



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.11.2020
Pronounced On	18.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.Nos.2538 & 2542 of 2019
and
C.M.P.No.12085 of 2019

(Through Video Conferencing)

Jaya Bharathy

... Appellant in
both C.M.As.

Vs.

S.N.Venkata Krishnan

... Respondent in
both C.M.As.

PRAYER: Civil Miscellaneous Appeals filed under Section 19(1) of the Family Court Act, 1984, to set aside the Fair and Decreetal orders dated 16.04.2019 passed in H.M.O.P.Nos.3613 & 3092 of 2017 on the file of the VI Additional Principal Family Court, Chennai.

For Appellant : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.S.Saravanan in both C.M.As.

For Respondent : Mr.V.Kannadasan in both C.M.As.

C O M M O N J U D G M E N T

C.SARAVANAN, J.

By this common order, we are disposing both the Civil Miscellaneous Appeals filed by the appellant-wife. These Civil Miscellaneous Appeals have been filed against Common Judgement and respective Decrees both dated 16.04.2019 passed by the VI Additional Family Court, Chennai passed in H.M.O.P.Nos.3092 & 3613 of 2017.

2. By the impugned Common Judgement and the respective Decrees, the Family Court has allowed H.M.O.P.No.3092 of 2017 filed by the respondent (husband) for dissolving the marriage solemnised between the appellant and the respondent on



16.06.2016 on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and dismissed H.M.O.P.No.3613 of 2017 filed by the appellant (wife) under Section 9 of the said Act for restitution of conjugal rights.

3. The Family Court has concluded that the appellant was cruel to the respondent and therefore, the respondent was entitled for a decree of divorce and has thereby dissolved the marriage solemnised between them on 16.06.2016. H.M.O.P.No.3613 of 2017 filed by the appellant under Section 9 of the said Act has been dismissed without much discussion perhaps on account of the Judgment and Decree in H.M.O.P.No.3092 of 2017.

4. H.M.O.P.No.3092 of 2017 was filed by the respondent for dissolving the marriage under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on 21.08.2017. It was filed within 14 months from the date of the marriage on 16.06.2016 and within 41 days from the birth of a female child on 11.07.2017 in a private hospital in Chennai.

5. In the petition filed by the respondent before the Family Court, the respondent alleged that the appellant has allegedly informed the respondent that she was not interested in the marriage and that the marriage was forced on her.

6. The respondent further alleged that the appellant declined physical intimacy and showed no interest even in physical touches during the initial days of the marriage.

7. The respondent further alleged that for the honeymoon, the respondent's parents had arranged a trip to Wayanad in Kerala between 26.06.2016 and 30.06.2016. However, during the trip, the appellant did not allow the respondent to even touch her and that the trip was shortened by a day as the appellant insisted on returning to Chennai on 29.06.2016.

8. The respondent further alleged that after they returned from their trip, the appellant and her family had forced respondent to undergo a potency test on 01.07.2016 and thereby, humiliated the respondent and same amounted to cruelty by the appellant.

9. It was further alleged that after the Medical Report was received on 02.07.2016, the family of the appellant felt that the appellant needs to be taken to Modi Baba Dargah so that she is not affected by any evil spirits.

10. Further allegation of the respondent before the Family Court in the aforesaid petition was that he verbally abused by the appellant's brother-in-law (sister's husband) who had earlier chided and teased the respondent as to whether he had



seen any porn CDs before and if required, he would get him one so that the respondent will know how to enjoy his marital life.

11. The other allegations against the respondent were that during a quarrel in July 2016, the appellant informed the respondent that the respondent was not like her ex-lover and that she was not interested in matrimonial life and was willing to agree for a divorce by a mutual consent.

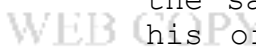
12. The main allegation of the respondent against the appellant before the Family Court was that the appellant had acted cruelly against the respondent in her conduct by denying him marital bliss of sex for a period of 43 days from the date of their marriage and that the marriage was consummated only in Tirupati during the last week of July, 2016 against his wishes though they had gone to Tirupati Temple as pilgrims and not as tourist or for their honeymoon. The respondent alleged that he was shocked as he was forced to have intercourse with appellant against his wishes near the Temples precinct.

13. The other allegations against the appellant were that during October 2016, the respondent along with family members visited Kasi and travelled by air for a pilgrimage. During this trip, he alleged that the appellant spent most of her time shopping and showed no interest in other things or in mingling with the respondent and his family. This according to the respondent was an indication of the fact that the appellant was adamant person by nature and unsuitable for marital life.

14. It was further alleged that even the said trip was not completed as per the schedule. The visit to Taj Mahal in Agra was delayed by the appellant as she got ready very late. This according to the respondent resulted in extra expenditure forcing the family to spend extra money which was not budgeted for the trip. The other allegations against the appellant were that she took her own time for shopping and did not care about the timings to catch flight while returning to Chennai.

15. According to the respondent, after the pregnancy was confirmed during the month of November 2016, the appellant insisted on staying with her parents even though the respondent's parents had taken good care of her during her stay with them after the marriage.

16. The respondent further alleged that after a lot of persuasion, the appellant came and stayed with the respondent in his parent's house but left immediately within 2 days after collecting all her valuables. It is further submitted that during her stay in the respondent's house, it is the respondent's mother who had to serve water in the room to the



17. The other instance of cruelty against the appellant in the said petition was that the parents of the appellant came to his office and made enquiries about the respondent. Therefore, the respondent's colleagues questioned him as to whether he was having any marital problems and he became a laughing stock in front of them and thereby lowered his esteem among his colleagues.

19. The other allegations against the respondent were that the appellant did not have any regard for auspicious and festival days and insisted on having non-vegetarian food. He alleged that the appellant insisted on having non vegetarian food even on Tuesdays, Fridays and Saturday against the religious sentiments of the family. The respondent submitted that he was therefore compelled to buy non-vegetarian food item from hotels to satiate her hunger with such non vegetarian food. In this regard, the respondent has referred to the event that took place on Sivaraathri.

21. The respondent further alleged that from the date of marriage till the respondent conceived and became pregnant, the appellant and the respondent had sexual intercourse only on 9 occasions.

23. Even when the respondent and his family members visited the appellant in the parent's house to celebrate the birthday of the respondent, the appellant refused to come out of her room and later came after much persuasion and just took a pinch of the birthday cake.



WEB COPY

24. According to the respondent when the respondent asked the appellant why she was unhappy, he was asked to leave immediately. The appellant also demanded a divorce from his on his birthday.

25. It was further alleged that even when the respondent visited the appellant in her parent's house every Saturday, the appellant is said to have abused the respondent and asked him whether he was coming to their house only for eating food and threatened to commit suicide if he stayed in her parent's house.

26. According to the respondent, this incident is said to have taken place on 26.12.2016 and thereafter, he stopped going or eating in the appellant's parent's house. According to the respondent, the appellant stayed with her parents after the confirmation of pregnancy and refused to stay with the respondent.

27. On 17.02.2017, a function was organised to mark the 5th Month of the pregnancy. All the jewels belonging to the appellant were handed over to the appellant on 16.02.2017 for being adorned by her as per her wishes for the functions.

28. According to the respondent, during the aforesaid function, the appellant is supposed have informed one of his relatives that it is like staying in a jail in her in-laws place when they had asked her when she was coming back.

29. According to the respondent, the appellant returned to the matrimonial home briefly after his father compelled the appellant to come and stay with them. However, on 14.02.2017, the appellant picked up a quarrel with the respondent and tore his shirt in front of the tenants and left for her parent's house. After the incident, the respondent's reputation was spoilt in the neighbourhood.

30. He further alleged that even during the baby shower function held during July 2017 by the respondent's family, the appellant was not happy and complained that the function was not organised in a grand manner.

31. Even after the girl child was born on 11.07.2017, the appellant showed no affection or respect to the respondent and his father and whenever the respondent visited the appellant in the parent's house to see the appellant and the newborn child, they abused him.

32. A specific incident which allegedly took place on 29.07.2017 has been referred. It was alleged that the appellant's brother-in-law Rajni alias Prabhakaran (appellants



sister's husband) picked a quarrel with the respondent and his father and physically assaulted the respondent's father and tore the respondent's shirt. It was further alleged that the appellant's mother also spoke to them rudely.

WEB COPY

33. These incidents according to the respondent amounted to cruelty by the appellant on him and therefore, filed H.M.O.P.No.3092 of 2017 on 21.08.2017. The respondent thereafter filed a complaint before the Commissioner of Police on 31.08.2017, i.e., within 10 days of filing of H.M.O.P.No.3092 of 2017, against the appellant and her family members.

34. The respondent again filed a complaint against the family members of the appellant on 09.07.2018 and thereafter, on 27.08.2018, the appellant filed a complaint against the respondent during the pendency of the two proceedings before the Family Court with a prayer for reunion between the appellant and the respondent.

35. The appellant has also alluded to few incidents before the marriage to make out a case for cruelty by the appellant on the respondent. The respondent alleged that after the engagement ceremony, when the respondent went to wish appellant's birthday on 09.03.2016 and gifted her with a new dress and wanted to have lunch with the appellant along with the appellant's sister, the appellant was moody and sad. The respondent alleged that the appellant was sad and moody because she was celebrating her birthday away from her friend (a former classmate from college) who also shared the birthday with her.

36. The other allegations against the appellant were that prior to the marriage, the appellant had gone out for about two days without accompanying her mother to Kumabkonam which was unusual particularly after the appellant and the respondent were engaged to each other and that later during April 2016, the appellant was admitted in Priya Hospital, Old Washermanpet. The respondent alleged that he was informed that she was admitted for treatment for cold. In the proof affidavit, he alleged that the appellant underwent medical termination of pregnancy.

37. The appellant in her counter has denied each and every allegation levelled against her in the said petition. She has also questioned the relevance of alleged incidents before the marriage for the purpose of the petition under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955. She has denied these allegations in her counter and in the proof affidavit.

38. In the counter, the appellant has also stated that the respondent was an immature person and amplified trivial incidents as cruelty after condoning them by his conduct. The appellant further alleged that the potency test was consensual as they were unable to consummate the marriage during the



honeymoon.

39. The appellant further stated that there was no major problem between the appellant and the respondent and she had reconciled to put up with the immaturity of the respondent, hoping time will change him in due course of time. According to the appellant, the respondent disappointed her in many ways and never reciprocated to her feelings and expectations as a newly married bride.

40. She further submitted that there was no hurdle or embargo put on the respondent to visit her in her parents' house when she was staying there before and after child birth.

41. It was further submitted that H.M.O.P.No.3092 of 2017 was filed only because a daughter was born as the family of the respondent only wanted a male child for which the family travelled to Tirupati for getting the blessings as was the practice of the respondent's family. The appellant categorically denied any acts of assault by her brother-in-law either on the respondent or his father.

42. It is further submitted that it was the respondent who destroyed the peace and harmony in the matrimonial life because of his immaturity and narrow minded approach to life and that was ill advised by his parents.

43. The Family Court framed the following points for consideration:-

- i. Whether the husband is entitled for divorce on the ground of cruelty?
- ii. Whether the wife is entitled for the relief of restitution of conjugal rights?

44. Before the Family Court, the respondent examined himself as P.W.1 and marked Exhibits P1 to P8. The appellant examined herself as R.W.1. She has not marked any document in support of her defence in the aforesaid proceedings.

45. Before the Family Court, the respondent filed a very lengthy proof affidavit and reiterated the content of petition filed in support of H.M.O.P.No.3092 of 2017.

46. In the proof affidavit, the respondent attempted to change the case of cruelty against the appellant to a case of adultery. The respondent alleged that he came to know from a relative of the appellant that prior to the marriage, the appellant had undergone medical termination of pregnancy in April 2016 in Priya Hospital. However, he did not name the person who allegedly gave him the above information.



47. He further alleged that in July 2016, the appellant also had stated that the respondent was not like her boyfriend who alone could satisfy her both physically and mentally and that she was not interested in getting married with the respondent and the marriage was forced on her and she was willing for a divorce by mutual consent.

48. That apart, the respondent further submitted that the appellant's family members were the root cause of all miseries, loss of peace of mind, mental agony suffered by him. He further alleged that though he assumed that the appellant was close to her former classmate, later he came to know that she was closer to her brother-in-law (Rajani Prabhakaran) who is none other than her sister's husband and that even after separating from each other she was seen travelling on a two wheeler with him in close proximity.

49. The appellant had also filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in H.M.O.P.No.3613 of 2017 immediately during the month of September 2017 after she came to know that the respondent had filed H.M.O.P.No.3092 of 2017 when she was called for an enquiry by the police pursuant to a complaint given by her before the All Women Police Station vide Ex.P4 dated 01.09.2017.

50. We have heard the learned Senior Counsel Mr.T.R.Rajagopal duly instructed by Mr.S.Saravanan, the learned counsel for the appellant (wife) and Mr.V.Kannadasan, the learned counsel for the respondent (husband).

51. The learned counsel for the respondent relied on the following decisions of the Hon'ble Supreme Court :-

- i. Amar Ghosh Vs. Jaya Ghosh, (2007) 4 SCC 511.
- ii. Savitri Pandey Vs. Prem Chandra Pandey, (2002) 2 SCC 73.
- iii. V.Bhagat Vs. D.Bhagat, reported in (Mrs) 3.
- iv. Raj Talreja Vs. Kavitha Talreja, reported in (2017).
- v. Ravi Kumar Vs. Julmidevi, (2010 (4) SCC 476).

52. We have gone through the impugned Judgment and Decrees and have also perused the evidence on record viz., Exhibits marked by the respondent and the depositions of the appellant and the respondent before the Family Court.

53. The marriage between the appellant and the respondent was solemnised on 16.06.2006. Both the appellant and the respondent are well educated. The respondent works for the Indian Railways as a Senior Signal Engineer (SSE). Though the



appellant had completed B.Tech, she was not employed at the time of the marriage. At the time of marriage, the appellant was aged about 23 years while the respondent was aged about 30 years.

54. Out of the wedlock, a girl child was born on 11.07.2017. H.M.O.P.No.3092 of 2017 filed on 21.08.2017 which is approximately 14 months after the date of marriage and 41 days after the birth of the girl child.

55. The evidence indicates that they lived together in the respondent's parents house as a joint family from the date of marriage till the appellant conceived and become pregnant in November 2016. The appellant thereafter stayed with her parents.

56. Though the respondent has alleged acts of cruelty starting from the period prior to the marriage upto 29.07.2017 in H.M.O.P.No.3092 of 2017, in the proof affidavit, the respondent added few other incidents which allegedly took place after 21.08.2017.

57. The respondent further improvised the allegation of cruelty to cruelty coupled with pre-marital sex and abortion by the appellant prior to the marriage in the proof affidavit. The appellant has denied the allegation generally but has not countered all the allegations specifically in the proof affidavit.

58. Though, Family Courts are not bound by strict rules of evidence under Section 14 of the Family Court Act, 1984, yet certain amount of modicum of Judicial discipline was to be followed while recording evidence.

59. A party cannot be allowed to let in evidence which never formed the basis of the pleadings. The Family Court should have expunged all averments in the proof affidavit of the respondent which were contrary to the pleadings in H.M.O.P.No.3092 of 2017.

60. It also should not have allowed the respondent to let in oral evidence contrary to the case made out in the petition filed in H.M.O.P.No.3092 of 2017. It also should not have allowed the respondent to make out a new case during cross-examination of the appellant unless the respondent had amended the pleading in H.M.O.P.No.3092 of 2017.

61. Therefore, a new case made out by the respondent in the proof affidavit cannot be allowed that in July 2016, the appellant had declared that her boy friend was both physically and mentally fitter than the respondent and compatible to the appellant.

62. Similarly, the suspicion of the respondent that the



appellant had undergone medical termination of pregnancy during April, 2016 is based on a hearsay evidence. The respondent has not given any details to substantiate the allegation or the person who told him about the same.

WEB COPY

63. In the proof affidavit, the respondent has for the first time stated that he came to know about that the appellant had undergone medical termination of pregnancy six months after the marriage. Therefore, he allegedly knew about it in December 2016. The respondent has not explained why same was not pleaded in H.M.O.P.No.3092 of 2017 which was filed 21.08.2017, i.e. after 14 months from the date of marriage and 8 months after the respondent allegedly came to know about the same.

64. There appears no truth in these allegations except to sully and assassinate the character of the appellant. Unfortunately, the Family Court has accepted the case of the respondent without any factual basis merely because the appellant had not specifically denied the new allegations levelled in the proof affidavit.

65. From the conduct of the respondent in celebrating functions after function with the appellant and visiting the appellant in her parent's house upto December, 2016 and getting the best treatment for the appellant at the time of delivery of the child indicates that the allegation in the petition in support of H.M.O.P.No.3092 of 2017 and the further improvement in the proof affidavit were nothing fertile imagination of the respondent fuelled by suspicion that the appellant may have undergone a medical termination of pregnancy before the marriage.

66. As far as, reticence in the couple getting physical relationship in the initial months is understandable. Both were young and were forced to live amidst their in-laws. It is unlikely that a newly married wife would feel free and shed her inhibition and get physically intimate with her husband in an atmosphere surrounded by her in-laws bereft of privacy.

67. After filing H.M.O.P.No.3092 of 2017 on 21.08.2017, the respondent filed a complaint on 31.08.2017 against the appellant and her family members within about 10 days.

68. The factual matrix indicates that the motivation for filing H.M.O.P.No.3092 of 2017 appears to be suspicion of the respondent regarding the appellant's equation with her brother-in-law and the fact that the appellant gave birth to her girl baby and the incident which allegedly took place on 29.07.2017.

69. The event which took place on 29.07.2017 triggered the



filing H.M.O.P.No.3092 of 2017 on 21.08.2017 followed by a police complaint on 31.08.2017. Instances of cruelty narrated and alleged in the petition filed in support of H.M.O.P.No.3092 of 2017 on 21.08.2017 and further improvement in the proof affidavit dated 03.09.2018 are only excuses to settle score with the appellant after the incident of 29.07.2017.

70. The respondent has made several trivial allegations in the petition by alluding to events both before the marriage and after the marriage to make out a frivolous case for dissolving the marriage for alleged cruelty by the appellant.

71. We are surprised that the Family Court has granted a decree of divorce to the respondent on totally frivolous, trivial and unsubstantiated allegations of the respondent.

72. For the purpose of making out a case on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, instance of cruelty after the solemnization of the marriage alone and not before the solemnization of marriage are relevant. Therefore, the Family Court erred in passing the impugned Judgment and Decree based on some of the allegations before the marriage.

73. Therefore, the conclusion arrived by the Family Court that the appellant had a relationship with her classmate while studying to construe cruelty on the respondent by the appellant is both bewildering and perplexing. In our overall assessments of facts and evidence on record, it is the respondent who was cruel to the appellant.

74. The allegation that the appellant underwent medical termination of pregnancy has been accepted by the Family Court by erroneously observing that the respondent during her cross-examination had not specifically denied the allegations in paragraph Nos. 6 and 7 of the proof affidavits filed by the respondent before the Family Court and had not specifically denied the same even during the cross examination.

75. As mentioned in this order, if the respondent came to know that the appellant had undergone medical termination of pregnancy in the said hospital based on the information furnished by some unknown relative of the appellant, it remains unexplained why he chose not to disclose their name and identity and produced them as witnesses. The Family Court has thus misread the evidence of the appellant.

76. In the proof affidavit, the respondent stated that he did not wish to reveal the name of the relative of the appellant. However, during cross examination, the respondent has



77. He has merely stated that they were husband and wife whose identity was not known to him. He is merely stated that the information was given to him at a location between Agastiar Theatre and the appellant's house. He has also not given any particulars as to when such information was furnished to him. He has also not produced any medical records to substantiate that the appellant had undergone medical termination of pregnancy during April 2016. Therefore, the Family Court erred in concluding that the appellant had undergone medical termination of pregnancy.

79. The respondent appears to have imagined that the appellant was pregnant before her marriage and therefore, underwent medical termination of pregnancy during April 2016 after they were engaged before they were married.

81. The Family Court has allowed itself to be influenced by these statements of the respondent while passing the impugned Judgment and Decrees. Therefore, the conclusion arrived by the Family Court that the appellant had undergone medical termination of pregnancy can neither be sustained nor construed to be relevant for the purpose of enquiry under Section 13(1) (i-a) of the Hindu Marriage Act, 1955.

83. The appellant has merely stated that the allegations



84. In our view, the respondent has deluded himself by imagining that the appellant had relationship with her classmate and continued to do so even after the marriage though same was neither proved by the respondent nor relevant for the purpose of Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

86. Though no case was specifically pleaded for alleging desertion, the Family Court has again given a finding on the desertion merely because the respondent stayed with her parents for delivery after she became pregnant.

88. As far as the allegation that the respondent was forced to undergo potency test is concerned, facts indicate that it was a mutual decision since the couples were unable to consummate the marriage when they went out of station for their honeymoon during the last week of June 2016.

90. Even otherwise, marriage was thereafter consummated and the appellant became pregnant and a girl baby was born to them on 11.07.2017 just prior to filing of the H.M.O.P.No.3092 of 2017.



91. The conclusion that the appellant admitted during cross examination that she had filed a complaint against the respondent on 27.08.2018 before the Commissioner of Police, Greater Chennai is subsequent to filing H.M.O.P.No.3092 of 2017 and H.M.O.P.No.3613 of 2017. DVA No.151 of 2019 is said to be pending.

92. The appellant cannot be held guilty of cruelty based on the allegation, she has made in D.V.A.No.151. Allegation made against the respondent's father in D.V.A.No.151 of 2019 is to be independently probed and if it is found true, has to be dealt in accordance with law.

93. The respondent has stated that the appellant had filed criminal complaint before the Commissioner of Police, Chennai on 01.09.2017. In the said complaint, she merely stated that she wanted the appellant and the respondent to live together. It shows the intention of the appellant was to live with the respondent.

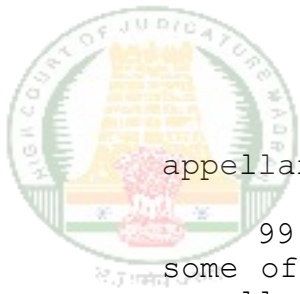
94. It further appears that the appellant was taken by surprise when the appellant went to the All Women Police Station at Vepery, Chennai - 7 on 04.09.2017, when she was informed that the respondent had already filed H.M.O.P.No.3092 of 2017 and the first date of hearing had been fixed to 06.10.2017.

95. On the other hand, the facts indicate that it was the respondent who was cruel to the appellant and tortured her unnecessarily by sullyng her character by doubting her chastity by stating that she had premarital sex and was pregnant before her marriage with her boyfriend and had undergone medical termination of pregnancy at Priya Hospital during April 2016, even though it was not the basis on which H.M.O.P.No.3092 of 2017 was filed.

96. Tearing off shirts by the appellant and quarrel by the appellant are to be taken as a part of normal wear and tear of marital life. Therefore, merely because the appellant has not denied the same during cross examination, it cannot be construed that it would warrant dissolution of marriage on account of cruelty.

97. The other allegation that the appellant had torn his shirt in a fit of anger on 01.04.2017 in the parents' house and that he was slapped by his brother-in-law on 29.07.2017 both remains unproved and irrelevant.

98. Even if there is some truth in the allegation that the brother-in-law of the appellant slapped the respondent and his father, they may have cause of action only against the



appellant's brother-in-law and not against the appellant.

99. We can only assume that the respondent may have made some of certain uncharitable remarks and allegations against the appellant and appellant's brother-in-law which perhaps may have led to provocation by the latter and in the process, the respondent and his father may have been roughed up by the appellant's brother-in-law.

100. Whether such an incident really took place or not itself questionable. Even if such an incident had taken place, it cannot be said that the appellant had instigated her brother-in-law to physically assault the respondent and his father. At best, the respondent may have cause of action against the appellant's brother-in-law.

101. In any event, many of the allegations and instances narrated in the above petition and in the proof affidavit indicate they are of trivial nature and are part of the day to day wear and tear in a normal family between married couple. They are not of very serious nature warranting judicial intervention by way of decree to dissolve the marriage.

102. Many of the alleged instances of cruelty even if true were condoned by the appellant as is evident from a reading of the petition filed by the respondent in H.M.O.P.No.3092 of 2017. In fact, in his deposition before the Family Court, the respondent has stated that though he is entitled to get the appellant treated in the Railway Hospital, he did not have the confidence in the treatment in the Railway Hospital and therefore, got the appellant admitted in Joseph Hospital for delivery of the child.

103. Thus, the respondent cared for the appellant and had no serious issues with the appellant until 29.07.2017. He was either unhappy because the appellant delivered a girl child which to our mind appears improbable or it could be on account of event surrounding the incidents which took place on 29.07.2017 when the appellant's brother-in-law allegedly assaulted both the respondent and the respondent's father.

104. The fact that the appellant had approached the police station on 27.8.2018 during the pendency of the above two proceedings with a request to the respondent to take her back along with the child in a separate independent house at best can show the hope of the appellant to continue in relation with the respondent and faith in the institution of the marriage.

105. The another appeal, i.e, C.M.A.No.2542 of 2019, against impugned Judgment and Decree passed in H.M.O.P.No.3613 of 2017



dismissing the prayer for restitution of conjugal rights, is to be allowed. We are therefore of the view that the impugned Judgment and Decree passed in H.M.O.P.No.3613 of 2017 also unsustainable. Over all facts indicate that the appellant has made out a good case for allowing the relief in H.M.O.P.No.3613 of 2017.

106. We do not find any merits in the findings rendered by the Family Court that the said act of filing of D.V.A.No.151 of 2019 against the respondent amounted to cruelty.

107. We therefore find sufficient reasons to set aside the impugned Judgment and Decree passed in H.M.O.P.No.3092 of 2017. Consequently, C.M.A.No.2538 of 2019 is also liable to be allowed.

108. In the light of the above discussion, we are of the view that the impugned Common Judgement and the respective Decrees passed by the Family Court in dissolving the marriage solemnised between the appellant and the respondent and in rejection of the application filed by the appellant for restitution of conjugal rights are liable to be set aside.

109. Therefore, the relief granted to the respondent in H.M.O.P.No.3092 of 2017 by the Family Court stands disallowed and the relief denied to the appellant in H.M.O.P.No.3613 of 2017 by the Family Court stands allowed. Liberty is given to the appellant to work out other remedies against the respondent in accordance with law.

110. Accordingly, C.M.A.No.2538 of 2019 and C.M.A.No.2542 of 2019 are allowed filed by the appellant. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

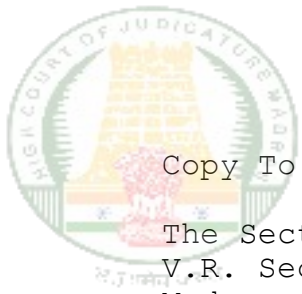
//True Copy//

Sub Assistant Registrar

jen

To:

The VI Additional Principal Family Court,
Chennai.



Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+2cc to Mr.V.Kannadasan, Advocate, S.R.No.37290, 37291
+2cc to Mr.S.Saravanan, Advocate, S.R.No. 37001 & 37002

C.M.A.Nos.2538 & 2542 of 2019
and C.M.P.No.12085 of 2019

SSV(CO)
GN(24/08/2021)