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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.NOS.999 AND 1000 OF 2018
AND
C.M.P.NOS.8142 AND 8143 OF 2018

Priya

... Appellant in both CMAs/
Petitioner

Vs

1.Iyyappan
2.The Regional Passport Officer,
Chennai.

... Respondents in both CMAs/
Respondents

(2nd respondent Suo motu impleaded as party respondent
vide Court order dated 08.07.2021 in CMP.No.20262, 8143
and 20265/18 in CMA.Nos.999 and 1000 of 2018
(NKKJ and TVTSJ)

COMMON PRAYER :

Civil Miscellaneous Appeal filed under Section 19 of the
Family Court Act, 1984, against the order passed in
M.O.P.Nos.439 of 2017 and 224 of 2014, respectively, dated
21.12.2017 passed by the learned Judge of the Family Court,
Puducherry.

For Petitioner
in both CMAs : Mr.R.Ganesan

For Respondents
in both CMAs :Mr.Prakash Adiyapathan for R1
Mr.Rajesh Vivekanandan for R2
Mr.Syed Mustafa
Special Government Pleader
on behalf of Pondicherry Govt



COMMON JUDGMENT
(Judgment of the court was delivered by
T.V.THAMILSELVI.J.,)

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The matters were heard through "Video Conference".

2. The appellant in both the appeals is the wife of the first respondent herein. She preferred both appeals against the common order dated 21.12.2017 passed in M.O.P.Nos.224 of 2014 and 439 of 2017 by the learned Judge, Family Court, Puducherry. The petition in M.O.P.No.224 of 2014 has been filed by the husband/ 1st respondent herein under Section 13(1) (ia) of the Hindu Marriage Act, 1995, praying to dissolve the marriage solemnized between himself and his wife/appellant herein, on 31.01.2011 on the ground of cruelty and the petition in M.O.P.No.439 of 2017 has been filed by the wife/appellant herein under Section 9 of the Hindu Marriage Act, 1955, for the relief of restitution of conjugal rights by directing her husband to rejoin with her and lead the matrimonial life.

3. Both the petitions were contested by parties. On hearing both sides, the divorce petition filed by the husband M.O.P.No.224 of 2014 was allowed by granting decree of divorce and the petition for restitution of conjugal rights filed by the wife in M.O.P.No.439 of 2017 was dismissed. Aggrieved by both orders, the wife preferred these appeals.

4. At the time of arguments, the learned counsel for the appellant submitted that the first respondent is employed as Filaria Inspector (under the control of Assistant Director (Filaria), Puducherry and hence, he sought permission to serve notice on the said office address of the respondent. This Court directed the Government Pleader of Puducherry, to inform the first respondent about the pendency of the appeal proceedings.

5. Mr.R.Syed Mustafa, learned Special Government Pleader, Puducherry, after verification of the status of the first respondent in his Department submits that the said respondent viz., Iyappan availed earned leave in the event of his visit to Europe (Paris, France). He submitted his letter dated 21.01.2019. Thereafter, he continuously extended his leave without complying with his undertaking which was given by him while he left the office through his letter dated 21.01.2019. On 17.06.2021, the Government of Puducherry, Filaria Control Unit issued a memorandum to the said respondent by instructing him to rejoin duty and he tendered his resignation but the same was not accepted. All those documents were enclosed by the Special Government Pleader, Puducherry.



6. On considering the continuous absence of the first respondent, this Court Suo motu impleaded the Passport Authority of India as the second respondent and also directed to submit his passport details as per the application submitted by the first respondent, while he applied for leave and he mentioned the particulars of passport as L7587802 - Date of Issue - 04.03.2014 and Date of Expiry - 03.03.2024.

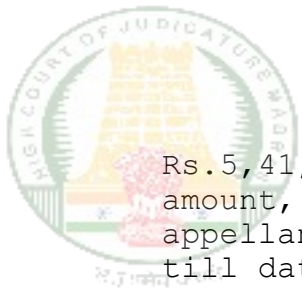
7. The learned counsel appearing for the appellant submits that the conduct of the first respondent reveals that in order to evade the Court proceedings as well as his employment, he went abroad without getting proper permission from the Head Office Department. Now, the Department also proposed to take disciplinary proceedings against him on considering his continuous absence, without permission of the department. He is abusing the process of law without doing his duty. So the passport authority/second respondent herein is directed to cancel the passport issued to the first respondent after due enquiry as required under law.

8. As per the submission of the learned counsel for the appellant, the appellant was deserted by the first respondent while she was pregnant. Even after the birth of the female child, he failed to maintain his wife and child with care.

9. A perusal of the records clearly reveals that the appellant was forced to leave the matrimonial home. As per the contention of the appellant, the mother and sister of the first respondent demanded dowry and she was driven out of the matrimonial home on 02.04.2014 and till date, the appellant is living separately with her daughter without any source of income.

10. Learned counsel for the appellant submits that without considering those facts, the Trial Court erroneously dismissed the petition for restitution of conjugal rights filed by this appellant and erroneously allowed the divorce petition filed by the husband and prayed to set aside the same by allowing the appeals.

11. This Court would observe that the conduct of the first respondent clearly indicates that he has not only maintained his wife and child but also not attended the official duty perfectly. He went to Europe without getting proper permission from the Department as discussed above. He received decent salary, but failed to maintain his wife and child. The terminal benefits payable to the first respondent is Rs.7,13,842/- as submitted by the Director of Health and Family Welfare, Puducherry. The Employees society dues comes to



Rs.5,41,800/- with interest. After deduction of the society amount, the remaining balance shall be paid directly to the appellant/wife as interim maintenance from the year 2014 to till date.

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12. Apart from that, the wife also filed application in DVAC proceedings praying for shelter in mother-in-law's house. The trial Court is directed to dispose of the DVAC proceedings initiated by the wife within a period of three months from the date of issuance of the order.

13. On perusal of the records before the trial Court, the appellant herein categorically stated that she was forcibly driven out from the matrimonial home, while she was seven months pregnant. This fact is not denied by the husband. But the trial Court without appreciating this fact erroneously concluded that the wife caused mental agony to the husband/first respondent herein. She also submits that by demanding dowry, her husband and his family members tortured her. If really the said allegation is false, the husband ought to have taken steps for re-union through Court of law. On the other hand, he directly filed the petition for divorce which itself speaks that the husband wants to desert the wife voluntarily without any reason. Even after the birth of the child, the husband has not taken steps for re-union. All these facts prove that the wife/appellant was always ready to live with her husband. On the contrary, the husband evaded to maintain the wife and children. He also left the office without obtaining proper permission from the higher authorities. Therefore, the conduct of the husband would reveal that he alone deserted the wife.

14. Accordingly, the divorce petition filed by the husband is not maintainable in law. Therefore, the findings given by the trial Court are set aside by allowing the CMA.No.999 of 2018. The appellant is able to establish that she always intended for reunion with her husband/first respondent. Hence, the petition filed by her for restitution of conjugal rights is maintainable in law and the same is allowed by allowing the appeal in CMA.No.1000 of 2018

15. Accordingly, both the appeals are allowed. The decree of divorce granted by the Family Court, Puducherry in M.O.P.No.224 of 2014 is set aside. The petition filed by the wife for restitution of conjugal rights in MOP.No.439 of 2017 is allowed. The second respondent is directed to cancel the passport granted in favour of the first respondent after due enquiry as per law. The Director of Health and Family Welfare Services, Puducherry is directed to pay the terminal benefits after deduction of the society loan to the appellant/wife herein



as part of the maintenance. Before the trial Court, the appellant/wife filed a petition seeking shelter in the husband's property. The trial Court is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Family Court,
Puducherry.
2. The Regional Passport Officer,
Chennai.

+1cc to Mr.Rajesh Vivekanandan, Advocate, S.R.No.41272
+1cc to the Government Pleader Puducherry, S.R.No.41452

C.M.A.Nos.999 and 1000 of 2018

RSI (CO)
PM/22/10/2021