

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.20 of 2020

J.Anandan

..Appellant/Respondent

-vs-

A.Usha

..Respondent/Petitioners

Memorandum of Grounds of Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act read with Section 100 of the Code of Civil Procedure, against the judgment and decree made in C.M.A.No.10 of 2019 dated 17.12.2019 on the file of the Principal District Judge, Thiruvavarur, reversing the judgment and decree made in H.M.O.P.No.126 of 2016 dated 29.8.2019 on the file of the Subordinate Judge, Thiruvavarur.

For Appellant :: Mr.K.Rajesh  
for M/s T.S.Gopalan & Co.

For Respondent :: Mrs.A.Arulmozhi

JUDGMENT

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. Mr.J.Anandan has brought this civil miscellaneous second appeal challenging the judgment and decree passed by the learned Principal District Judge, Thiruvavarur in C.M.A.No.10 of 2019 dated 17.12.2019, reversing the judgment and decree made in H.M.O.P.No.126 of 2016 dated 29.8.2019 passed by the learned Subordinate Judge, Thiruvavarur, raising the following substantial questions of law:-

"(i) Whether the learned Appellate Court was right in drawing adverse inference against the appellant only on the ground that he had not paid maintenance for a period of two years, since the date of the respondent living separately?

(ii) Whether the learned Appellate Court has not erred in its conclusion that the judgment of the trial Court was to be reversed on the ground of cruelty, without there being any evidence thereon?

(iii) Whether the learned Appellate Court was right in referring to the interested party evidence of P.W.1 and P.W.2?"

3. Learned counsel appearing for the appellant submitted that the marriage between the appellant and the respondent was solemnized on 22.8.2005 at Om Sakthi Thirumana Mandapam, Cuddalore in accordance with the Hindu rites and customs. The appellant/husband is a Post Graduate degree holder in Commerce along with Diploma in Computer Application, whereas the respondent/wife is a Graduate along with Diploma in Computer Application. At the time of marriage, the appellant/husband was serving as Assistant Manager at Coonoor Branch of Indus Ind Bank Limited. After the marriage, both parties were staying in a friend's house as paying guest. However, when the appellant was transferred from Coonoor to Pondicherry Branch of Indus Ind Bank Limited in September, 2005, he set up a house at Pondicherry and lived with the respondent happily for four years. During this period, the respondent gave birth to a son Hrithik on 22.12.2007. Later on, the appellant was transferred to Sankagiri in Salem District from Pondicherry. However, the respondent continued to work in St. Immaculate Training School and St. Immaculate College, Pondicherry as Lecturer. When it was found difficult to run between Sankagiri and Pondicherry, the appellant resigned his job to join the respondent on 1.9.2008 and in the year 2009, the appellant joined in Muthoot Finance Limited at Sirkazhi near his father's place in Thiruvarur. However, when the appellant's father helped him to get a job as Clerk in City Union Bank, the appellant also, believing that City Union Bank is a large bank having widespread network that would give more promotional opportunities in his career progression, accepting the position even as a Clerk, just to stay in Thiruvarur with the respondent, stayed together with the respondent along with the parents of the appellant. The respondent decided to have an occupation for herself and was selling sarees and other hosiery materials to her friends and neighbours. It was also alleged that the appellant's position as Clerk in City Union Bank Limited appeared to be inferior. Therefore, on that score, the respondent used to taunt the appellant from different directions. The pressure and the taunting tactics employed by the respondent made the appellant to resign his job in July, 2014 from the post of Clerk in City Union Bank Ltd. In view thereof, he was showing his

disappointment to his parents and other members of the family. In the meanwhile, the respondent got a job as Teacher in the GRM School, Thiruvarur. However, despite the assistance given by the appellant's father, the respondent left the house of the appellant in September, 2016 and she filed a petition in H.M.O.P.No.126 of 2016 before the Sub Court, Thiruvarur under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage on the ground of cruelty. Thereafter, the appellant also got a job in Sarvodaya Small Finance Bank as Branch Manager (Sales). After getting a job, the appellant was quite hopeful that his wife would come back to the matrimonial home. When he invited the respondent telephonically, the respondent made a police complaint. To escape from arrest, the appellant had to seek anticipatory bail from this Court. One of the grounds mentioned in the H.M.O.P.No.126 of 2016 seeking divorce was that the appellant was mentally unstable and he had the habit of talking to himself and had strange mannerisms. It was also alleged that the appellant did not have a permanent job, hence, he was cruel to the respondent and their son.

4. Opposing the above false allegations, the appellant filed his counter affidavit denying the allegations expressing his readiness and willingness to live together with the respondent and the child. There were certain conciliation proceedings initiated by the Court also. Although the appellant was willing to live with the respondent and the child, the respondent refused. In the meanwhile, the appellant got a better job as Deputy Manager (Sales) in Equitas Small Finance Bank Limited, Nagapattinam branch as Development Officer. Finally, the trial Court took up the H.M.O.P.No.126 of 2016 for trial. After going through the evidence on record and the documents filed, the trial Court came to the conclusion that the respondent did not prove cruelty on the part of the appellant and thereupon declined to grant the decree for divorce, observing that the testimony of the respondent was untrustworthy and could not be believed.

5. Aggrieved thereby, the respondent filed C.M.A.No.10 of 2019 before the Principal District Judge, Thiruvarur. The lower appellate Court without assigning any good or cogent reasons, reversing the finding and conclusions reached by the trial Court, dissolved the marriage in its order dated 19.12.2019 only on the ground that the appellant and the respondent were staying apart for the last two years. The reasons cited by the lower appellate Court were that the appellant did not have a permanent job, that he was not taking good care of the respondent and the child and that the appellant was harassing the respondent and the child, therefore, in the interest of justice, the judgment

of the trial Court should be reversed and accordingly, decree of divorce was granted, as against which the appellant/husband has come to this Court seeking reversal of the impugned judgment, so that both the husband and wife can live together in the interest of the child as well.

6. Mrs.A.Arulmozhi, learned counsel appearing for the respondent argued that the appellant/husband is full of suspicion. Every day he used to doubt the fidelity of the respondent. The unnecessary doubt and suspicion entertained in the mind of the appellant have caused immense mental cruelty on the respondent. Besides the appellant is also mentally unstable and was having the habit of talking to himself and even his mannerisms could not be believed as safe for the respondent to live together. At one point of time, when the respondent/wife was sleeping, in an effort to tarnish her outlook and physical personality, so that nobody would look at her, had cut her long hair covering the head. That conduct of the appellant clearly shows that the appellant had not only caused mental cruelty, but also physical cruelty. Moreover, at no point of time, he had taken care of his wife and child. In an effort to demonstrate that the appellant was having unstable mind, Mrs.Arulmozhi also argued that every now and then when the appellant used to get a job, after serving for sometime, he would resign immediately. In view of his unstable mind, he never allows the respondent to sleep. Therefore, when the appellant was not sticking to a particular job and all the time used to resign immediately after joining a particular job and was also harassing the respondent, left with no other option, the respondent filed the H.M.O.P.No.126 of 2016 under Section 13(1)(i-a) of the Hindu Marriage Act seeking dissolution of marriage. Although the trial Court refused the prayer on the ground that no cruelty was made out, on appeal, the lower appellate Court, granted the decree of divorce, taking into account the unstable mind of the appellant, namely, that the appellant resigned his Assistant Manager post in Indus Ind Bank Limited, Coonoor, that after joining Muthoot Finance Limited at Sirkazhi in the year 2009, resigned the same, that after joining as Clerk in the City Union Bank Limited at Thiruvavarur, once again resigned from the said post in April, 2014. Thereafter, although he joined in Sarvodaya Small Finance Bank in March, 2017 as Branch Manager (Sales), resigned from the said post also, before joining as Deputy Manager (Sales) in Equitas Small Finance Bank Limited, Nagapattinam. Therefore, the decree of divorce granted by the lower appellate Court need not be interfered with, she pleaded.

7. This Court also finds merit on her submissions. To arrive at the conclusion of mental cruelty caused to the respondent,

the lower appellate Court has dealt with the strange conduct of the appellant in tarnishing the respondent's physical personality by cutting her long hair covering the head while she was sleeping. In his evidence before the trial Court as R.W.1, the appellant has clearly deposed that when they were living separately, he has not taken out any application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. Secondly, he has also not taken up any application before the Court below to see his child. Thirdly, during the period of separation, the appellant has admitted that he has not come forward to pay the maintenance to the respondent and the child. It is not in dispute that the appellant was working in various organisations. After serving as Assistant Manager in Indus Ind Bank Limited at Coonoor branch, he resigned from the said post and joined in the Muthoot Finance Limited at Sirkazhi during the year 2009. However, thinking of career progression, although the appellant joined in the City Union Bank Limited, Thiruvapur as a Clerk, within a short period, he resigned the said job and joined in Sarvodaya Small Finance Bank in March, 2017 as Branch Manager (Sales), where also, he did not wish to continue. Thereafter, he joined as Deputy Manager (Sales) in Equitas Small Finance Bank Limited in Nagapattinam. This sequence of events would clearly show that the appellant was not sticking to one job, which clearly indicates his unstable mind. Secondly, he has not even taken any step to pay the maintenance to his wife and child. This apart, the further act of the appellant cutting the respondent's long hair covering the head while she was sleeping so as to tarnish her personality, clearly indicates that the appellant is not only a man of doubtful character, but also a person suffering from unstable mind. Therefore, the respondent was not ready to accept the reunion proposal, in spite of the fact that the Court had appointed officials to conciliate the matter.

8. A husband and wife can resort to frequent altercations and can come back to normalcy. But in the case on hand, the husband had displayed his unusual behaviour in disfiguring his wife's personality by cutting her long hair, covering her head. It is said that when the hair in the head grows long, then our head gets phosphorus, calcium and vitamin-D naturally. They eventually enter the body through two tubes at the top of the brain. This makes the human memory more efficient and stronger. As a result, the person having long hair gets physical energy, better stamina and patience. If we look at ancient India, saints and sages used to have long hair. It is believed that the hair balances the whole electromagnetic field of the body, which helps to increase vitality and understanding. Therefore, from Newton to Einstein, from William Shakespeare to Rabindranath

Tagore and former Indian President, all had long hair. The Ramayana epic came into human history for the reason that Lakshmana outraged the modesty of Surpanaka by cutting her nose, hair from head etc., therefore, Ravana also became enraged, since his sister was outraged by disfiguring her beauty, abducted Sita. The fact of the matter is that when the appellant/husband, suspecting his wife's fidelity, cut her long hair, a symbol of beauty, he leaves an incurable wound in the mind of her whole life. Whenever the hair grows long, she would entertain fear in her mind that either her husband would again cut the same while sleeping or he would doubt her integrity. This is a mental cruelty. For women, long hair gives added beauty to their personality. Therefore, cutting of hair by the husband is cutting down and disfiguring her personality that is not only physical, but also mental cruelty, therefore, wife in this case is right in refusing reunion. Hence, answering the substantial question of law against the appellant that the lower appellate Court was right in drawing adverse inference against the appellant that he had not come forward to pay the maintenance to his wife and child for a period of two years, resultantly, he has miserably failed to discharge his obligation either as a dutiful husband to the respondent or as a dutiful father to the child, the decree of divorce granted by the lower appellate Court cannot be found fault with. Accordingly, answering the substantial questions of law against the appellant, the civil miscellaneous second appeal fails and it is dismissed. Consequently, C.M.P.No.8103 of 2020 is also dismissed. No costs.

-s/d-  
Assistant Registrar

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Sub-Assistant Registrar

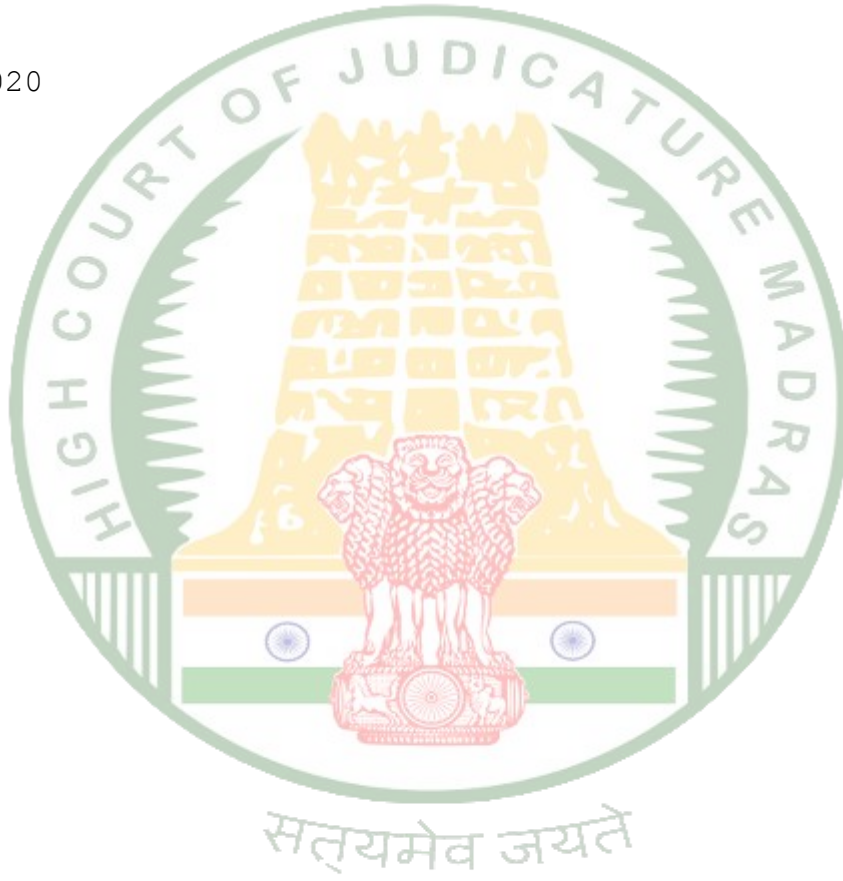
ss  
To

1. The Principal District Judge  
Thiruvavarur
2. The Subordinate Judge  
Thiruvavarur

+1 cc to Mr.T.S.Gopalan & Co Advocate sr32399

C.M.S.A.No.20 of 2020

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