



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.09.2021

PRONOUNCED ON : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.NO.1163 OF 2018

AND

C.M.P.NO.8768 OF 2021

Purnima Shanmugham

... Petitioner

.Vs.

Palanivel Ramachandran

... Respondent

PRAYER:-

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, to set aside the Judgment and Decree dated 19.12.2017 in H.M.O.P.No.3271 of 2014 on the file of the III Additional Principal Family Court, Chennai.

For Petitioner : Mr.K.Sridhar
For Mr.D.Senthil Kumar

For Respondent : Notice served
No Appearance

J U D G M E N T

(V.SIVAGNANAM, J.,)

This Civil Miscellaneous Appeal has been filed, to set aside the Judgment and Decree dated 19.12.2017 in O.P.No.3271 of 2014 on the file of the III Additional Family Court, Chennai.

2. Appellant is the wife and respondent is the husband. They got married and registered their marriage on 18.01.2013 before the SRO, Mylapore, under Certificate No.18/2013. After



the marriage, both of them went to Singapore on 12.02.2013. According to the appellant-wife, from the date of inception of marriage, problem started between them. Thereafter, due to strained relationship, the appellant left her matrimonial home on 04.01.2014 and she came back to her parent's house at Chennai. During April 2014, the appellant got a job offer from her previous employer in USA and she joined duty on 28.03.2014. Afterwards, the appellant never joined in her matrimonial home again. Since, there was no reconciliation, the appellant filed a petition for divorce under Section 13(1) (a) of the Hindu Marriage Act, on the ground of cruelty. The respondent-husband resisted the divorce petition and denied the allegations contained in the petition. The respondent-husband also filed a petition in H.M.O.P.No.407 of 2016, for restitution of conjugal rights before the Subordinate Judge, Poonamallee. The trial Court after considering the oral and documentary evidence, dismissed the divorce petition on 19.12.2017 in O.P.No.3271 of 2014.

3. Aggrieved by the said order of dismissal dated 19.12.2017 in O.P.No.3271 of 2014 the appellant is before this Court with a prayer to set aside the said Judgment and Decree.

4. The respondent-husband, even after receiving the notice in this appeal, neither appeared before this Court nor contested the case and remained exparte.

5. Heard the learned counsel for the appellant and perused the records.

6. The learned counsel for the appellant would submit that the trial Court erred in dismissing the divorce petition and failed to appreciate the evidence of the appellant. Further, the trial Court observed that the photos taken during the marriage and honey-moon shows that the appellant and respondent are lived happily and failed to believe the evidence of the wife, towards the cruelty caused by the respondent-husband and reiterated other grounds raised in the appeal and pleaded to allow this appeal.

7. From the petition averments, it is clear that there was difference of opinion between the appellant-wife and respondent-husband, right from the date of marriage. After the marriage, both the appellant and respondent went to Singapore on 12.02.2013 and established their matrimonial house there. From the inception of marriage there were problems between them for one and the other reasons and during the 2nd week of March 2013 both of them went for shopping to buy a sandal for the appellant and the sandal selected by the appellant was not convincing the respondent, for which the respondent picked up quarrel and left



the appellant there itself. Thereafter, the appellant herself reached home at 10.00 pm.,. On that day, the respondent returned to home in an inebriated condition. During the 1st week of October 2013, the respondent assaulted her and locked the wife by leaving her inside the house. The said incident was informed to her parents, who in turn informed the same to the respondent's mother. On 27.12.2013, at Singapore, when they jointly went for jogging at 7.30 am., wordy quarrel was started between them and due to which the respondent assaulted the appellant. Thus, the respondent continuously teased her. On 04.01.2014, the appellant went to her aunt's house and thereafter she left to her parents house. During April, 2014, she got job offer from USA and went there. Thereafter, she never joined in her matrimonial home, even after the respondent made several attempts to apologize for his acts. From the entire evidence and pleadings laid by the learned counsel for the appellant, it stands established on the record that they have not been able to live together.

8. Now, it is relevant to extract the Hon'ble Apex Court decision in Samar Ghosh Vs. Jaya Ghosh reported in (2007) 4 SCC 511,

"No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.



WEB COPY

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.



WEB COPY

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

9. In our considered view, this is a clear case of irretrievable breakdown of marriage. When the parties are admittedly living separately for more than seven years, the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair, because of the mental cruelty caused by the respondent. Further, when the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus it is inaccurate and liable to lead to confusion, if the word 'cruelty' is used as descriptive only of the conduct complained of, apart from its effect on the victim.

10. In such circumstances, if the parties are not been able to live together, the Court should not bother about the reason for his or her inability to live together. In this case, there being no chance of reconciliation, hence, we are inclined to grant divorce to both the parties.

11. In view of the above, we allow the Civil Miscellaneous Appeal and the marriage held on 18.01.2013 between the appellant and the respondent is hereby dissolved by a decree of divorce and the order dated 19.12.2017 passed by the learned III Additional Principal Judge, Chennai, in O.P.No.3271 of 2014 is



hereby set aside. No costs. Consequently connected miscellaneous petition is closed.

WEB COPY

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Jer

To

The III Additional Principal Judge,
III Additional Family Court,
Chennai.

Copy To:-

The Section Officer,
V.R. Section,
High Court, Madras - 104.

+2ccs to Mr.D.Senthil Kumar, Advocate, S.R.No.52988

C.M.A.NO.1163 OF 2018 AND
C.M.P.NO.8768 OF 2021

SSV(CO)
PBS/17/11/2021