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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2021

PRONOUNCED ON : 27.09.2021

CORAM

THE HONOURABLE MR.JUSTICE K. KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.M.A.Nos.1815 and 1816 of 2018

A.Balamurugan ... Appellant in both the C.M.A's/
Petitioners in O.P.No.3499/16 &
Respondent in O.P.No.4290/2015

Vs.

N.Subasankareswari ...Respondent in both the C.M.A's/
Petitioner in O.P.No.4290 of 2015 &
Respondent in O.P.No.3499 of 2016

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 19 of the Family Court Act, to set aside the order and decretal order dated 12.02.2018 passed in O.P.Nos.4290 of 2015 and 3499 of 2016 by the III Additional Family Judge, Chennai.
In both the C.M.A's.:

For Appellant : Mr.A.Thirunavukkarasu

For respondent : Mr.R.Sivakumar

C O M M O N J U D G M E N T
(V.SIVAGNANAM, J.,)

The Civil Miscellaneous Appeals have been filed by the appellant-husband, being aggrieved by the orders dated 12.02.2018 passed in O.P.Nos.4290 of 2015 and 3499 of 2016 by the III Additional Family Judge, Chennai.

2.The appellant-husband is a Doctor and the respondent-wife is also a Doctor by profession. Marriage between them was solemnized as per Hindu rights and customs on 08.09.2014 at Pasumpon Devar Mandapam, T.Nagar, Chennai. After two weeks of



the marriage, their relationship become strain for various reasons and they have not been able to live together. Therefore, the appellant-husband filed a petition under Section 13(1) (i-a) of the Hindu Marriage Act, 1996, in O.P.No.76 of 2015 for divorce, before the Sub Court, Pattukottai, on the ground of cruelty. Thereafter, the respondent-wife filed a petition in O.P.No.4290 of 2015 for restitution of conjugal rights under the Hindu Marriage Act, 1955, before the Principal Family Court, Chennai.

3.While being so, the case in O.P.No.76 of 2015 was transferred to the Family Court, Chennai and re-numbered as O.P.No.3499 of 2016. The Trial Court after considering the oral and documentary evidences, while declining to grant divorce in favour of the petitioner-husband in O.P.No. 3499 of 2016, the Trial Court has granted restitution of conjugal rights in favour of the respondent-wife in O.P.No.4290 of 2015 by a common order dated 12.02.2018.

4.Aggrieved by the order dated 12.02.2018, in O.P.Nos.4290 of 2015 and 3499 of 2016, the present Civil Miscellaneous Appeals are preferred.

5.The learned counsel for the appellant submitted that the Trial Court erred in declining the divorce and granted restitution of conjugal rights by giving credence to the version of the respondent-wife and failed to consider the evidences of the appellant-husband and also failed to consider the circumstances in which the appellant-husband and the respondent-wife are lived separately. He further contended that the Trial Court erred in its approach and did not consider the cumulative effect of the evidence that the appellant-husband got Government post at Tanjavore District. While concentrating upon various allegations, the Trial Court failed to appreciate the evidence of appellant-husband that the respondent-wife refused to come to live with him in the matrimonial home at Pattukottai along with his parents and further contended that after the marriage, the appellant and the respondent are not lived happily. They have not been able to live happily, because of the attitude of the respondent-wife. Under these circumstances, the Trial Court ought to have granted divorce to both of them, instead of allowing the petition for restitution of conjugal rights. Thereby, the learned counsel for the appellant reiterated other grounds raised in the grounds of appeals and thus pleaded to allow these Civil Miscellaneous Appeals.

6.The learned counsel for the respondent supported the order of the Trial Court and further contended that the respondent-wife also joined duty at Government Hospital, Walajah, in the month of November 2014. At the time of marriage



the appellant-husband agreed to live with the respondent at Chennai, and he informed the parents of the respondent that he will settle in Chennai itself and on the face of the said arrangement, the respondent's family come forward to perform the marriage between the appellant and the respondent. However, after getting the job at Government Hospital, Pattukottai, the appellant refused to come to Chennai. Efforts taken by the respondent and her family members in reuniting them ended in vain. Further, the appellant's family members are interested to get divorce from the respondent and they are planning to contract another marriage to the appellant and thus pleaded to dismiss the Civil Miscellaneous Appeals.

7. Heard the learned counsel for the parties and perused the records.

8. The admitted fact of this case is that the appellant and the respondent got married on 08.09.2014. The appellant-husband is the permanent resident of Pattukottai Taluk and the respondent-wife is the permanent resident of Chennai. After two weeks of the marriage, problem started between the appellant and the respondent and thereafter, the respondent joined duty at Government Hospital, Walajah, in the month of November 2014 and the appellant also got job at Government Hospital, Pattukottai. Due to the difference of opinion, Thalai Deepawali also not celebrated, which developed the situation too worst. According to the appellant, the respondent stayed with her parents, after she separated from the appellant and the attempts made by the appellant to bring the respondent to the matrimonial home become vain. Further the respondent treated him cruelly and caused lot of mental agony. Therefore, he was forced to file the divorce petition and thereafter, the respondent filed a petition for restitution of conjugal rights, in order to justify her separate living without her husband.

9. We have gone through the judgment of the Trial Court.

10. The Trial Court held that the appellant did not prove the cruel attitude of the respondent and failed to prove the ground for divorce. Therefore, the Trial Judge dismissed the petition for divorce and allowed the petition for restitution of conjugal rights. From the entire evidence lead by the parties and the pleadings, it stands established on the record that after the marriage was held on 08.09.2014, the appellant and the respondent were lived happily, only for a period of two weeks and thereafter problem started between them. Further, when the spouse sues for restitution of conjugal rights, it is evident that they are living separately and from the evidence and pleadings it reveals that they are accusing each other for one and the other reason.



11. After filing the present appeals before this Court, the matter was referred before mediation centre on 08.03.2019 and this Court appointed Mrs. Uma Ramanan as Mediator. Accordingly, both the parties were directed to appear before the Mediator on 04.04.2019 and the Hon'ble Judges of this Court directed the parties to appear before them on the subsequent dates. Finally, they observed that inspite of best efforts made by them to reunite the parties, they could not be able to arrive at an amicable settlement. Hence the matter was directed to be listed before the Court, to argue the case on merits.

12. The term "cruelty" has not been defined in any of the Indian matrimonial statutes for the obvious reason, that it may manifest itself in a variety of unreasonable conduct, so much so that the meaning and import of cruelty cannot be brought in a straight jacket. In the instant case, over all picture suggests that the parties were not quiet comfortable with each other. It is true that there was a complete breakdown but none of the party can be blamed for this. Further, the definition of cruelty is absent in the statute as laid down by the Hon'ble Supreme Court in the case of V. Bhagat Vs. D. Bhagat (Mrs.) reported in (1994) 1 SCC 337 and observed as follows:-

"Mental Cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the



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cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill treatment or conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

13. In such circumstances, if they have 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.

14. In view of the above, we allow the Civil Miscellaneous Appeals and the marriage held on 08.09.2014 between the appellant and the respondent is hereby dissolved by a decree of divorce and the restitution of conjugal rights decree in O.P.No. 4290 of 2015, is hereby set aside. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

Jer
To



The III Additional Family Judge,
Chennai.

Copy To

The Section Officer,
VR Section,
High Court, Madras.

C.M.A.Nos.1815 and 1816 of 2018

PA (CO)
GN (26/11/2021)