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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.1532 of 2018

S.Logannathan

... Appellant

Versus

T.Thangamani

... Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act, 1984, against the fair and decreetal order dated 07.09.2016 in FCOP.No.151 of 2012 on the file of the Family Court, Salem.

For Appellant : Mr.S.Raveekumar

For Respondent : Mr.S.Natarajan
for Mr.T.K.Saravanan

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The appellant/S.Logannathan has filed this Civil Miscellaneous Appeal challenging the impugned fair and decreetal order passed by the Family Court, Salem, in F.C.O.P.No.151 of 2012, dated 07.09.2016, refusing to grant the decree for dissolution of marriage solemnized between the appellant/husband and the respondent/wife on 31.10.2008 on the ground of cruelty and desertion.

2. When the matter was taken up on 09.12.2021, we have passed the following order:-

"This Civil Miscellaneous Appeal has been directed against the fair and decreetal order dated 07.09.2016 passed in FCOP.No.151 of 2012 by the learned Judge, Family Court, Salem,



2. Learned Counsel appearing for the appellant-husband placed three fold submissions before us. Firstly, after the marriage was solemnized between the appellant and the respondent on 31.10.2008, as per the Hindu rites and Customs at Chinnamanoor Panchayat Union Marriage Hall, they were finding it difficult to live together, because the respondent-wife was having some permanent health issues, namely, she was afflicted with back pain due to her back bone deformity and in view of the said physical deformity on L1 and S1 Discs on her spinal chord, she was not able to lead a normal matrimonial life. Secondly, though they were living together only for a period of three months, during this three months time also, her non-co-operation resulting from the L1S1 Disc problem made them not to live together. Thirdly, when the appellant-husband filed a Divorce Petition under Sections 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 before the Family Court, Salem, till date, the respondent-wife has not come forward to file any application under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights. That shows the truthfulness of the case of the appellant that respondent-wife is unfit for marital life. These vital aspects have been completely overlooked and unanswered by the trial court, he pleaded.

3. Learned Counsel for the respondent-wife also admitted that the trial court has sent the respondent-wife to the Medical Board and the report of the Medical Board was also examined by the trial court.

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'Chief Neurologist : At present Neurologically normal clinically

HOD Ortho : MRI shows Isthmion-L5S1 & Casual stenosis.

Patient is asymptomatic at present as she is not having back pain & leg pain. Incidental finding. She will require decompression & Stratification at a latter date if symptoms detected. She is advised activity modification and to wear L.S.Belt for support. Patient at present in having asymptomatic L5S1 Isthmion.

Psychiatrist : Mrs.Thangamani was examined in the department of psychiatry. Her mental status examination revealed that she does not have any mental disorder at present.'

The above Medical Report would show that the respondent-wife has some health issues.

5. Therefore, the learned Counsel for the appellant submitted that the appellant is ready to pay Rs.5,00,000/- towards permanent alimony to the respondent-wife. Anyhow, we have directed the appellant-husband to reconsider the said amount.

6. Consequently, learned Counsel for the appellant-husband submitted that the appellant-husband would pay a sum of Rs.6,00,000/- towards permanent alimony under Section 25 of the Hindu Marriage Act, 1955. Justifying the said amount, he has also stated that the appellant is working as a Store Keeper in Tamil Nadu Electricity Board and drawing a monthly salary of Rs.45,000/-.

7. We also find that since the respondent-wife has contracted the marriage, without disclosing her major health issues to the appellant-husband, the request of the learned Counsel for the respondent-wife for reunion cannot be considered since it is too late in view of the Medical Report speaking clearly that she is unfit for matrimonial life. Therefore, as agreed by the learned Counsel for the appellant-husband, for bringing a Demand Draft for a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) drawn in favour of the respondent-



wife, Registry is directed to list the matter on 10.12.2021."

3. After perusing the oral and documentary evidences, we have found against the respondent/wife as she has some permanent health issues, namely, she is affected with physical deformity on L1 and S1 Discs on her spinal chord, due to which, she is unable to lead a normal matrimonial life. Secondly, it is also further seen from the records that within three months of the marriage, she parted with the matrimonial life, as a result, they have been living separately for the past 13 long years. Thirdly, to find out whether the respondent/wife is capable of giving birth to a child as alleged by her husband, learned Family Court referred the matter to the Medical Board of Mohan Kumaramangalam Medical College, Salem, and after examining her, the Medical Board submitted a report dated 25.03.2015 and one Dr.Subramanian was examined as Court Witness (C.W-1). For better appreciation, the report dated 25.03.2015 of the Medical Board is extracted below:-

'Chief Neurologist : At present Neurologically normal clinically

HOD Ortho : MRI shows Iystistion-L5S1 & Casual stenosis.

Patient is asymptomatic at present as she is not having back pain & leg pain. Incidental finding. She will require decompression & Stratistigation at a latter date if symptoms detected. She is advised activity modification and to wear L.S.Belt for support. Patient at present in having asymptomatic L5S.1ystistion.

Psychiatrist : Mrs.Thangamani was examined in the department of psychiatry. Her mental status examination revealed that she does not have any mental disorder at present."

4. In view of her bodily infirmities, the appellant/husband has lost his youthful marital life for the past 13 long years. Moreover, he has lost his prime age of his life only in the court proceedings for the past 9 years. Accordingly, in our earlier order dated 09.12.2021, we have held against the respondent/wife as she has contracted the marriage without disclosing her major health issues to the appellant/husband. However, to show some compassion on the respondent/wife, when the matter was taken up on 09.12.2021, we have directed the appellant/husband to pay a sum of Rs.6,00,000/- towards permanent alimony to his wife. Learned counsel for the



appellant/husband, on getting instruction from the husband, sought time to bring Demand Draft for a sum of Rs.6,00,000/-

5. Accordingly, today, when the matter is taken up, Mr.S.Raveekumar, learned counsel for the appellant/husband handed over a Demand Draft drawn in the name of the respondent/wife to the tune of Rs.6,00,000/-. But, refusing to receive the same, Mr.S.Natarajan, learned counsel for the respondent/wife sought for pass-over of the matter to get instruction from his client/respondent/wife.

6. In the afternoon session, after taking instruction from the respondent/wife, who is also present in the Court, learned counsel for the respondent/wife requested us to direct the husband to return the Cot, Bureau and one sovereign gold coin given to him at the time of marriage. Learned counsel for the husband agreeing to return the Cot and Bureau, stated that the husband has not received any such gold coin, however, as he has given Gold Thali Chain to her, the same may be retained by her. The said submission is recorded and the Cot and Bureau may be returned as agreed above.

7. Learned counsel for the respondent/wife has also agreed for Rs.6,00,000/- towards permanent alimony and accordingly, after receiving the said DD, she stated that her name has been wrongly mentioned in the DD as Thangamani, instead of Thangammal. Therefore, in view of such discrepancy in the DD, learned counsel for the appellant/husband undertook to transfer the said sum through bank transfer to her bank account by tomorrow itself.

8. Therefore, by recording the above said submissions of the learned counsels for the parties and also for the reasons stated above, the impugned fair and decreetal order passed by the Family Court is set aside and consequently, the decree for dissolution of marriage is granted. The Civil Miscellaneous Appeal stands allowed. No Costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



To

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The Judge,
Family Court,
Salem.

+1cc to Mr.S.Raveekumar, Advocate Sr.66316

C.M.A.No.1532 of 2018

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srg 17/02/2022