

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1475 of 2018

S.Natarajan Appellant/Petitioner

Vs.

KoteswariRespondent/Respondents

Appeal filed under Section 19 of the Family Courts Act, 1984 against the decree and judgment dated 07.04.2018 passed in F.C.O.P.No.182 of 2014 on the file of the Family Court, Vellore, Vellore District.

For Appellant : Mr.M.Saravana Kumar

For Respondent : No Appearance

JUDGMENT

(Delivered by M.M.SUNDRESH.,J)

Challenging the decree and judgment dated 07.04.2018 passed in F.C.O.P.No.182 of 2014 by the Family Court, Vellore, the present appeal has been filed.

2.Appellant is the husband of the respondent. The marriage was solemnised on 02.07.2009. Thereafter, both the appellant and the respondent lived only for three months. They were living separately after the period of three months. The appellant issued legal notice on 13.02.2012 stating that the respondent

was not willing for cohabitation and therefore he is proceeding to take appropriate steps to get the decree for divorce. Allegation regarding cruelty has also been made.

3. In the petition filed for divorce, the appellant contended that the respondent was not ready and willing for cohabitation and she was indulging in cruelty. In the proof affidavit filed, the appellant had stated that the respondent and her family members threatened to kill the appellant by mixing poison in his food.

4. The respondent, while denying the allegation, had deposed that it is a fact that the appellant sought for cohabitation but the same was refused by her. She also acknowledged the fact that there was no physical relationship between her and the appellant. It is her further case that the appellant has been living with another lady.

5. The Family Court rejected the case of the appellant by stating that the appellant has not proved the factum of failure of cohabitation at the instance of the respondent. While holding that the respondent has not proved her allegations, the allegation made by the appellant with respect to the conduct of the respondent that she was threatening to kill him by mixing poison in the food has not been raised specifically in the petition filed for divorce but only in the proof affidavit, the Family Court dismissed the petition.

6. Heard the learned counsel appearing for the appellant. Despite vakalat having been filed, there is no representation on behalf of the respondent. In fact, there was no representation on behalf of the respondent even on the last occasion.

7. We do find considerable force in the submission made by the learned counsel for the appellant. In the cross examination, the respondent has submitted that there was no cohabitation and the appellant did ask for the same. Therefore, the Family Court was not right in rejecting the case of the appellant in this regard. Suffice it to state that the parties were living separately after a few months of living together. No attempt has been made by the respondent to rejoin the appellant. The allegation regarding cohabitation has not been denied or disputed till the date of filing of the petition for divorce and legal notice has also not been replied.

8.The Family Court committed another error in dismissing the petition for divorce after holding that the allegation that the appellant is living in intimacy has not been proved. The respondent made specific allegations against him but however did not prove the same. Secondly, the reasoning of the Family Court that the appellant has not raised the plea of cruelty specifically with respect to the threat to do away with him has not been taken in the petition filed for divorce. The plea of cruelty has now been raised. In the proof affidavit, it has been elaborated further. Therefore, the Family Court was not right in rejecting the contention raised in this regard. We also note that for more than a decade, the parties are separated. The respondent has not filed any petition for restitution of conjugal rights. She has also admitted that she has some exclusive ailment. Her evidence is to the effect that the appellant did ask for cohabitation, which she refused.

9.Thus, taking note of the above, we are of the view that the order of the Family Court requires interference. Accordingly, the order dated 07.04.2018 passed in F.C.O.P.No.182 of 2014 stands set aside and the Civil Miscellaneous Appeal is allowed. Consequently, there shall be a decree for divorce. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mmi
To

The Judge Family Court,
Vellore.

copy to
The Section Officer
VR Section
High court Madras

+1 cc to Mr.M.Saravanakumar Advocate sr13235

C.M.A.No.1475 of 2018

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