

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2020

PRONOUNCED ON : 18.11.2020

CORAM

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

C.M.A.No.4286 of 2019

(Through Video Conferencing)

K.Kumarakrishnan
By his Power Agent
M.P.Krishnamurthy. Appellant/Petitioner

vs.

T.P.Padmaja Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the Fair and Decretal order in H.M.O.P. No.101 of 2019 dated 30.09.2019 on the file of the learned Family Court, Villupuram.

For Appellant : Mr.N.Suresh

For Respondent : Mr.T.Dhanasekaran

J U D G M E N T

The present appeal has been filed by the husband against the impugned judgement and decree dated 30.09.2019 passed by the Family Court at Villupuram in H.M.O.P.No.101 of 2019. By the impugned judgement and decree, the said Family Court has dismissed the aforesaid petition filed for dissolving the marriage solemnised between the appellant and the respondent.

2. Aggrieved by the impugned judgement and decree dismissing the above HMOP, the present appeal has been filed by the Appellant. The case of the appellant before the Family Court was that the respondent was cruel to him and deserted him therefore the marriage solemnised between them was liable to be dissolved under the provisions of Section 13 (1) (i-a) & (-ib)

of the Hindu Marriage Act, 1955.

3. The appellant had originally filed H.M.O.P.No.330 of 2014 before the Sub-Court, Tambaram for dissolving the marriage. Thereafter, the case was transferred H.M.O.P.No.151 of 2015 to Family Court, Villupuram and thereafter transferred the petition in H.M.O.P.No.58 of 2019 before the Principal Subordinate Judge, Villupuram. Thereafter, it was once again retransferred the petition in H.M.O.P.No.101 of 2019 to Family Court at Villupuram. At each of the stage, the case was renumbered in these court's.

4. The appellant had filed I.A.No.74 of 2017 in H.M.O.P. No.151 of 2015 before the Family Court, Villupuram for a permission to conduct trial through video conferencing. That application was allowed on 25.07.2017. Challenging the same, the respondent-wife filed C.R.P(PD) No.3802 of 2017 to set aside the said order.

5. Thereafter, the respondent-wife filed Tr.C.M.P. No.892 of 2017 to withdraw the petition in H.M.O.P. No.151 of 2015 on the file of the learned Judge Family Court, Villupuram and to transfer the same to any other Courts in Villupuram District. The said petition was dismissed.

6. Thereafter that the respondent filed I.A. No.140 of 2016 for an interim maintenance till the disposal of the divorce petition. The respondent has filed I.A.No.6 of 2018 before the Trial Court for earlier disposal of the application for interim maintenance and till the disposal sought for stay of the proceedings in H.M.O.P.No.330 of 2014 and the said application was dismissed.

7. The respondent thereafter filed CRP.PD No.1080 of 2018 to set aside the application in I.A. No.6 of 2018. It was dismissed with a direction to the Family Court to dispose of the application in I.A.No.140 of 2016 filed under Section 24 of the Hindu Marriage Act, within a period of one month from the date of receipt of a copy of that order and thereafter to proceed the original petition in H.M.O.P. No.151 of 2015 in interlocutory application.

8. Thereafter, the respondent-wife filed Tr.C.M.P. No.385 of 2018 to withdraw H.M.O.P. No.151 of 2015 pending on the file of the Family Court, Villupuram and transfer the same to any other courts in Villupuram District. Same was ordered with a direction to the learned Principal Subordinate Judge, Villupuram to dispose of H.M.O.P. No.151 of 2015 within a period of three months.

9. The respondent also filed I.A.No.32 of 2018 for interim maintenace under Section 24 of the Hindu Marriage Act. It was dismissed as not pressed. Thereafter, the respondent-wife has also filed I.A.No.66 of 2018 to amend the petition under Order 6

Rule 17 of C.P.C and the same was allowed. Eventually, the impugned judgement and decree has been passed by the Family Court, Villupuram after recording evidence.

10. The case of the appellant before the Family Court was that the respondent was a short tempered person and was disrespectful towards the appellant and his parents and his relatives. In the petition before the Family Court, the appellant has referred to several trivial incidents which allegedly amounted to cruelty by the respondent. The appellant alleged that on 8.5.2013 the respondent also demanded for a divorce from him when he was in the US and therefore a mediation/panchayat was conducted by the relatives of the appellant and respondent when also the respondent demanded divorce. It was further alleged that during the panchayat held in the respondent's relatives house on 24.05.2013, respondent, her father and mother used unparliamentary words against the appellant and his parents and insulted them and threatened to slipper the appellant in person. However, the appellant thereafter took the respondent with him to America on 21.12.2014 along with their infant child born to them on 10.10.2012.

11. He further alleged by treating the bygone as bygone he took the respondent and their minor infant child to the U.S.A on 21.01.2014. However, after reaching America on 22.01.2014, the respondent created a ruckus and broke an expensive laptop in a fit of rage and anger on 28.01.2014 and insisted on returing back to India, and therefore left with no other option, he arranged for a return to travel for the appellant, the respondent and the minor infant child returned to India on 30.1.2014 and that the respondent directly left with her parents without informing him and thus the appellant returned.

12. Apart from the aforesaid incident according to the appellant, the respondent also had on several occasions insulted the appellant and his family members. According to the appellant, even during the punyadanam ceremony after the 10th day of the birth of the child the appellant's parents were insulted by the respondent and her parents. He further alleged that even when they were staying together in Chennai, the respondent used to frequently visit her parents without his knowledge and therefore suffered cruelty in her hands. It was further stated that the case of the appellant before the Family Court though his parents gifted a saree on her birthday on 24.5.2012 before the birth of the child, the appellant insulted them.

13. The appellant further alleged that the respondent refused to show their minor infant child to his parents when they visited the respondent in her parents house. He further alleged that though he had purchased expensive web camera and gifted to the respondent as a birthday on 24.5.2012 as the appellant was expected to travel to America, the respondent did

not show the child to him through the web camera alleging the web camera mal-functioned. The appellant also alleged that as he was unable to see his minor infant child, he gifted a tablet to his respondent. However, the respondent only showed still photo of the infant much to his chagrin and disappointment and frustrated him. The appellant further alleged that the respondent rarely spoke to him.

14. The other allegation against the appellant for cruelty was that despite the appellant asking the respondent to take passport for their infant child, the respondent delayed and applied a passport from the Villupuram passport office instead of Chennai Post Office and applied only after repeated reminders from the appellant. He further submitted that even when they were staying together in a independent house the appellant found it very difficult to converse with the respondent as she was mesmerised by her mother and used to frequently leave the matrimonial home and that it would take 3 days for the respondent's mood to stabilise. He further alleged that the respondent did not take care of herself by doing her marital duties of cooking food or taking care of the house. It was further alleged that the respondent on her own volition shifted out of the rented premises in Chennai on 10.11.2012 along with all the household articles one day prior to the appellant's departure to the America to her parents house though he was not expected to stay forever in the US.

15. The respondent has denied that she had voluntarily decided to shift the household articles from Chennai on her own volition and that entire exercise was overseen by the appellant's father and to this effect she also filed a freight receipt signed by the appellant's father as an Exhibit.

16. Respondent in her counter has denied all the allegations of cruelty. On the other hand, she has stated in the counter that it is the appellant who threatened the respondent with the divorce from US since the respondent could not come and stay with his parents after the child birth on 10.10.2012. She alleged that on 8.5.2013 the appellant informed the respondent that his parents had advised him to apply to divorce for the respondent as she was unwilling to come and stay in his parents house.

17. Anguished with the threat, the respondent brought this to her parents attention who enquired with the appellant's parents who said that this was a family dispute between the husband-and-wife and therefore they would not like to be involved. She further submitted that a conciliation was held in presence of the relatives of the appellant and the respondent and peace was brokered.

18. Before the Family Court, following documents were marked on behalf of the appellant and the respondent:-

Appellant	Respondent
Ex.P1 - Marriage Invitation	Ex.R1 - H4 VISA application issued by the TATA Company dated 17.10.2013.
Ex.P2 - Marriage Photo	Ex.R2 - certificate issued by the Kamatchi Hospital dated 21.02.2012.
Ex.P3 - Copy of Family Card	Ex.R3 - Photo taken by the appellant with child .
-	Ex.R4 - Examination Report of Kamatchi Hospital dated 21.0.2012
-	Ex.R5 - Salary slip issued by the TATA Company dated 09.012013
-	Ex.R6 - Photo taken by the appellant's mother with his child
-	Ex.R7 - Document issued by the City Union Bank dated 09.10.2018
-	Ex.R.8 - Insurance policy taken in the name of the respondent dated 05.11.2012.
-	Ex.R.9 - Receipts sent by the Deccan Express Packers & Movers dated 10.11.2012.
-	Ex.R.10 - H.M.O.P.No.6 of 2018 on the file of Family Court, Villupuram seeking restitution of conjugal rights.
-	Ex.P.11- Certified copy of notice

19. On behalf of the appellant and the respondent, the appellant and his father deposed evidence as PW1 and PW2 respectively. On behalf of the respondent and her father deposed evidence as RW1 and RW2 respectively.

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

Whether the petitioner was entitled for the relief or not based on the averments in the petition?

21. We have considered the petition filed by the appellant before the Family Court, the counter of the respondent. We have also perused oral evidence adduced and the documentary evidence produced before the Family Court by the appellant and the respondent.

22. Learned counsel for the appellant relied on the following decisions of the Hon'ble Supreme Court :

" i) Dalit Singh vs. State of Uttar Pradesh, 2010(2) SCC 144

ii) Oswal Fats & Oils Ltd. v. Commr. (Admn.), 2010 (4) SCC 728

iii) Samar Ghosh vs. Jaya Ghosh, 2007(4) SCC 511

iv) Thirugnansambandam vs. Kannan & Others, 2018(6) CTC 198

v) Gopal Krishji Ketkar vs. Mohamed Haji Lathif, AIR 1968 SCC 1413 ;

vi) Praveen Mehta vs. Inderjit Mehta, AIR 2002 SCC 2582;

vii) Vinita Saxena vs. Pankaj Pandit, AIR 2006 SC 1662

viii) Malathi Ravi vs. B.V.Ravi, 2014(7) SCC 640;

ix) Vinothkumar Subbaiah vs. Saraswathi Palaniappan, 2015(8) SCC 335;

x) V. Bhagat vs. D. Bhagat, 1994(1) SCC 337 "

23. We have also given our anxious consideration to the arguments advanced by the learned counsel for the appellant and the respondent.

24. The marriage between the appellant and the respondent was solemnised as per the Hindu rituals on 18.10.2010. Both the families hail from Villupuram as the parents of the appellant and the respondent are from the Villupuram District. Both the appellant and the respondent are well educated. The parents of

the respondent are both physicians by profession. During the marriage, the respondent's family has given marriage gifts as Stridhana.

25. The appellant was working in Chennai at the time of marriage and staying in a bachelor accommodation in Chennai and continued to do so for about 2 months after the marriage. Therefore, the appellant and the respondent as newly married couples used to meet up only during weekends in the respondent's parents house when the appellant travelled to Villupuram during weekends.

26. On 11.12.2010, the families arranged for a rented house for the appellant and the respondent to live in Chennai. Thus, the young couples started their independent matrimonial life in Chennai from 11.12.2010. Approximately, they lived together for 13 months in the rented house in Chennai only. The deposition of PW2 also confirms the same. Apart from gifting expensive ornaments as at the time of marriage for the appellant and the respondent, the parents of the respondents also purchased household items, car etc. for the appellant and the respondent.

27. The marriage was consummated and on 26.1.2012 it was confirmed that the appellant was pregnant and therefore the respondent shifted back to her parents house in anticipation of the delivery of the child. The appellants parents also celebrated Valakkapu function during the 7th month of pregnancy and gifts were exchanged by the respective in-laws in favour of their son-in-law and daughter-in-law i.e the appellant and the respondent.

28. On 10.10.2012 a son was born. The allegation that none of the relatives of the respondent was invited for the Punyadanam ceremony and therefore the appellant was humiliated and subjected to cruelty cannot be countenanced in view of the fact that the respondent had difficulties to travel to the appellant and undertake the work as she had undergone surgery due to cesarean.

29. Meanwhile, the appellant got an opportunity to work in the America for his company and therefore flew to America in connection with his employment on 11.11.2012. Thus, the appellant left for America within a month of the birth of the child. The respondent therefore continued to live with her parents.

30. On 10.11.2012, the rented house was vacated since the assignment of the appellant in America was initially for a period of 3 years. The appellant and the respondent thus decided

to vacate the rented premises in Chennai as the respondent was to stay with her parents post delivery of the child.

31. All the house hold items were therefore shifted to the respondent's parents house. Shifting of the house hold items was arranged by the appellant's father. Therefore, there is no basis to conclude that the respondent voluntarily deserted the appellant on the 1st occasion.

32. The appellant has made several allegations in the petition which are trivial in nature to make it seem as if the appellant suffered cruelty in the hands of the respondent. However, none of the allegations in the petition filed before the Family Court have been proved by the appellant. Even otherwise these allegations are trivial in nature and do not constitute cruelty to warrant a decree of divorce.

33. The allegation that the respondent and her parents insulted the appellant and his parents on 24.5.2013 in a family panchayat has not been proved. If the appellant wanted to rely on the outcome of the said Panchayat and the conduct of the respondent and her parents, it was incumbent on the part of the appellant to produce independent witnesses to establish the same. Instead, he has blamed the respondent for not having produced witness to disprove his allegation. In any event, after the panchayat on 24.5.2013, the appellant came back from America on 12.01.2014 to take the respondent and the infant child to America with him. On 21.01.2014, the appellant, respondent and their infant child boarded a flight to the USA and reached USA on 22.01.2014.

34. As per the respondent's counter statement, prior to their departure to America, the appellant on his return from the USA stayed with the respondent in respondent's parents house for a day and thereafter took the respondent and their infant child to his parent's house and dropped them back on 16.01.2014 in respondent's parents house in Villupuram and left for work to Chennai and asked the respondent to come to the airport along with the minor infant child on 21.01.2014 for taking a flight to America. He has not denied the said statement of the respondent.

35. The allegation that the appellant and the respondent travelled separately in a separate car from Villupuram to board the flight at the Chennai airport in our view does not constitute cruelty. The respective families are from Villupuram District and it is the appellant who dropped the respondent back in the respondent's parents house owing to the fact that the respondent and the minor infant child were being taken care of by the respondent's parents and till then not by

the appellant's parents and had left to Chennai in connection with his work.

36. The appellant has also admitted that appellant's mother was a arthritis patient. Therefore, she could not in any manner have helped the respondent or the infant child and therefore we are unable to infer any cruelty by the respondent in either choosing to stay with her parents after pregnancy was confirmed or for having continued to stay with her parents. The respondent has also categorically stated that the delivery was not normal. Delivery was after a cesarean on 10.10.2012. Therefore, it was not possible for the respondent to stay with appellant's parents. We are also convinced that it would have been highly impractical for the respondent to shift to the appellant's parents house after the child birth particularly in the light of the fact that the appellant himself was not there to take care of the respondent and the infant child and appellant's mother herself was having medical conditions which incapacitated her from helping the respondent who was recuperating after surgery from cesarean after the child birth. That apart without the appellant with her in-law's house, it would have been difficult for the respondent to live with her in-laws to take care of herself and the infant child.

37. The allegation that the respondent delayed in getting the passport and that she applied for passport only from Villupuram passport office and not from Chennai passport office appears to be a too trivial a complaint and no cruelty can be inferred from it. The explanation of the respondent that she had difficulties after the child birth due to formation of lumps while breast feeding the infant child appears to be a reasonable explanation for not arranging for passport immediately as was demanded by the appellant. In any event, this was condoned by the appellant.

38. The allegation that after reaching the United States of America, the respondent created a ruckus on 28.01.2014 and broke an expensive laptop forcing the appellant arrange for a return to India appears to be a one-sided explanation and a lame excuse of the appellant to resile from the commitment given to the respondent's parents and the society as a husband of the respondent. Explanation of the respondent that the weather condition in the United States of America oscillates between -7 to 13° at that time and therefore their infant child developed breathing problem after landing and could not be given immediate medical attention from medical practitioners in absence of registration with the health department, forcing the respondent to demand for a return ticket immediately to India appears a reasonable cause and demand of the respondent. Slighted by the demand of the respondent, the appellant is said to have

allegedly hit and kicked the respondent and therefore on coming to know of the same, the respondents parents requested their relative to intervene for safe return of the respondent and the infant child back to India. This explanation appears to be reasonable and plausible.

39. The appellant thus immediately arranged for the ticket for them to travel back to India in hurry and left the respondent and the infant child at the airport and disappeared without meeting the respondent's parents who had come to receive them. Whether the respondent really broke an expensive laptop of the appellant or not has not been proved. It remains an unsubstantiated allegations of the appellant.

40. In our view, the explanation of the respondent appears to be a reasonable under the given circumstance. If the appellant was a responsible person, he would have accompanied the respondent and the infant child to a hospital or atleast dropped them in the respondent's parents house. Instead, he appears to have abandoned them and vanished and left for America fearing uncomfortable questions being asked. He cannot take advantage of his own mistake. The fact that he filed HMOP. No.330 of 2014 before the Tambaram Sub Court which had no jurisdiction, also raises a serious doubt regarding the bonafide of the petition filed by the appellant.

41. In our view, the Family Court has come to a fair conclusion that no case was made out by the appellant before the Family Court either for desertion or for cruelty by the respondent. We therefore find no reasons to interfere with the impugned judgement and decree passed by the family Court.

42. In the light of the above discussion, we are inclined to dismiss the above Civil Miscellaneous Petition filed by the appellant. We leave it open for the respondent to work out her remedies in accordance with law. No cost.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

Kkd

To

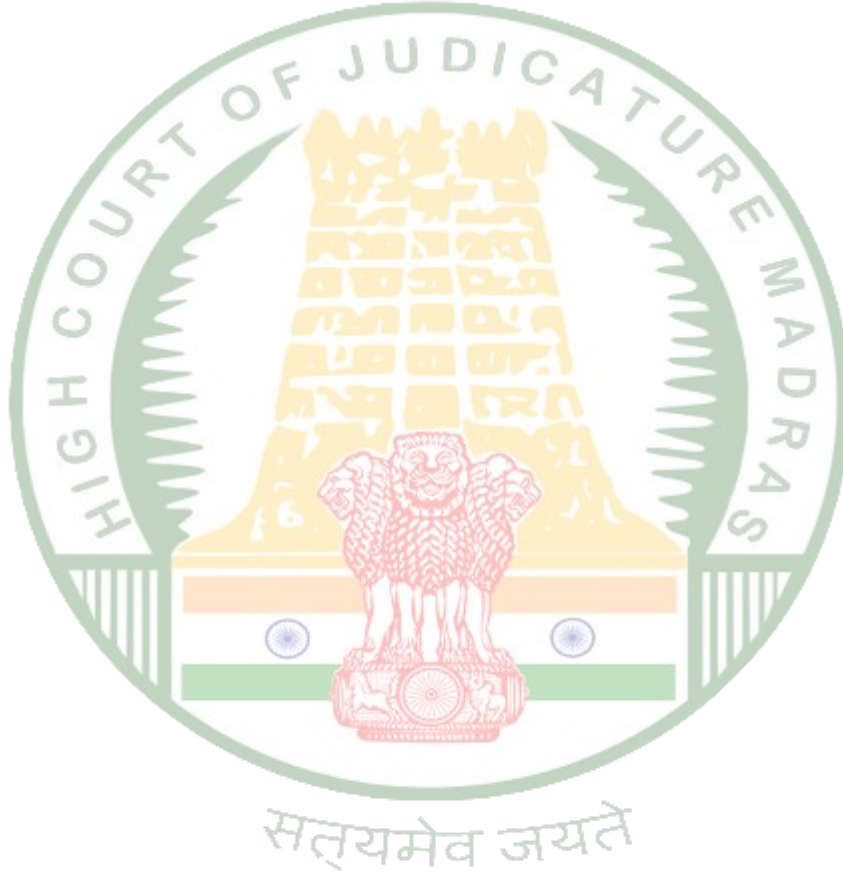
The Family Court, Villupuram.

+2cc to Mr.N.Suresh, Advocate, S.R.No. 37342

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No. 36901

C.M.A.No.4286 of 2019

CNR (CO)
GN (14/12/2020)



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