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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA  
and  
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A. No.758 of 2021

Praveena Thiyagarajan

... Appellant/Respondent

-vs-

R.H.Deva Narayanan

... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act to set aside the fair and decretal order dated 28.12.2020 in O.P. No.1868 of 2018 on the file of IV Additional Principal Judge, Family Court, Chennai in so far as the findings rendered therein.

For Appellant : Ms.V.Anusha

JUDGMENT

Judgment of this Court was made by T.RAJA, J.

This appeal has been directed against the fair and decretal order dated 28.12.2020 passed by the IV Additional Principal Judge, Chennai in O.P. No.1868 of 2018.

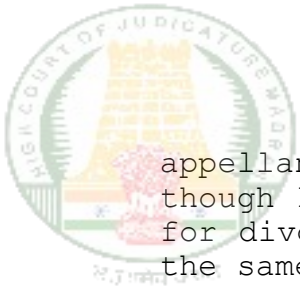
2.Learned counsel appearing for the appellant/wife submitted that the respondent/husband has filed the above O.P. No.1868 of 2018 before the Family Court, Chennai under Section 13(1)(i-a) of the Hindu Marriage Act seeking an order to dissolve the marriage solemnised between the appellant and the respondent on 09.06.2003 at Sri Rama Kalyana Mandappam, Nungambakkam, Chennai-34 on the ground of cruelty. Learned counsel appearing for the appellant wife further submitted that during the pendency of the matter before the Family Court, both the husband and wife made a



joint request for grant of divorce by consent, but, the Family Court, instead of granting divorce on the consensus reached by both the parties, had granted divorce on the ground of cruelty, which is un-justifiable. Therefore, the appellant/wife has been advised to file the present appeal.

3.It is seen from records that when the respondent/husband filed the above O.P. No.1868 of 2018 before the Family Court, Chennai under Section 13(1)(i-a) of the Hindu Marriage Act seeking an order to dissolve the marriage solemnised between the appellant and the respondent on 09.06.2003 at Sri Rama Kalyana Mandappam, Nungambakkam, Chennai-34 on the ground of cruelty, the same was dismissed on 04.11.2019 as there was no representation on either side. Thereafter, the appellant wife, being the respondent before the Family Court, surprisingly, has filed an appeal in C.M.A. No.4808 of 2019 before this Court to set aside the dismissal order passed by the Family Court in O.P. No.1868 of 2018. By order dated 18.02.2019, this Court restored the above O.P. No.1868 of 2018 on the file of the Family Court. Thereafter, the above O.P. filed by the respondent husband was taken on file and the same was allowed by the Family Court, holding that the appellant wife, in the proof affidavit has not chosen to deny Exs.P6 and P7/Photographs with CD and Copy of Whatsapp messages, which amounts to admission of the above documents and that the wife had chat messages with a person and the same revealed the intimacy of the appellant wife with some other person other than the respondent herein and that the intimate photographs taken with the male friend, after marriage with the respondent herein, amounts to mental cruelty on the respondent husband.

4.When the respondent husband, after their marriage, finding out the intimate photographs and chat messages of the appellant wife with her boy friend, has filed the above O.P., the Family Court, while taking the matter for enquiry, fully agreeing with the both oral and documentary evidence produced by the respondent husband and considering the fact that the wife had chat messages with a person and the same revealed the intimacy of the appellant with some other person, other than the respondent herein and that the said intimate photographs were taken with the male friend, after marriage with the respondent herein, has allowed the above O.P., which in our considered opinion does not call for any interference since the same amounts to mental cruelty on the respondent herein. When the appellant admitted the documents namely, Exs.P6 and P7/chat messages and intimate photographs taken with her boy friend, after their marriage, which would definitely amount to mental cruelty on the respondent husband, the ground made by the



appellant that there was no mental cruelty cannot be accepted though both the appellant and the respondent have given consent for divorce. Therefore, the appeal is liable to be dismissed and the same is dismissed. No costs.

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Sd/-  
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

vga

To

1.The IV Additional Principal Judge at Chennai.

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

+1cc to M/s.V.Anusha, Advocate, S.R.No.16328

C.M.A. No.758 of 2021

NRL(CO)  
CB(15/09/2021)