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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

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THE HONOURABLE MR. JUSTICE T.RAJA

C.M.S.A. No. 29 of 2011

Ramanesh S. Ramanan

...Appellant / Petitioner

Vs.

Anuradha

...Respondent / Respondent

Prayer: Civil Miscellaneous Second Appeal against the judgment and decree dated 15.02.2011 passed in C.M.A.No. 13 of 2006 on the file of the District Judge, Thiruvannamalai, reversing the order and decree dated 17.08.2006 passed in H.M.O.P. No. 7 of 2003 on the file of Principal Subordinate Judge, Thiruvannamalai.

For Appellant : Ms.S. Subhiksha
for M/s.P.B.Balaji

For Respondent : Mr.J. Ramakrishnan

JUDGMENT

This CMSA has been filed as against the impugned judgment and decree dated 15.02.2011 passed by the learned District Judge, Thiruvannamalai in C.M.A.No. 13 of 2006 raising the following substantial questions of law:

"a) Whether the reasoning of the Appellate Authority based on surmises and conjectures in exploring Exhibit P4 are sufficient to dislodge the findings of the Trial Court?

b) Whether the Appellate Authority erred in not considering the overall pleadings and evidence on record to prove the allegations of cruelty, more particularly, with regard to Ex.P4, which indicates that the respondent/wife even after 4 1/2 years from the date of marriage was found to be a virgin and not had proper marital relationship with her husband?"

2.The learned counsel for the husband/petitioner before the Trial Court, argued that the marriage was solemnised on 01.06.1997 at Tiruvannamalai, as per Hindu rites and customs. The appellant/husband was employed at Mumbai and he had also set up a family at Mumbai soon after the marriage. At the time of marriage, it had been mutually agreed that the respondent should



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not seek employment whatsoever. However, after marriage, on persuasion of the respondent/wife, the appellant/husband had agreed that the respondent could work till child birth. Accordingly, the respondent/wife joined Life Insurance Corporation of India, Kallakurichi, during the month of August, 1998 and subsequently got transferred to Mumbai. But the attitude of the respondent changed and she ill-treated the appellant/husband and his parents neglecting her duties as a Hindu wife. She used to scold the appellant/husband and his parents in filthy language and even on frivolous matters, she used to pick up quarrels unnecessarily. The respondent insulted the appellant in front of others to cause mental agony and she used to return home late in the night and neglected to maintain the household affairs. As a result, the mental cruelty started increasing. Again, it is stated that the respondent/wife refused to accompany the appellant/husband to outings, public functions and social activities and thereby caused severe torture and mental agony to the appellant/husband.

3.While so, in September, 2001, when the appellant/husband lost his job due to winding up of his company, the respondent/wife refused to support the appellant's family financially. However, after securing another job with less income, the appellant had been helped by his parents financially. In the meanwhile, the respondent/wife started spreading messages in the family circle with a view to defame the appellant's reputation. At one point of time, the respondent/ wife refused to continue the marital relationship with the appellant/husband. As a result, the marriage itself has not been consummated so far. Resultantly, the appellant/husband had lost much of his youthful years of life because of the behaviour of the respondent. Mediations were held and finally, when there was a long separation and there was no possibility for giving birth to a child to the family, the appellant issued a lawyer's notice on 23.11.2002 asking the respondent/wife to come and live with him. Instead of complying with the said request, the respondent sent a reply with false allegations. Therefore, he filed H.M.O.P. No. 7 of 2003 before the Principal Sub Court, Tiruvannamalai, under Section 13(i)(ia) of Hindu Marriage Act, 1955 to dissolve the marriage between him and his wife which took place on 01.06.1997 by a decree of divorce.

4.A detailed counter affidavit was filed by the respondent/wife stating that she was always ready and willing to live with her husband. She also denied the mutual agreement to the effect that she would not seek any employment. The averments in the counter affidavit show that the respondent/wife was living her husband and in-laws as a dutiful wife with utmost devotion and co-operation. Nearly after a year of marriage, on 24.08.1998, the respondent got permanent employment in LIC of



India, Kallakurichi. With the consent and approval of the appellant and his parents, she joined the job. According to the respondent, even before marriage, she was working temporarily in LIC of India in Tirukoilur and Tiruvannamalai branches. But, the appellant had not raised any objection then. When the appellant/husband was living in Mumbai, the respondent/wife went to Mumbai and lived with him. Subsequently, after much efforts, she got transfer from Kallakurichi to Mumbai and they were living together in Mumbai in Kandibli area. It was also the claim of the respondent/wife that the inferiority complex in the mind of the appellant/husband was the main cause for the petition for divorce. She would further state that the appellant was jobless for sometime and she was earning substantial amount and this was working at the back of his mind and that of his parents. While so, it would not be proper on the part of the appellant/husband to say that she was making allegations to defame either him or his family members. In fact, according to the respondent/wife, it was the appellant, who deserted her in Mumbai and left for Tiruvannamalai. Therefore, the respondent/wife was forced to stay at Ladies Hostel. In spite of several letters written by the respondent/wife, the appellant/husband and his parents did not even care to reply. Thereafter, the respondent/wife also got re-transferred to Kallakurichi to join her husband. But, she was not allowed by the appellants' parents when she returned to Tiruvannamalai to reside with her husband in his house. In view of the counter allegation, the matter was taken up for trial.

5.The Trial Court, after framing the issue as to whether the appellant/husband is entitled to a decree of divorce on the ground of cruelty made by him came to the serious allegation as to whether the appellant/husband was subjected to mental cruelty by the respondent/wife in view of non-co-operation of the respondent/wife for conjugal relationship. During the trial, the Trial Court had come to the conclusion that the respondent/wife had not taken any steps to prove the sexual infirmities with the appellant as well as with her. With reference to the certificate Ex.P4 obtained by the respondent/wife from a Doctor, after 4 ½ years from the date of marriage, the Trial Court, while examining the said certificate, came to the conclusion that getting a certificate as if her hymen is intact after a period of 4 ½ years of marriage is something abnormal. If the appellant is impotent, then what is the purpose of keeping the matrimonial life alive. From the evidence available on both sides, the Trial Court came to the conclusion that there was a serious dispute between the parties with regard to sexual cohabitation.

6.The learned counsel for the appellant submitted that the appellant/husband filed the petition for divorce under Section 13(i)(ia) of the Hindu Marriage Act, 1955 on 22.01.2003.



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The respondent/wife had not even thought of filing an application for restitution of conjugal rights under Section 9 of Hindu Marriage Act, 1955, which shows that the respondent/wife was not ready to live with the appellant/husband. Secondly, both the parties are living separately for 20 long years. Thirdly, when there is an allegation against the respondent/wife that she is not co-operating for marital relationship, there is no need for her to get Ex-P4 certificate from a Doctor to show that she is capable of begetting a child. The said certificate clearly shows that the appellant and the respondent were not having conjugal relationship for a long time. That itself shows that the respondent/wife was not co-operative to give birth to a child and she was not willing to reside with the appellant/husband. Considering these aspects, the learned Trial Judge had rightly dissolved the marriage between the appellant and the respondent. Overlooking these findings and conclusions, the Appellate Court had reversed the same and allowed the CMA filed by the respondent/wife as against which the present CMSA has been preferred by the husband.

7.The learned counsel for the appellant would submit that now, in any event, the appellant/husband and the respondent/wife are living separately for the past 20 years. Moreover, though the marriage was solemnised on 01.06.1997, till the date on which the divorce petition was filed, for about 4 ½ years, they were not leading a happy marital life. Therefore, the appellant filed the petition for divorce in 2003 and during the pendency of H.M.O.P. No. 7 of 2003, i.e from 22.01.2003 till 17.08.2006, on which date the H.M.O.P. was allowed, the respondent/wife had not even come forward to file any petition for restitution of conjugal rights, which clearly shows that she was not co-operating to lead matrimonial life, as a result of which the appellant/husband had lost most of his youthful years of life. Therefore, the order and decree passed by the Trial Court dissolving the marriage should be restored.

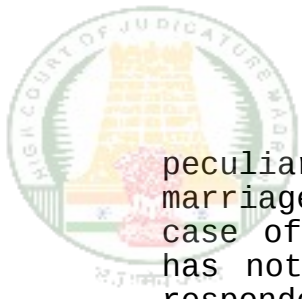
8.Opposing the said contentions, learned counsel for the respondent/wife would submit that the respondent/wife was always ready and willing to live with the appellant. At one point of time, when the appellant/husband was transferred to Mumbai , after much efforts, the respondent/wife also got transferred to Mumbai and lived with him subsequently. With the help of appellant's parents and relatives, from June, 1999, the respondent/wife was living with the appellant/husband and his parents in Kandibli area. Therefore, the conduct of the respondent/wife would only go to show that she was all the time ready and willing to live with her husband. Therefore, the allegation against the respondent/wife that she was not co-operating with the appellant/husband to lead a happy matrimonial life is meritless.



9. Coming to the allegation of ill-treatment by the respondent/wife, the learned counsel for the respondent/wife would state that at no point of time, the respondent ever ill-treated the appellant or his parents. Moreover, in the petition for divorce, it has not been specifically mentioned. Even during cross-examination of P.W.s 1 and 2 and in her evidence, it was mentioned clearly that she used to give her entire salary to her in-laws. Therefore, the question of causing cruelty to the appellant/husband is far from acceptance. On this aspect also, the Appellate Court has reversed the finding of the Trial Court. Even as regards the allegation against the respondent/wife that she was not capable of giving birth to a child, it is submitted by the learned counsel for the respondent/wife that the respondent had produced Ex-P4 certificate to show that she is fit to beget a child. The endeavour of the respondent in obtaining a medical certificate from a well-known Doctor to prove her capacity to beget a child cannot be found fault with.

10. Heard the learned counsel on either side.

11. This Court finds that after the marriage was solemnised on 01.06.1997 the appellant/husband was always having a grievance as against the respondent/wife that she was not co-operating to lead a happy matrimonial life as the respondent/wife refused to have conjugal relationship with him on several occasions. Both the appellant and the respondent are residents of Thiruvannamalai. At the time of marriage, the appellant was working in Mumbai, hence, they set up a family at Mumbai soon after the marriage. Subsequently, the respondent also got a job in LIC of India, Kallakurichi and after getting the job, she got transferred to Mumbai. She was also receiving more income than the husband. Therefore, it was one of the grievances of the husband that the respondent/wife started to neglect her duties as a Hindu wife and she used to abuse and insult the husband and his family members in front of others. It is also one of the grievances that the wife refused to accompany the husband for the outings, functions and social activities, thereby it caused severe mental cruelty and torture, because the husband lost his job in October, 2001 due to the company being wound up. It was the further allegation that the wife refused to support the family financially. Therefore, somehow he secured another job with a meagre income. But the serious allegation made against the wife is that the marriage between them has not been consummated so far and due to difference of opinion, they started living separately. Hence, the appellant/husband issued a lawyer's notice on 23.11.2002 calling upon the respondent/wife to come and live with him, for which the respondent/wife refused to receive the notice and the same was also recorded. Subsequently, he served notice through courier service, which was accepted by the respondent. It is a



peculiar case where the husband alleged non-consummation of marriage due to non-cooperation from his wife. It is not the case of the respondent/wife that her husband is impotent. She has not raised this point in the counter affidavit also. The respondent/wife has not averred that her husband is impotent both in the counter as well as in evidence before the trial Court. Even in the cross examination, R.W.1 has stated as follows:

"மனுதாரருக்கு ஆண்மை தன்மை இல்லை என்று பலபேரிடம் நான் கூறி இருக்கிறேன் என்றால் சரியல்ல. திருமண தேதியிலிருந்து எனக்கும் என் கணவருக்கும் இதுநாள் வரை உடலுறவே ஏற்படவில்லை என்றால் சரியல்ல",

It is not in dispute that the marriage between the parties took place on 01.06.1997, whereas Ex-P4 dated 30.01.2002 has been obtained by the respondent/wife after 4 ½ years of marriage from a Doctor at Thiruvannamalai and the contents of the said document read as follows:

"To Whomsoever concerned,
This is to certify that Mrs. Anuradha is physically and mentally fit for child birth and so far, she has not had proper intercourse with the husband, hence, advised regarding incourse. Given Hymen is still intact."

When the respondent has not stated that her husband is impotent, there is no need for getting the certificate Ex.P4 from the Doctor, who has not been examined. Even that certificate also shows that there was no effective sexual intercourse with the husband. That being the dispute, it goes without saying that there was a refusal on the part of the respondent to have consummation. It is a well settled legal position by the various pronouncements of the Supreme Court and this Court holding that refusal by one party to the marriage to have cohabitation with the partner amounts to cruelty. (See 2006-2-MLJ 383, 2006-2-LW-606, 2003-2-MLJ 148). Accepting this proposition, the trial Court has granted divorce. However, the Lower Appellate Court, on appeal by the wife, wrongly reading Ex.P4 and the evidence of the wife, erroneously reversed the judgment of the Trial Court. Therefore, answering the substantial questions of law raised by the appellant that the Lower Appellate Court based on surmises and conjectures cannot dislodge the findings of the Trial Court, in his favour, the CMSA stands allowed setting aside the judgment and decree passed by the Lower Appellate Court and restoring the judgment and decree passed by the Trial Court. No Costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The District Judge,
Thiruvannamalai.

2.The Principal Subordinate Judge,
Thiruvannamalai.

+1cc to M/s.P.B.Ramanujam, Advocate SR.No.37533

+1cc to M/s.J.Ramakrishnan, Advocate SR.No.37630

C.M.S.A. No. 29 of 2011

VD(CO)
RVM(01/09/2021)