellant-husband called the respondent-wife, she was in her mother's place and her response was very rude. She never answered him properly. During November 2006, when the appellant-husband called the respondent-wife for Deepavali shopping, she refused to accompany him. Even on the first birthday of the minor child on 27.11.2006, the appellant-husband tried to call the respondent-wife, but she did not respond. Therefore, left with no other option, the appellant-husband had sent a message through the mobile phone and wished the child. As the respondent-wife refused to return to the matrimonial home, the appellant-husband, along with his mother, uncle by name Krishnamoorthy and aunt Usha Rani went to the house of the respondent-wife and called upon the respondent-wife to return to the matrimonial home during the eve of Pongal festival, but she stoutly refused and shouted towards the appellant-husband and others as to why they should come to her parents house. In fact, during such time, the father of the respondent-wife attempted to assault the appellant-husband and also categorically stated that his daughter would never come back to the matrimonial home. In spite of such humiliation, the appellant-husband called upon the respondent-wife to come to the matrimonial home during Pongal festival, but she imposed a pre-condition to take up a separate home for their living, leaving his mother. Accordingly, the appellant-husband partitioned the family property during January 2007, as per which, the appellant-husband's mother was given a portion in the property to reside separately. Thereafter, the respondent-wife joined the matrimonial company of the appellant-husband on 15.01.2007 at 11.00 am, but left in the evening along with her aunt. When the appellant-husband asked for the reason, she demanded the appellant-husband to come and live with her near her parents house in a separate house. By such act of the respondent-wife, the appellant-husband was subjected to acute mental agony and humiliation. Therefore, the appellant-husband filed the Original Petition seeking dissolution of marriage.

4.(i) Opposing the Original Petition filed by the appellant-husband, the respondent-wife has filed a counter statement before the Family Court, contending that, at the time of marriage, her parents have offered 65 sovereigns of Gold ornaments, three kilograms of Silver, besides other house hold articles, as has been demanded by the mother of the appellant-husband. At the time of marriage, the appellant-husband was not having a permanent job and in spite of the same, the mother of the appellant-husband insisted to complete the marriage within a month, on the ground that the marriage of her son has to be

solemnised within a year from the date of death of her husband, who died on 15.09.2003.

(ii) According to the respondent-wife, after marriage, she merely lived along with the appellant-husband without any excitement. The appellant-husband never spoke freely with her, especially in front of his mother and only when the appellant-husband's mother was not present, he moved freely and affectionately. At the time of marriage, the respondent-wife was employed in Citi Bank and she resigned it as advised by the mother of the appellant-husband. It was stated that the mother of the appellant-husband was working in a Government Department and she had never treated the respondent-wife affectionately. The mother of the appellant-husband imposed numerous conditions, not to enter the kitchen or to speak with the appellant-husband etc. The mother of the appellant-husband was highly possessive of her son and this had come as a stumbling block in the matrimonial life of the respondent-wife with the appellant-husband. The mother of the appellant-husband also insulted the respondent-wife by referring to her status and that of her family. According to the respondent-wife, the appellant-husband's mother also insulted her by stating that she is not a fit match for her son. The appellant-husband's mother also retorted that even though very many rich persons have come forward to give their daughter in marriage to her son, the marriage was arranged with the respondent-wife. After marriage, the respondent-wife left her job, however, the mother of the appellant-husband insisted her to take up a suitable job. Even when the respondent-wife was pregnant, she was not spared and made to attend her employment by travelling for 2 hours daily. The mother of the appellant-husband also did not like the appellant-husband taking the respondent-wife outside during weekends or holidays. Even during her pregnancy, the appellant-husband was not permitted to accompany the respondent-wife for medical check up. After the birth of the child, the appellant-husband alone used to visit her in her parents house and the mother of the appellant-husband visited her house only during the naming ceremony of the new born child. After three months of the delivery of the child, the mother of the appellant-husband asked the respondent-wife to look for some other job with better salary to meet the needs of the new born child and the appellant-husband cannot be expected to meet those expenses. The appellant-husband's mother, sister Usha and brother Krishnamoorthy have also imposed a condition to visit the matrimonial home with the new born child along with 5 sovereigns of Gold chain. It was in those circumstances, the respondent-wife did not turn up to the matrimonial home after three months of the delivery. The respondent-wife returned to the matrimonial home only after 7 months with 5 sovereigns of Gold jewellery and even thereafter, the respondent-wife was treated very badly. The

mother of the appellant-husband also demanded a bike to be purchased for the appellant-husband. The respondent-wife's father, who visited the matrimonial home once in a fortnight, financially supported the respondent-wife even for purchase of grocery and other essential items for the child and the appellant-husband did not support the respondent-wife financially. Even when the new born child suffered from Chikkanguniya, there was no financial support forthcoming from the appellant-husband. Therefore, after the child recovered, the respondent-wife along with the child stayed in her parents house for some time. The mother of the appellant-husband also did not like the appellant-husband to speak freely with the respondent-wife or to fondle the new born child. The appellant-husband also has no inclination to celebrate the first birthday of the child. It was the respondent-wife who called upon the appellant-husband to attend the first birthday, but he simply sent a message through phone wishing the child. Above all, the appellant-husband's mother, sister Usha Rani and brother Krishnamoorthy came to the house of the respondent-wife and demanded that the property standing in the name of the father of the respondent-wife, be partitioned and a share be given to the respondent-wife, failing which, the appellant-husband will initiate proceedings for dissolution of the marriage. As the appellant-husband's mother, brother and sister made such an ugly demand, the father of the respondent-wife met the uncle of the appellant-husband, by name Raja, in his house and highlighted the demands made by the mother of the appellant-husband, but he exhibited helplessness by saying that the mother of the appellant-husband will not heed to any one's advise. This would only indicate that it was the respondent-wife who was cruelly treated by the appellant-husband and his family with demand for more money.

(iii) According to the respondent-wife, during Pongal festival in January 2007, the appellant-husband came near her mother's house and called upon the respondent-wife to come to a nearby Temple with the new born child. When the respondent-wife met the appellant-husband, he asked the respondent-wife to accompany him to the matrimonial home. The respondent-wife also obliged and accompanied the appellant-husband to the matrimonial home. After staying in the matrimonial home for few hours, the appellant-husband himself accompanied the respondent-wife and the new born child to her parents house and left them there with an assurance to bring them back to the matrimonial home on an auspicious day. Believing such assurance of the appellant-husband, the respondent-wife waited patiently to hear from the appellant-husband, but it never happened. When the respondent-wife was anticipating to hear from the appellant-husband to go to the matrimonial home, the appellant-husband has filed the Original Petition for dissolution of marriage. The respondent-

wife is always ready and willing to live with the appellant-husband. The respondent-wife did not subject the appellant-husband to matrimonial cruelty in any manner. It was the appellant-husband who left the respondent-wife in her parents' house and thereafter refused to take the respondent-wife and the new born child to the matrimonial home, and thereby, he committed acts of cruelty against the respondent-wife. In such circumstances, the appellant-husband is not entitled to maintain this petition. The respondent-wife therefore prayed for dismissal of the Original Petition.

5. Before the Family Court, the appellant-husband examined himself as P.W.1, besides examining one Suguna, servant maid engaged in his house, as P.W.2 and marked Exs. P-1 and P-2. The respondent-wife examined herself as R.W.1, besides examining her mother Mrs. Leela as R.W.2, but she has not marked any document. The Family Court, on considering the oral and documentary evidence, refused to accept the plea of the appellant-husband that the respondent-wife is a hysteric patient and that is the reason why she used to shout at him unnecessarily. The Family Court rendered a specific finding that, had it been true that the respondent-wife suffers from hysteria, she could not have been employed in a reputed Bank or continued her employment. Further, the appellant-husband also did not produce any medical records to prove the mental condition of the respondent-wife. The Family Court also did not accept the averments made by the appellant-husband in the Original Petition, on the ground that except the interested testimony of the appellant-husband, no independent witness, including his mother, brother or sister, were examined to prove the nature of cruelty alleged to have been perpetrated towards him by the respondent-wife. Further, the deposition of PW2, servant maid is of no use to the appellant-husband to establish his case against the respondent-wife. The Family Court therefore held that the appellant-husband failed to establish his case and he is not entitled to a decree of divorce.

6. The learned counsel for the appellant-husband contended that after the respondent-wife went to her parents house for delivery, she refused to return to the matrimonial home, inspite of many requests. The respondent-wife also refused to accompany the appellant-husband for shopping on the eve of Deepavali festival. Such a reasonable and legitimate expectation of the appellant-husband to accompany the respondent-wife for shopping, has not been fulfilled by her. Even on the date of birthday of the minor child on 27.11.2006, the appellant-husband called upon the respondent-wife by phone, but she did not respond. Even during the short stay of the respondent-wife in the matrimonial home, she behaved like a hysteric, screamed at the top of her voice and suddenly started shivering as if she had a nervous

disorder. When enquired by the appellant-husband, the respondent-wife has not given a satisfactory reply. Due to such an ailment, on one occasion, the respondent-wife physically assaulted the appellant-husband and threatened to commit suicide. In such circumstances, with such a mood swing suffered by the respondent-wife, the appellant-husband cannot be expected to peacefully and blissfully engage with the respondent-wife in his matrimonial life. In this context, the learned counsel for the appellant-husband relied on the decision of the Supreme Court in the case of Parveen Mehta Vs. Inderjit Mehta, reported in 2002 (5) SCC 706, wherein it was held as follows:

"21. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively."

The learned counsel appearing for the appellant-husband further submitted that in the case on hand, the acts of the respondent-wife in physically assaulting the appellant-husband in front of his mother, threatening the appellant-husband that she would commit suicide and also refusing to reveal the pills she is taking for her ailment, would certainly amount to cruelty and it was proved by the appellant-husband before the Family Court.

7. The learned counsel for the appellant-husband proceeded to contend that the respondent-wife left the matrimonial home during November 2006 and thereafter, she refused to rejoin the appellant-husband in the matrimonial home without any justifiable cause. The respondent-wife also admitted that she is residing separately from November 2006. Even when the appellant-husband yielded to the demands of the respondent-wife and set up a separate abode, the respondent-wife insisted him to come and take a separate house for their living near her parents' house, especially when the appellant-husband is having his own house. When the appellant-husband along with his mother and relatives went for a mediation, the respondent-wife even

yelled at them as to why they have come for mediation. At that time, the father of the respondent-wife attempted to physically assault the appellant-husband and also stated that the respondent-wife will never come to the matrimonial home. Notwithstanding such humiliation, the appellant-husband requested the respondent-wife to come to the matrimonial home and she had also visited the matrimonial home on the eve of Pongal only to stay for a few hours and left back. In this regard, the learned counsel for the appellant/husband invited the attention of this Court to the evidence of R.W.1 and R.W.2, which are contradictory to each other. Even though the respondent-wife admitted that the appellant-husband accompanied her to the parents house and assured to take her back on an auspicious day, R.W.2, who is the respondent's mother, had stated that the appellant-husband left the respondent-wife by stating that his house needs to be white-washed. In any event, this would only indicate the preparedness of the appellant-husband to take back the respondent-wife to the matrimonial home, but it was the respondent-wife, who refused to return.

8. The learned counsel for the appellant-husband contended that the version of the respondent-wife that she was subjected to torture by the mother, sister and brother of the appellant-husband by demand of money, is far from truth, besides, it has not been substantiated. The respondent-wife was in fact adequately taken care of by the appellant-husband and his mother at all times, particularly during her pregnancy. The appellant-husband or his family members never demanded any dowry as a condition precedent for taking the respondent-wife back to the matrimonial home. As the respondent-wife was also employed, a servant maid (P.W.2) was engaged to do the household chores and this amply makes it clear that the respondent-wife was put to all comforts during her stay in the matrimonial home. The respondent-wife had made several insinuating allegations against the mother of the appellant-husband, but those averments were not proved. In order to cover up the wrong doings committed by the respondent-wife, she had thrown the blame on the mother of the appellant-husband without any basis.

9. The learned counsel for the appellant-husband contended that even though the respondent-wife harps upon by stating that the appellant-husband did not take any steps to bring her back to the matrimonial home and she was always ready and willing to join the appellant-husband, she did not file any separate petition under Section 9 of The Hindu Marriage Act for restitution of conjugal rights and this will speak volumes about the conduct of the respondent-wife. On the other hand, after dismissal of the Original Petition, she filed Domestic Violence Case in DVC No. 17 of 2017 before the Additional Mahila Court, Allikulam for relief of injunction and other monetary order.

Further, the respondent-wife is presently employed in Bangalore and earning a lucrative salary. This subsequent conduct of the respondent-wife in filing the domestic violence case, only shows that the intention of the respondent-wife is to harass the appellant-husband and in such an event, the appellant-husband may not have any inclination to join the respondent-wife. The matrimonial relationship between the appellant-husband and the respondent-wife had broken irretrievably and therefore, the order passed by the Family Court has to be set aside. In this context, the learned counsel for the appellant-husband relied on the decision of the Supreme Court in Samar Ghosh Vs. Jaya Ghosh reported in 2007 (4) SCC 511 and contended that the long and continued separation of the couple, had resulted in snapping of the matrimonial bond beyond repair and on that ground, the matrimonial tie has to be severed. If that has not been done, the appellant-husband will be subjected to mental cruelty and could not spend rest of his life in peace. The learned counsel for the appellant-husband therefore prayed for allowing this appeal.

10. Per contra, the learned counsel for the respondent-wife contended that the averments, based on which the Original Petition has been filed by the appellant-husband, are trivial and they are not such that it would constitute matrimonial cruelty. Even otherwise, the averments made by the appellant-husband have not been proved by the appellant-husband in a manner known to law, except his own interested testimony. Even though the appellant-husband examined the servant maid employed in his house as P.W.2, her deposition does not help the appellant-husband to establish his case in any manner. P.W.2 in her deposition has only stated that she was not aware with regard to any dispute between the appellant-husband and the respondent-wife and therefore, the evidence of PW2 will not help the appellant-husband in any manner to establish his case.

11. The learned counsel for the respondent-wife contended that the appellant-husband invited the respondent-wife for a shopping ahead of Deepavali festival, but the respondent-wife refused to accompany him, since the child was infected with Chickungunya and was on the path of recovery at that time. As the respondent-wife intended to take care of the new born child, she could not accompany the appellant-husband and it cannot be blown out of proportion by the appellant-husband. On the other hand, during the first birthday celebration of the new born child, the appellant-husband did not even choose to meet the child. Instead, he only sent a message in the mobile phone. The appellant-husband has not given any reason for not attending the birthday function in person. In any event, the refusal on the part of the respondent-wife to accompany the appellant-husband for shopping, cannot be termed as a matrimonial cruelty

inflicted on the appellant-husband. Further, the allegation that the respondent-wife behaved like a hysteric patient, consumed pills and shouted at the peak of her voice, are self-serving statements of the appellant-husband. To prove that the respondent-wife suffered from such ailment, the appellant-husband has not produced any evidence with medical records. Therefore, it must be concluded that those averments have been made by the appellant-husband for the purpose of filing the Original Petition on the ground of cruelty.

12. As regards desertion, it is contended by the learned counsel for the respondent-wife that the appellant-husband did not file the Original Petition on the ground of desertion, but only on the ground of cruelty. Even otherwise, the respondent-wife was always ready and willing to join the matrimonial company of the appellant-husband and it was the appellant-husband who failed to take back the respondent-wife and the minor child. Even on the eve of the Pongal festival, at the request of the appellant-husband, the respondent-wife accompanied him to the matrimonial home. However, within few hours, the appellant-husband himself had left the respondent-wife and the minor child in her parents house with an assurance to take them back to the matrimonial home on an auspicious day. While so, the appellant-husband cannot take advantage of his own wrong. In such event, merely because the respondent-wife did not file any petition for restitution of conjugal rights, it will not be a ground for granting a decree of divorce, especially when the appellant-husband has not filed the Original Petition on the ground of desertion. The respondent-wife never insisted the appellant-husband to take a separate house for their abode. The uncle and aunt of the appellant-husband visited the parents house of the respondent-wife only to reiterate the demand for Rs.5 lakhs from the parents house and they did not visit the parents house of the respondent-wife to request the respondent-wife to come back to the matrimonial home, as alleged.

13. The learned counsel for the respondent-wife also submitted that after the dismissal of the Original Petition, the respondent-wife filed C.C.No.17 of 2017 under the Protection of Women from Domestic Violence Act only to assert her matrimonial right. Such a complaint was given, inasmuch as the appellant-husband did not support the respondent-wife and the minor child financially. The averment that the respondent-wife is receiving a lucrative salary out of her employment in Bangalore, is untenable, as the respondent-wife is living in Chennai along with her parents. The Family Court, on appreciation of the oral and documentary evidence has held that the averments made in the Original Petition are not substantiated by any evidence, besides, they are bald and vague. Such a conclusion arrived at

by the Family Court is wholly justified and it needs no interference by this Court.

14. The learned counsel for the respondent-wife also contended that the decision relied on by the learned counsel for the appellant-husband in Samar Ghosh case (cited supra) cannot have any application to this case. In that case, the husband was deserted by the wife when he had undergone a bye-pass surgery. The wife, in that case, also refused sexual intercourse with the appellant-husband. It is in those circumstances, it was held that the wife had subjected the husband to matrimonial cruelty. In the present case, no such situation exist and therefore, the decision rendered by the Supreme Court relied on by the counsel for the appellant-husband, is factually distinguishable. Similarly, the other decisions relied on by the counsel for the appellant-husband are factually distinguishable and they cannot be relied on in this appeal.

15. The learned counsel for the respondent-wife, on the other hand, relied on the decision of a Division Bench of this Court in Usha Devi Vs. G.Dayalanathan, reported in MANU/TN/4264/2017 and contended that instances of cruelty cannot be read in isolation, but the cumulative effect of the facts and circumstances emerging therefrom has to be considered.

16. The learned counsel for the respondent-wife also relied on decisions of the Division Bench of this Court in (i) A.Padmini Vs. T.Hemachandran, reported in 2018 (4) Law Weekly 812, (ii) Hunnuswamy Vs. T. Sumathy, reported in 2017 (2) Law Weekly 673 and (iii) Vallabhi Vs. R.Rajasabhai, reported in 2016 (5) Law Weekly 554 and contended that trivial dispute among the couple are not adequate to hold that one of the spouses had subjected the other spouse to matrimonial cruelty and it must be pleaded and proved. When one of the spouses denied having committed matrimonial cruelty, the burden is on the other spouse to disprove it. In the present case, the averments made in the Original Petition are generic and not specific and they were denied by the respondent-wife. While so, the burden is on the appellant-husband to disprove those averments made by the respondent-wife. In any event, the misunderstanding between the couple over a trivial dispute cannot be construed as infliction of matrimonial cruelty against the other. In such case, a decree of divorce on the ground of cruelty has to be refused. Furthermore, in this case, the appellant-husband had neglected to discharge his matrimonial obligations, left the respondent-wife and the minor son without any financial support for their reasonable expenses towards maintenance and education of the son. When the appellant-husband had exhibited a blame-worthy conduct, he cannot be entitled for a decree of divorce on the

ground of cruelty. The learned counsel for the respondent-wife therefore prayed for dismissal of this appeal.

17. We have heard the counsel for both sides and perused the materials placed on record.

18. The appellant-husband has filed the Original Petition for dissolution of the marriage solemnised between him and the respondent-wife on the ground of cruelty. The averments based on which the appellant-husband had filed the Original Petition, can be summarised below for consideration.

19. According to the appellant-husband, the marriage life was blissful and peaceful for about seven months. At that time, the respondent-wife was pregnant and therefore, she was sent to her parents' house. It is the contention of the appellant-husband that after the respondent-wife left the matrimonial home for delivery of the child, her behaviour pattern had undergone a vast change. Further, after delivery of the child, when the appellant-husband called upon the respondent-wife to come to the matrimonial home, she refused. However, she returned to the matrimonial home only after seven months of birth of the minor child. When the child suffered ailment, the respondent-wife neglected to take parental care and it was the appellant-husband and his mother, who have taken care of the child. When the child recovered, at the request of the respondent-wife, she was sent to her parents house and thereafter, she did not return back to the matrimonial home. When the appellant-husband called upon the respondent-wife for a festival shopping, she refused to accompany him. Even for the first birthday celebration of the minor child, the appellant-husband called upon the respondent-wife, but she never responded and therefore, he wished the child by sending a message over phone. When the appellant-husband and his mother and relatives went for a mediation, the appellant-husband and others were humiliated by the respondent-wife. The father of the respondent-wife went a step further and attempted to physically assault the appellant-husband and also made it clear that the respondent-wife will not come back to the matrimonial home. Notwithstanding such humiliation suffered, the appellant-husband requested the respondent-wife to come to the matrimonial home and she also obliged by returning to the matrimonial home on the eve of Pongal festival during 2007, however, within few hours, she returned back. From then onwards, the respondent-wife and the appellant-husband are residing separately and the efforts made by the appellant-husband for bringing the respondent-wife back to the matrimonial home, went in vain. Therefore, the appellant-husband has filed the Original Petition.

20. The averments that the appellant-husband had made in the Original Petition, were denied as false by the respondent-wife. According to the respondent-wife, the mother of the appellant-husband remained as a stumbling block for her peaceful matrimonial life, as she was very possessive towards her son. The mother of the appellant-husband did not permit the appellant-husband to accompany the respondent-wife anywhere during week ends or holidays. She also asserted that she refused to accompany festival shopping during Deepavali, because the minor child was progressing from the ailment and she has to take care of the child. She also replied that she was always ready and willing to join the matrimonial home of the appellant-husband and in fact she also accompanied him at his call during Pongal 2007. She also stated that the appellant-husband himself had left the respondent-wife and the minor child in her parents' house with an assurance to take them back on an auspicious day. Thus, the respondent-wife had rebutted the averments the appellant-husband had made and she prayed for dismissal of the Original Petition to pave way for her to join the appellant-husband in the matrimonial home.

21. The foremost averments, based on which the appellant-husband had filed the Original Petition, to seek a decree of divorce on the ground of cruelty, have been elucidated by us in para No.19 above. As discussed in para No.20 supra, the respondent-wife had chosen to deny those averments and put the onus on the appellant-husband to disprove the same. Be that as it may. At the outset, we are at a loss to understand as to how those averments made in the Original Petition could constitute matrimonial cruelty. The alleged failure of the respondent-wife to accompany the appellant-husband to shopping or for not extending invitation to the appellant-husband on the birthday of the minor child etc., can only be regarded as trivial and insignificant for our consideration in this appeal. Those averments can at the best be termed as normal wear and tear that can be witnessed in every household. In our opinion, such a misunderstanding or a trivial dispute can be sorted out at the instance of elders in the family through mutual discussion or, by passage of time, those misunderstanding could no longer linger in the memories of the spouse and it would pave way for their reunion, automatically. In other words, given the magnitude of the misunderstanding between the appellant-husband and the respondent-wife, we feel that time is the best medicine for healing their wounds and it is certainly curable. Therefore, the trivial dispute or a misunderstanding between the couple cannot always be blown out of proportion to hold that one of the parties to the matrimonial dispute had inflicted matrimonial cruelty against the other. For granting a decree of divorce on the ground of cruelty, it must be proved by pleadings and evidence that the injury or scar inflicted by one of the spouses

against the other is such that it would be difficult for the other spouse to peacefully continue the matrimonial journey with the other spouse, voluntarily and wholeheartedly. The misconduct or misdeed or failure to fulfil one's matrimonial obligation leading to matrimonial cruelty, must therefore be sufficiently and adequately proved by the one who asserts that he was a victim of matrimonial cruelty. Even though there cannot be any direct proof or evidence in a matrimonial dispute between the spouses, the person who comes forward with a plea alleging matrimonial cruelty, is expected to prove his case by examining the close relatives, friends or colleagues or others who have knowledge about the strained relationship between the parties or with whom the matrimonial dispute was discussed or exchanged. In the present case, first of all, the injuries said to have been suffered by the appellant-husband at the behest of the respondent-wife, are not proved. Even though the appellant-husband alleged that the respondent-wife physically assaulted him in front of his mother, he has not chosen to examine his mother before the Family Court. The appellant-husband also did not examine his brother, sister or any of the relatives who has knowledge about the existence of the so-called matrimonial dispute between him and the respondent-wife or any one who has knowledge about it. Even though an attempt was made by examining the servant maid as PW2, her deposition is of no use for the appellant-husband to substantiate his case. PW2 feigned ignorance about the dispute, if any, between the appellant-husband and the respondent-wife. There was also no suggestion put forth to PW2 as to whether the relationship between the appellant-husband, respondent-wife and the mother of the appellant-husband was peaceful and cordial. Therefore, we hold that the appellant-husband failed to substantiate the allegations he made in the Original Petition, besides, those allegations are not sufficient for us to come to a conclusion that he was subjected to matrimonial cruelty at the instance of the respondent-wife.

22. The learned counsel appearing for the appellant-husband vehemently contended that the appellant-husband and the respondent-wife are residing separately at least for thirteen years since February 2007 and such a long and continued separation had practically snapped the matrimonial relationship between the parties. We are not, at the outset, inclined to accept such contention of the learned counsel for the appellant-husband for the simple reason that the Original Petition was filed only on the ground of cruelty and not on the ground of desertion. Even otherwise, the respondent-wife had categorically stated that during Pongal 2007, at the request of the appellant-husband, she accompanied him to the matrimonial home along with the child and stayed in the matrimonial home for few hours. Thereafter, it was the appellant-husband who had left the

respondent-wife and the minor child in the matrimonial home, with an assurance to take back them on an auspicious day. These averments of the respondent-wife remains largely disproved by the appellant-husband by letting in any contra evidence. Even otherwise, the mere long and continued separation of the couple, will not be a ground for snapping the matrimonial tie by granting a decree of divorce. Therefore also, we are not inclined to interfere with the order passed by the Family Court.

23. The learned counsel for the appellant-husband contended that after dismissal of the Original Petition, the respondent-wife has filed C.C. No. 17 of 2007 under the provisions of The Protection of Women from Domestic Violence Act and this itself would stand testimony to the fact that the intention of the respondent-wife is only to harass the appellant-husband and his family. We see no force in such submission of the counsel for the appellant-husband. The Criminal Proceedings were initiated subsequent to the dismissal of the Original Petition by the Family Court. In the present case, we have to examine the correctness or validity of the order of the Family Court. While so, we cannot travel beyond the scope of this appeal. Even otherwise, we can only observe that the respondent-wife, in order to assert her right and interest to get financial support from the appellant-husband, has filed C.C. No. 17 of 2017. Thus, the mere filing of C.C. No. 17 of 2017 subsequent to the dismissal of the Original Petition by the respondent-wife, cannot ipso-facto suggest that it was filed only to harass and disturb the appellant-husband and his family.

24. Though we cannot precisely define the word "cruelty" and narrate the instances of cruelty in this case, we can give some of the general instances illustratively, which are discussed below, containing some of the ingredients of 'cruelty'. The 'cruelty' has to be decided based on the facts and circumstances of each case and what is cruelty in one case, may not be cruelty in the other case.

25. It is well settled that cruelty or cruel treatment, is not defined precisely in the Hindu Marriage Act or conspicuously by way of judicial pronouncements by the Courts in our country. The definition of "cruelty" has to be inferred from the facts pleaded and evidence adduced by the party. Some of the leading cases in which cruelty was construed as a ground for dissolution of marriage are:

(i) Proof of the husband or wife falsely or maliciously prosecuting the other through the Criminal Courts and thereby harassing the other;

(ii) Proof of refusal to have conjugal relationship, which is a part of the matrimonial obligation.

(iii) Proof of refusal on the part of either spouse to postpone the child birth;

(iv) Proof of either spouse assaulting or causing bleeding injury during the course of the matrimonial life, thereby making the other spouse to live in constant fear;

(v) Proof of either spouse threatening or intimidating the other to commit suicide and to throw the blame on the other, thereby putting and intimidating the other spouse to remain in fear;

(vi) Proof of voluntary desertion by either spouse without any just or sufficient cause, thereby making the other spouse to suffer silently;

(vii) Proof of scolding or abusing either spouse, either in privacy or in front of others, thereby putting the other spouse into shame and degradation.

26. None of the above parameters have been made out in the case on hand. As mentioned above, the averments made by the appellant-husband, are, first of all, not true, besides, those averments were denied by the respondent-wife in the counter statement and also in her deposition before the trial Court. The appellant-husband has failed to discharge the burden of proof cast on him. He has also not contradicted the respondent-wife to disprove those denial of averments of the respondent-wife.

27. For all the reasons mentioned above, we confirm the Judgment and Decree dated 30.11.2015 passed in O.P.No.336 of 2007 on the file of III Additional Family Court, Chennai. The Civil Miscellaneous Appeal fails and it is dismissed. No costs.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

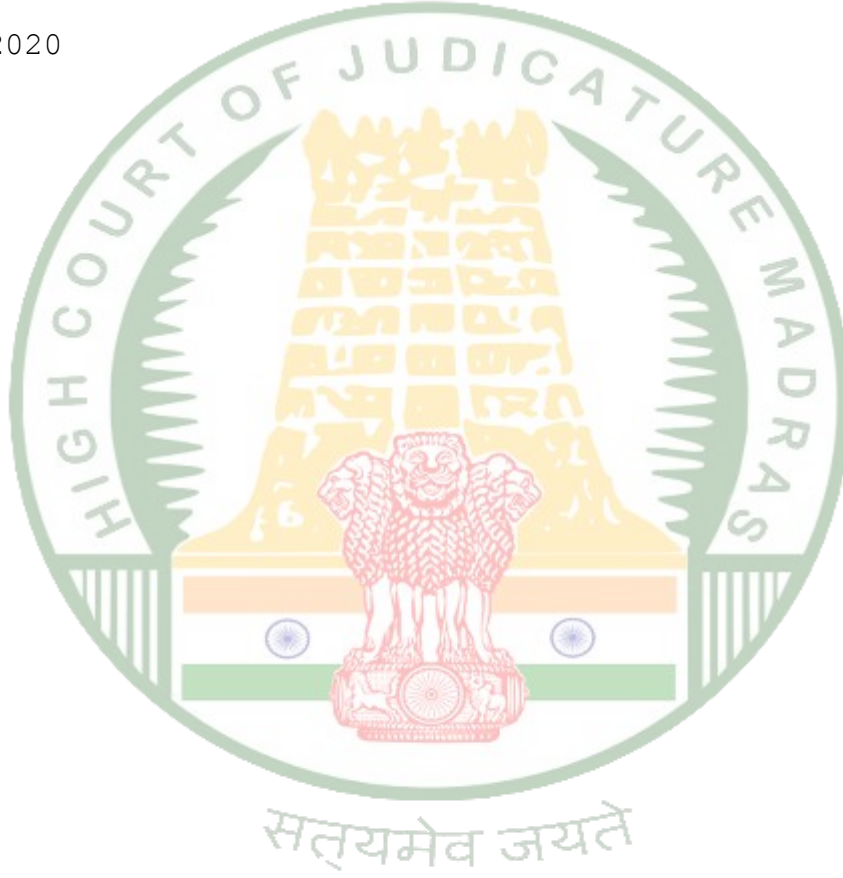
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To

1. The Presiding Officer
III Additional Family Court
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A.No.134 of 2016

LN (CO)
CS/16/10/2020



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