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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

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

C.M.A.No.1537 of 2018

V.R.Sathyanarayanan .. Appellant

-vs-

Mrs.S.Jayashree .. Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, 1984, against the fair and decretal order dated 28.02.2018 made in H.M.O.P.No.4649 of 2016 on the file of the IV Additional Principal Judge, IV Additional Family Court, Chennai.

For Appellant :: Mr.S.Mahendran

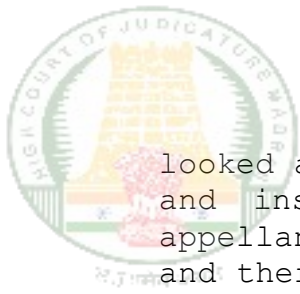
For Respondent :: No appearance

JUDGMENT

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

This civil miscellaneous appeal has been brought forth by the husband Mr.V.R.Sathyanarayanan to reverse the decree of dissolution of marriage on the ground of cruelty granted by the trial Court.

2. Learned counsel appearing for the appellant/husband pleaded that the marriage was solemnized on 30.08.90 between the appellant and the respondent at Jaya Kalyana Mandapam, Periyar Nagar, Madras as per the Hindu rites and customs. Out of the wedlock, two children S.Anitha and S.Aravind Kumar were born to them. Now they are aged about 26 and 24 years respectively. After 26 years from the date of marriage, the respondent/wife filed the petition for divorce under Section 13(1)(i-a) of the Hindu Marriage Act for dissolution of marriage on the ground of cruelty pleading that from the date of marriage, the relationship between the parties were not cordial and the appellant/husband never



looked after the family; that the appellant ill-treated, harassed and insulted the respondent/wife in various ways; that the appellant stated frequently that he never liked the respondent and thereupon abused her for not being highly educated, for which acts the respondent got offended. Therefore, she was constrained to approach the Court below praying for a decree of divorce on the ground of cruelty. The appellant/husband, filing a counter affidavit, denied all the allegations. It was also the argument of the appellant before the Court below that the respondent/wife never involved herself in any household chores and would make every attempt to desist from doing any household works and sometimes, she would not even serve the cooked food to the appellant. Whenever the appellant requested the respondent to serve food, she would always abuse him and behave in a rude and arrogant manner and that she would pick up quarrel with the appellant on flimsy grounds. These facts would clearly show that the matrimonial life between the respondent/wife were not conducive from the date of marriage. When the appellant/husband, through his savings, deposited a sum of Rs.10 lakhs in Indian Overseas Bank, Villivakkam branch for his daughter's wedding, the respondent only pressurized the appellant to conduct the marriage within rupees ten lakhs, as their daughter had an affair with a boy who did not have a good character and that the boy also insisted the appellant to accept for registered marriage without the knowledge of the boy's family. Instead of using that money for the marriage of daughter, the appellant purchased the property and registered the same in the name of the respondent/wife. In spite of doing these good things, it was contended that the respondent/wife lodged a false complaint against the appellant and created mental agony.

3. With this background, when the matter was posted for trial, the respondent/wife alone was examined as P.W.1. Again when the matter was posted for cross examination, in view of the failure on the part of the appellant/husband to appear before the Court, the Court below decreed the petition for divorce.

4. Learned counsel appearing for the appellant/husband submitted that the order of the Court below, without appreciating the procedure established under the law, for the reason that the appellant failed to appear before the Court, decreeing the petition granting divorce without substantial evidence to dissolve the marriage, is unjustified, therefore, the decree of divorce is to be interfered with. He also submitted that when the appellant and the respondent are having a son and a daughter aged about 26 years and 24 years respectively as of now, the decree of divorce is not going to serve any purpose to the



respondent.

5. We have heard the learned counsel appearing for the appellant. None appeared for the respondent.

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6. The only question raised in the present appeal is whether the findings and conclusions reached by the Court below for granting the decree of divorce by dissolving the marriage that took place between the parties on 30.08.90 are sustainable in law?

7. As could be seen from the pleadings filed by both parties, when the petition for divorce was filed by the respondent/wife stating that the couple were not enjoying a cordial relationship from the date of marriage, the appellant/husband also in the counter affidavit stated that the relationship between them was not good due to the bad attitude and behaviour shown by the respondent/wife. It was also the case of the appellant that the respondent/wife used to behave in a rude and arrogant manner by picking up frequent quarrels on flimsy grounds, as a result the matrimonial home, which was in Kolathur, was shifted by the respondent/wife to her parental home because of the ill-treatment. However, when the matter was posted for trial, the appellant/husband failed to appear before the Court below either to cross examine his wife, the respondent herein or to let in evidence in chief, in spite of several opportunities granted to him. In this context, Order XV, Rule 1 of the Code of Civil Procedure shows that the Court can dispose of the suit at the first hearing when it appears that the parties are not at issue on any question of law or of fact. For better understanding, the said provision is extracted hereunder:-

"Rule 1 Order XV of Code of Civil Procedure
1908 "Parties not at issue"

Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment."

8. A perusal of the above provision clearly shows that if the parties are not at issue on any question of law or of fact, the Court may at once pronounce the judgment. In the present case, when the trial Court has given a finding that after the matter was posted for trial, P.W.1 alone appeared, however, in spite of repeated opportunities given to the appellant/husband, he deliberately and willfully, for the reasons best known to him, chose not to appear before the Court, so as to give evidence in his support or to disprove the case of the respondent/wife, for



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disposal of the petition.

9. Further, it is pertinent to refer to Order VIII, Rule 5(1) of the Code of Civil Procedure, which reads as follows:-

"Rule 5 of Order VIII of Code of Civil Procedure 1908 "Specific denial"

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability."

10. A perusal of the above provision clearly shows that every allegation of fact in the plaint, if not denied specifically or by necessary implication, the same shall be taken to be admitted as against the person who failed to deny the same. Besides, it is also pertinent to extract Order XVI, Rule 20 of the Code of Civil Procedure, as follows:-

"Rule 20 of Order XVI of Code of Civil Procedure 1908 "Consequence of refusal of party to give evidence when called on by Court"

Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit."

11. A mere reading of the above said provision would also show that where any party to a suit pending in Court refuses to give evidence or to produce any document then and there in his possession or avoids the Court willfully, the Court can pronounce judgment or make such order against that party on the ground that he failed to prove the case in the manner known to law.

12. While considering a similar issue in Mohinder Kaur v. Sant Paul Singh, (2019) 9 SCC 358, the Apex Court has also held that a party to the suit does not appear in the witness box to state his own case on oath and does not offer himself to be cross examined by the other side, would suffer a presumption, because, the case set up by him would not be genuine, natural or honest and real one.



13. In the present case also, in our opinion, when the appellant/husband has deliberately and willfully boycotted the proceedings before the Court below, for the reason that he was not having any evidence to produce, he cannot come to this Court with this appeal, as the same is not maintainable. Moreover, when the appellant has got a duty to appear before the Court and adduce evidence to disprove the pleadings and the evidence produced by the respondent, in spite of repeated opportunities given, has not appeared before the Court. Hence, when the appellant/husband has not appeared before the Court in spite of repeated opportunities given, the Court below has rightly granted the decree of divorce, that cannot be found fault with. Accordingly, the civil miscellaneous appeal is dismissed confirming the fair and decretal order passed by the Court below. Consequently, C.M.P.No.12245 of 2018 is also dismissed. However, there is no order as to costs.

Sd/-

Assistant Registrar(I)

// True Copy //

Sub Assistant Registrar

ss

To

1. The IV Additional Principal Judge
IV Additional Family Court
Chennai.

2.The Section officer,
V.R.Section, High Court,
Madras-104 (+2 copies)

+2cc to Mr.S.Mahendran, Advocate SR.No.20833

C.M.A.No.1537 of 2018

GSM(CO)
CB(06/12/2021)