



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.3816 of 2019

M.Thiruppugal

... Appellant/Petitioner

Versus

Geetha @ Geetha Ebenezar

... Respondent/Respondent

Prayer : Civil Miscellaneous Appeal has been filed under Section 55 of Indian Divorce Act, to set aside the fair and decretal order of the learned Principal District Judge, Tirupur, dated 03.12.2018 in D.O.P.No.78 of 2013 and allow the above C.M.A.

For Appellant : Mr.M.Vijayakumar

For Respondent : No Appearance

JUDGMENT

(Judgment of this Court made by Mr.Justice D.Bharatha Chakaravarthi)

This Civil Miscellaneous Appeal is filed by the husband namely, Thiruppugal, aggrieved by the fair and decretal order passed by the learned Principal District Judge, Tirupur, dated 03.12.2018 in D.O.P.No.78 of 2013, whereby the petition for divorce filed by the husband on the ground of cruelty and desertion, praying to dissolve the marriage between himself and the respondent/wife namely, Geetha @ Geetha Ebenezar, dated 08.07.2002, under Section 10(ix) and 10(x) of the Indian Divorce Act, 1869 is dismissed.

2. The case of the petitioner is that, the petitioner and the respondent are Christians and on 08.07.2002, the marriage was performed at C.S.I Church, Udumalaipettai, as per Christian rites. A few months after the marriage, the respondent/wife started behaving indifferently. Thereafter, on 22.06.2003, a male child namely, Pradeep was born to them. After the birth of



the child, the behaviour of the respondent/wife changed further and it appeared as if she was psychologically affected. The said behaviour which was abnormal, amounts to cruelty according to the husband. Specifically, he has pleaded that the respondent/wife used to lock herself inside one room and will not allow others to come into the room and touch her things. On one occasion, when the water-filter she was using had ants in it, she found fault with the petitioner's mother and she abused her in a disrespectful and filthy language, slapped her repeatedly on her cheeks. Again, in another incident, when she opened the dhal packet procured by petitioner's 73 year old father, and when she found that it was infested with insects, she verbally abused him and cursed him that he shall better die. When this behaviour was complained to the respondent's parents, they asked him to adjust with the behaviour stating that hysteria patients will behave likewise. While so, in the year 2011, unilaterally, she got the transfer certificate of his son and admitted him in a school, Udumalaipettai and started living with her parents. In spite of his repeated demands, the respondent is not willing to come and live with the petitioner. Therefore, he issued a legal notice on 25.05.2011 and since the respondent/wife has deserted him for a period of two years, preceding the filing of the divorce petition and since her action amounted grave mental cruelty, he prays for dissolution of the marriage.

3. The respondent/wife filed counter and resisted the said application. It is her submission that the specific incidents of cruelty mentioned in the petition are a figment of imagination and those incidents never happened. It is her case that at all times, she wanted to live with the petitioner. If the petitioner permits, she is ready to join him in the marital life. She still likes and loves her husband. She cannot even think of separation from her husband. It is the case of the respondent that the petitioner never took his career seriously and was all the time roaming in motor bikes and was not properly earning and did not give any money for the family. Under these circumstances, in the year 2011, during summer vacation, when the respondent went to her parent's house along with her son, the petitioner demanded Rs.10,00,000/- and made a condition that if only the respondent brings Rs.10,00,000/-, he will take her back. Only because of the same, she was forced to live with her parents along with her son. In the best interests of her son she was forced to admit him in a school in Udumalaipettai. Even thereafter, the husband used to visit Udumalaipettai, met them regularly and he also felt it convenient as the child continued to study in Udumalaipettai.



4. On the above pleadings of the parties, since there was no any amicable resolution between the parties, the Family Court had no other option than to proceed with the trial. On behalf of the petitioner, the petitioner examined himself as P.W.1 and his mother, Daisy as P.W.2. The copy of the wedding invitation was marked as Ex.A1, the birth certificate of the petitioner's son, Pradeep, is marked as Ex.A2. Copy of the family ration card for the years 2005 -2009 has been marked as Ex.A3. The legal notice, caused by the petitioner is marked as Ex.A4 and the acknowledgement card as Ex.A5. On behalf of the respondent, the respondent/wife examined herself as R.W.1 and one Mallika as R.W.2.

5. The Trial Court, upon consideration of the evidence on record, found that the allegations of cruelty were not proved and P.W.2, the mother of the petitioner, in the cross-examination, had admitted that the respondent/wife was doing all the cooking along with her and was leading a family life. In fact, she had chided her son for scolding her daughter in law. Even after the year 2011, several times, her daughter-in-law came home willing to join, but, it is only her son, who sent her back. From her evidence and considering the cross-examination of the petitioner, came to the conclusion that there was no cruelty and the respondent was behaving like any other dutiful wife, mother and daughter-in-law. On the ground of desertion, the Trial Court found that only because she was forced to leave the house, the respondent/wife is living separately and even then the appellant/husband was visiting them during his son's holidays and they are in regular touch. The petitioner's mother has also admitted that her daughter-in-law made attempts repeatedly to come home and join together. Based on this evidence coupled with the categorical assertion of the wife in the counter affidavit as well as in the evidence that she is always willing to live with the petitioner, the Trial Court came to the conclusion that the allegations of cruelty and desertion are not proved and there is a bright chance for the petitioner and the respondent to live together and lead a normal marital life in their own interests and in the interests of their minor child, and finally dismissed the D.O.P.No.78 of 2013, by the judgment under the appeal, dated 03.12.2018.

6. Heard Mr.M.Vijayakumar, learned Counsel for the appellant. The learned Counsel for the appellant took us through the pleadings and submitted that specific incidents of cruelty have been pleaded and P.W.1 has deposed to prove the said allegations. From the examination of parties, the admitted case



of the parties that they are not living together from 2011 April. The petitioner had waited two years after the desertion of the respondent and then filed the petition for divorce on 19.08.2013 and now, for a period of about ten years, they are not living together. Therefore, this Court should interfere in the reasonings of the Trial Court and as a result, the petition has been filed by the husband seeking decree of divorce should be allowed.

7. Notice was served on the respondent. There is no appearance on behalf of the respondent, inspite of opportunities and therefore, this Court proceeded to hear the appellant on merits, in the absence of the respondent/wife.

8. After perusing the oral and documentary evidences placed before us, we have framed the following issues for adjudication:-

- (i) Whether the husband has made out a case for dissolution of the marriage?
- (ii) Any other relief?

9. Upon careful consideration of the arguments of the learned Counsel for the petitioner and upon going through the material evidence on record, we are of the opinion that the so called specific incidents of cruelty are absolutely vague without any particulars. Even the approximate time, date etc., of the alleged cruelty have not been mentioned or pleaded anywhere. Further, a perusal of the allegation, words alleged to have been spoken and the deeds said to have been committed for the alleged circumstances does not inspire our confidence, hence, we are unable to accept the same. Learned Trial Court, after taking note of the admission of P.W.2-mother of the appellant/husband about the good qualities of her daughter-in-law and the deposition of the respondent/wife that only her husband had sent her back, but, they are meeting frequently and that she is ready and willing to live with her husband, held that there is no reason for granting divorce. This apart, the further allegations about the hysteric behaviour, as found by the Trial Court, first, there is lack of proof and second, even as per the allegation, the said behavioural problem started on account of the pregnancy and child birth, in which case, the meritless allegation cannot be treated as a ground for mental cruelty on the petitioner husband. Therefore, we agree with the finding of the Trial Court that the husband has failed to prove the allegations of cruelty.



10. Similarly, when the wife has given an acceptable explanation for living in her parent's house, coupled with the evidence of P.W.2-mother of the appellant/husband that even after separation, she repeatedly tried to join her husband and it is only the petitioner, who is not willing to take her back and the further facts of the appellant/husband visiting them in his in-laws' house and they are still in touch would prove that the family bond is alive and subsisting between the parties and in view of continuous meeting and visiting of the parties, there is no desertion by the respondent/wife. The tenor of the counter affidavit and the oral evidence of the respondent/wife in expressing that still she likes the appellant/husband and that she always was and is ready to live with him, has been rightly accepted by the learned Trial Judge. Therefore, we find no merits in this appeal and we reject the submissions of the learned Counsel for the appellant for the reasons stated supra.

11. Accordingly, this Civil Miscellaneous Appeal stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

grs

To

1.The Principal District Judge,
Tirupur.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to M/s.R.Sathyabama, Advocate SR.No.60937

C.M.A.No.3816 of 2019

GP(CO)
CB(01/03/2022)