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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No. 2601 of 2016

V.Viyagappan

..Appellant / Petitioner

Vs

A.Amulrani

..Respondent / Respondent

Prayer : Appeal filed under Section 55 of the Indian Divorce Act, 1869, against the fair and final order dated 29.07.2016 made in I.D.O.P.No. 136 of 2015 on the file of the Principal District Court, Tiruppur.

For Appellant : Mr.D.R.Arun Kumar

For Respondent : No appearance

JUDGMENT

The fair and decreetal order dated 29.07.2016 made in I.D.O.P.No. 136 of 2015 is under challenge in the present civil miscellaneous appeal.

2. The appellant filed a petition under Section 10 of the Indian Divorce Act, 1869, seeking dissolution of marriage. The marriage between the appellant and the respondent was solemnized on 12.09.2011 as per the Christian rites and customs.

3. Learned counsel for the appellant states that they have not been continuing in the matrimonial home for about two months. During the short span of period, the difference of opinion arose mainly on the ground that the respondent/wife was a



married woman and by suppressing the fact, she married the appellant. Apart from this, the appellant contended other allegations regarding adultery and desertion. It is pertinent to note that the respondent attended the counselling programme before the trial Court and thereafter not contested the case. The trial Court made a finding that the respondent had not appeared before the trial Court nor contested the case by filing documents or adducing evidence. Thus, the trial Court passed an exparte order rejecting the petition filed by the appellant for dissolution of marriage.

4. Learned counsel for the appellant further states that the trial Court has not given an opportunity to the appellant to establish his case. This apart, the contention of the appellant set out in the petitions were not defended by the respondent. Thus, declining the relief is not in consonance with the principles and, therefore, the order passed by the trial Court is to be set aside.

5. This Court is of the considered opinion that admittedly, the marriage became irretrievably broken down. The parties are not living together for more than nine years. The ground of desertion was taken by the appellant before the trial Court. However, the petition filed by the appellant was not defended by the respondent and even after service of notice, the respondent has not appeared either before the trial Court or before this Court when the present appeal is taken up for hearing.

6. Thus, this Court is of the considered opinion that remanding the matter back would not serve the purpose and the litigation may be prolonged. As far as the merits of the case are concerned, this Court cannot adjudicate the allegations regarding cruelty in the absence of any examination of witnesses. As far as the ground of desertion is concerned, it is an admitted fact that the parties are living separately for about nine years. Therefore, this Court can rely on the ground of desertion based on the fact that the appellant and the respondent are not living together for about nine years. Thus, the ground of desertion for more than two years as contemplated under Section 10 of the Act is existing as of now and based on the said desertion, the appellant is entitled for decree of divorce.



7. Accordingly, the fair and decreetal order dated 29.07.2016 passed in I.D.O.P.No. 136 of 2015 is set aside and the civil miscellaneous appeal stands allowed. No costs.

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Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ssm

To

The Principal District Judge,
Tiruppur.

+1cc to Mr.D.R.Arunkumar, Advocate, S.R.No.11252

C.M.A.No. 2601 of 2016

SSD(CO)
SB(03/09/2021)