

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 01.03.2021	Judgment Pronounced on 26.03.2021
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CORAM:

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

CMA Nos.3653 and 3654 of 2019

Mahalakshmi Appellant/Petitioner/Respondent
in both CMAs.

...vs...

RKM.Rajkumar ...Respondent/Petitioner/Respondent
in both CMAs.

This appeals are filed under Section 19 of Family Court Act, against the common fair order and decreetal order of the learned Family Court Judge, Krishnagiri in O.P.No.261 of 2019 and O.P.No.142 of 2019 dated 28.05.2019.

For Appellant in both CMAs.:Mr.B.Kumar, senior counsel
for
M/s.Usharaman

For Respondent in both CMAs.: Mr.A.K.Sriram
for
M/s.A.S.Kailasam & Associates

COMMON JUDGMENT

(Judgment of the Court was delivered by G.CHANDRASEKHARAN,
J.,)

Appellant is the wife of respondent and their marriage was solemnised on 18.11.2015. Respondent filed petition under Section 13(1)(i)(a) of Hindu Marriage Act, 1956 for divorce and appellant filed petition under Section 9 of Hindu Marriage Act, 1956 for restitution of conjugal rights.

2. The case of respondent in the pleadings set out in his divorce petition and the counter filed in the petition for restitution of conjugal rights, in brief, is as follows:-

After the marriage between the appellant and respondent on 18.11.2015, the couple started to live at the house of respondent. One week after the marriage, i.e., on 25.11.2015, the respondent and his parents noticed that the appellant behaved hysterically, erratically, abused the family members of the respondent and disrespected his parents.

Respondent thought that the erratic behaviour was due to the adjustmental problem in a new environment. But even after the passage of time, the erratic behaviour of appellant was increased, not reduced. She complained headache and dizziness regularly and avoided to take any responsibility and role in household chores, like preparing food, do pooja works e.t.c. Respondent offered her to take up any role in the family business, that was also declined by appellant. Respondent engaged her by arranging classes for Hindi language, driving and singing classes. But the appellant was not interested in attending the classes after some days. From the inception of marriage, appellant was closely and constantly guided and monitored by her parents regularly. Later, respondent realised that appellant was getting medicines from her parents for her health condition. Respondent took her to Singapore for honeymoon from 30.12.2015 to 02.01.2016. She complained of day-long headache and dizziness and was in bad mood, cried the whole night, not slept properly and fought with respondent. In January 2016, respondent noticed that appellant was taking 'Amitriptyline', a neuropsychiatric anti-depressant drug. When enquired, appellant informed that during her third year in college, she had bitter experience in college hostel and was not happy with her friends; she was stressed and could not sleep on many days and it reflected in her studies. A scan taken on 21.02.2014 showed that she is having 'partial agenesis of corpus callosum with peri-callosal lipoma'. This is one of the reasons for the appellant having symptoms of headache, dizziness, tinnitus, imbalance, sleeping disorder, nervousness, depression, psychosis. After much hesitation, appellant's parents parted with the medical records of appellant. It shows that appellant was suffering from various medical conditions before marriage and had met many doctors and even after engagement in June 2015. Appellant's medical condition would genetically affect a child to be born and she can never lead a normal marital life. Appellant and her parents cheated the respondent by concealing her medical condition. As a consequence of the medical condition, appellant's behaviour was uncontrollably erratic. She was always fighting, crying, refusing to stay with the respondent. She torn her own dress, threw pillows, bedsheets, slippers all around the room, cried the whole night and created ruckus at home. Respondent took earnest efforts to make the marriage workable and initiated treatment to cure appellant by taking her to leading doctors in the filed. Dr.Murali, Head Neurologist, Manipal Hospital, Bangalore advised the appellant that she should avoid pregnancy and the disorder seems to be hereditary. Dr.Sridevi Hegde, Genetician also gave the same advice. He had also taken her to Maldives on their first wedding anniversary. Even there, appellant complained of headache, dizziness, tinnitus and imbalance. Respondent also consulted Dr.A.S.Hegde, Head of Neurosurgery Department at MS Ramiah

Institute, Bangalore. Doctor advised the appellant to take treatment involving coordination of departments of neurology, psychology and ENT, but the appellant was not cooperating. But the appellant was always abusive towards respondent and she has suicidal tendency. She attempted to commit suicide from a running car. She was also not cooperating to have sexual intercourse. The mental and physical abuse suffered by the respondent at the hands of appellant scarred him emotionally and psychologically. During Pongal in 2017, appellant started complaining stinging pain inside her head, she broke few glass showcases, damaged few articles and tried to hit the respondent. She started crying and rolling on the floor and threatened to commit suicide. She removed 'thali' and threw on the face of the respondent. The respondent informed that to her parents and they came and took the appellant to their home. Till now, she is residing with her parents. In Whatsapp messages sent, the appellant expressed her willingness to leave the marital life and she is not interested in continuing. She had also threatened the respondent with suicide. Her health issues are impediment to normal marital life and for her irritable behaviour. There is no possibility of continuing marital life with the appellant. Therefore, the necessity for filing the petition for divorce.

3. The response of the appellant, as seen from the counter filed in the divorce petition and petition filed by her for restitution of conjugal rights, in brief, is as follows:-

The respondent is the only son to his parents and he has an younger sister Meenakshi studying medicine at the time of marriage. Respondent family is running a flour mill by name 'Jeyakrishna Flour Mill'. They are doing lucrative business and well off. The respondent and his father have totally committed to their business. The respondent would go to office around 9.30 a.m and come home only around 10 p.m. On Sundays also he used to attend the office half-a-day. Even after returning from office around 10 p.m, everyday, he would sit with his parents and discuss about the family and other affairs till late night. He was totally under the control of his parents and act like a puppet at the hands of his parents, especially his mother. His parents never allowed him freely to move close with the appellant. Respondent's parents treated the appellant very cheaply, roughly and rudely. Respondent's mother always wanted the appellant to obey and act like a servant to them. She used to criticize and find fault with quality of any dress and things possessed by the appellant. She used to call the appellant in a cheap, wounding and disrespectful way like calling a 'servant'. Appellant was harassed, humiliated and wounded by the words of respondent's mother. Appellant has nobody to have a free talk or express her grievances. Therefore, the mental balance and peace of the appellant was seriously disturbed and she was

totally collapsed and depressed. She started shivering and felt nervous, when she saw respondent's mother coming near her. Respondent's family gave much importance to horoscope. On the advice of an astrologer, respondent's mother advised the appellant to go and stay in her mother's house for three months from 18.01.2017. Due to ill-treatment by respondent's mother, the appellant often collapsed mentally and physically and suffered mental depression. Respondent also told several times that she is not a suitable pair to him in taste, habits, choices and feelings. She used to act like good mother-in-law in front of others. Arranging of Hindi tuition and singing class was purely an eyewash and appellant was not allowed to pursue the classes. When respondent's younger sister was celebrated like a princess, appellant was treated with inhumaneness and merciless. Appellant's ordinary and negligible problem was aggravated and made severe and serious by the torture, harassment and cruelty committed by respondent's mother. On 18.01.2017, respondent dropped the appellant at her parent's house and promised to take her back after his return from the business trip to North India. But he did not come to take back the appellant. Without any sufficient, justifiable, reasonable cause, respondent intentionally and dishonestly deprived the appellant from conjugal rights. Charge against the appellant that she behaved hysterically, erratically, abused and disrespected the respondent and his parents are all false. The allegation that the appellant is suffering from headache, dizziness, imbalance and tinnitus are false and mischievous. Appellant is a soft spoken and a quiet person. She never ever committed the alleged acts of cruelty. On the other hand, respondent's mother had alone ill-treated and committed cruelty on the appellant. Only to make out ground for filing the divorce petition, the respondent is making baseless allegations about the health condition of appellant. Those allegations are baseless, untenable, unacceptable and frivolous. Appellant filed a petition for restitution of conjugal rights, which she is entitled to. She prayed for dismissal of the divorce petition and grant relief for restitution of conjugal rights with the respondent.

4. Respondent was examined as PW.1 and appellant was examined as RW.1. Exs.P1 to P15 were marked on the side of respondent. Exs.R1 to R4 were marked on the side of appellant. On considering the oral and documentary evidence produced before the Family Court and the entitlement of the parties for the relief sought for, learned Family Court Judge allowed the petition filed by the respondent for divorce and dismissed the petition filed by the appellant for restitution of conjugal rights. Against both the orders, appellant has preferred these appeals.

5. Learned counsel for the appellant submitted that whatever the medical condition the appellant was suffering would in noway affect the normal marital life between the appellant and respondent. Anybody can have this kind of minor health issues and that may not be the reason for dissolving a marriage. In fact, learned Family Court Judge has based her findings on the basis of materials collected from Wikipedia on the medical condition of the appellant. None of the allegations like the alleged acts of cruelty like attempting to commit suicide, irritable behaviour, showing disrespect to respondent and his parents, breaking of things, weeping throughout the night e.t.c., was proved through acceptable evidence. No doctor was examined to prove that appellant's medical condition affected her from having normal marital life with the respondent. Whatsapp messages cannot be used as evidence as it is a privileged communication. The appellant was cross-examined at length and it shows that her mental condition was stable. On the other hand, it is seen from the evidence of appellant that she was subjected to physical and mental cruelty by the words and deeds of respondent and his family members, especially mother of the respondent. However, without considering all these aspects, learned Family Court Judge has wrongly allowed the divorce petition filed by the respondent and dismissed the petition for restitution of conjugal rights filed by the appellant. Therefore, learned counsel for the appellant prayed for allowing the petition for restitution of conjugal rights and dismissing the divorce petition. He relied on the judgments reported in (i) MANU/SC/0169/2011 (T.V.Venugopal ..vs.. Ushodaya Enterprises Ltd. and Ors) and (ii) MANU/SC/4087/2007 (Commissioner of Customs, Bangalore ..vs.. ACER India Pvt. Ltd.,) with regard to the proposition that the views given in Wikipedia cannot form basis for coming to conclusion and judgments reported in (i) MANU/TN/4518/2010 (S.Valli .vs. N.Rajendran) (ii) 2013 (5) CTC 665 (Kollam Chandra Sekhar ..vs.. Kollam Padma Latha) (iii) Unreported judgment of this Court in CMA (MD) No.29 of 2016 (Rekha ..vs.. T.Kumar) and (iv) 2014 SCC OnLine Bom 89 (Hemali Bindesh Kelaiya ..vs.. Bindesh Jayantilal Kelaiya) for the proposition as to what constitutes unsoundness of mind and that the respondent failed to prove that the appellant is an unsound mind person and therefore, he is not entitled for divorce.

6. In response, learned counsel for the respondent submitted that the respondent's case rests on the ground that the appellant committed acts of cruelty because of her physical condition and it is not the case of the respondent that she is an unsound mind person. Therefore, he submitted that the judgments relied on by learned counsel for the appellant discussing entitlement for divorce on the ground of unsoundness of mind are not applicable to the facts and circumstances of this case. The respondent's case is that the

appellant is not an unsound mind person, but she has a neurology condition, which contributed to her irritable behaviour and the resultant acts of cruelty. It is seen from the counter affidavit filed by the appellant that the important averments made in para-7 to 11 are not at all specifically denied. Some of the documents received from the appellant shows her medical condition, even prior to her marriage. Whatsapp messages show that the appellant was not interested in continuing the marriage and her suicidal tendency. Through the oral and documentary evidence, the respondent proved the neurological and other medical conditions of the appellant, which contributed to her irritable behaviour, non-cooperation in sexual life and other acts of abnormal behaviour. Learned Family Court Judge properly analysed the evidence and rightly allowed the petition for divorce and dismissed the petition for restitution of conjugal rights. Learned counsel for the respondent prayed for confirming the order of the learned Family Court Judge and for dismissal of these appeals.

7. Points for consideration in these appeals are:-

1. Whether the finding of the learned Family Court Judge that the respondent is entitled for the dissolution of marriage solemnised between the respondent and the appellant on the ground that the appellant subjected him to mental cruelty is correct ?
2. Whether the finding of the learned Family Court Judge that the appellant is not entitled for restitution of conjugal rights is correct?
3. Whether these appeals can be allowed?

8. From the admitted case of the parties, it is clear that the marriage between the appellant and respondent was solemnised on 18.11.2015 and they lived at the residence of respondent till they got separated in January 2017. The reasons, according to the respondent, for separation are that the appellant had condition called 'partial agenesis of corpus callosum with peri-callosal lipoma' even prior to the marriage and that was responsible for her frequent headache, dizziness, tinnitus, imbalance, sleeping disorder, nervousness, depression and psychosis. She was not even able to perform the routine daily activities. In spite of taking several steps for treating her for this disease by renowned doctors, her condition has not improved. She behaved irritably and in violent manner and disrespectful towards respondent and his parents. She attempted to commit suicide, refused to cohabit with the respondent. Her medical condition prevented her from conception. She was not able to get out of these issues inspite of medical and moral support provided by the respondent. This caused great mental cruelty on the respondent. Without there being any option, the respondent filed this petition for divorce.

9. The sum and substance of the appellant's case as seen from the submissions made by the learned counsel for the appellant is that the appellant is a normal woman with good upbringing and she is a timid and soft spoken person. She had minor health problem, which would noway hamper the normal matrimonial/marital life. Respondent and his family members, especially her mother-in-law, had blown the minor ailment out of proportion and started teasing and ill-treating the appellant. That alone caused great anxiety and depression on the appellant aggravating her ailment. In fact, respondent's mother and his family members had not allowed enough private space for the appellant and the respondent to lead a happy marital life. Respondent dropped the appellant at her parents house with a promise to take her back after his business trip. The appellant is always willing and longing to live jointly with the respondent in matrimonial home. Learned counsel for the appellant cited the following judgments in support of his argument:-

(i) In MANU/TN/4518/2010 (S.Valli .vs. N.Rajendran), this Court held that,

"25.The word cruelty has not been defined in the Hindu Marriage Act,1955. In order to define cruelty, the conduct of a party should be so dangerous, so that a spouse is unable to live with the other. It is not the isolatory incident which is relevant but the whole matrimonial life that will have to be seen. A marriage is a meeting and union of two minds. There will always be difference between two persons who come from different background having different behaviors, thoughts, attitude, conduct and values. The above said factors are determined by the environment in which a person is brought up. Therefore, mere bickerings in a marital life cannot be a ground for cruelty. In order to make out cruelty, the intensity and gravity of one's action will have to be seen."

(ii) It is held in 2013 (5) CTC 665 (Kollam Chandra Sekhar ..vs.. Kollam Padma Latha) as follows:-

"21. It is thus clear that the respondent, even if she did suffer from schizophrenia, is in a much better health condition at present. Therefore, this Court cannot grant the dissolution of marriage on the basis of one spouse's illness. The appellant has not proved the fact of mental disorder of the respondent with reference to the allegation made against her that she has been suffering from schizophrenia by producing positive and substantive evidence on record and on the other hand, it has been proved that the respondent is in much better health condition and does not show signs of schizophrenia as per the most recent medical report from NIMHANS, as deposed by PW-4 in his evidence

before the trial court. "

(iii) In an Unreported judgment of this Court in CMA (MD) No.29 of 2016 (Rekha ..vs.. T.Kumar), this Court held as follows:-

"12. The lower Court has accepted the document, Ex-P8, which is only a medical report and prescription given by a Doctor. The disorder, due to the depression is not explained in the document, so as to find the disorder as one to enable the respondent to get a decree for divorce on the ground of mental illness.

13.The incidents narrated by the respondent/husband in the petition was neither proved by any independent witness nor by examining the Doctor. The Family Court, however, proceeded, as if the incidents of abnormalities narrated in the petition have been proved by the respondent/husband. "

(iv) In 2014 SCC OnLine Bom 89 (Hemali Bindesh Kelaiya ..vs.. Bindesh Jayantilal Kelaiya), our Hon'ble Apex Court held as follows:-

"21. The legal question that arises for our consideration is whether the marriage between the parties can be dissolved by granting a decree of divorce on the basis of one spouse's mental illness which includes schizophrenia under Section 13(1)(iii) of the Act. In the English case of Whysall Vs. Shysall; (1959) 3 ALL ER 389, it was held that a spouse is incurably of unsound mind if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental health, which would make this possible in future. Mental disorder of the husband even if proved, cannot, by itself, warrant a decree of divorce and it must be further proved that it is of such a nature as the wife could not be expected to live with the husband. Inability to manage his or her affairs is an essential attribute of an incurably unsound mind. The facts pleaded and the evidence placed on record produced by the appellant in this case, does not establish such inability as a ground on which dissolution of marriage was sought for by her before the trial Court. It is thus, clear that the respondent, even if he did suffer from schizophrenia, it was not to such an extent as to make living together impossible."

10. Learned counsel for the respondent strongly relied on the judgment of the Hon'ble Supreme Court reported in 2016 (9) SCC 455 (Narendra ..vs.. Meena) for cruelty, wherein it

has been held as follows:-

"10. With regard to the allegations of cruelty levelled by the Appellant, we are in agreement with the findings of the trial Court. First of all, let us look at the incident with regard to an attempt to commit suicide by the Respondent. Upon perusal of the evidence of the witnesses, the findings arrived at by the trial Court to the effect that the Respondent wife had locked herself in the bathroom and had poured kerosene on herself so as to commit suicide, are not in dispute. Fortunately for the Appellant, because of the noise and disturbance, even the neighbours of the Appellant rushed to help and the door of the bathroom was broken open and the Respondent was saved. Had she been successful in her attempt to commit suicide, then one can foresee the consequences and the plight of the Appellant because in that event the Appellant would have been put to immense difficulties because of the legal provisions.

11. We feel that there was no fault on the part of the Appellant nor was there any reason for the Respondent wife to make an attempt to commit suicide. No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court. In our opinion, only this one event was sufficient for the Appellant husband to get a decree of divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of this Court in the case of Pankaj Mahajan v. Dimple @ Kajal (2011) 12 SCC 1, wherein it has been held that giving repeated threats to commit suicide amounts to cruelty."

11. After marriage, the appellant and respondent lived together at the respondent's house for 14 months. They have no children out of this wedlock. The main reason for the separate living is the medical condition of the appellant and the resultant irritable and suicidal behaviour. Appellant has not denied her medical condition, but claimed that her medical

condition will noway affect the marital life and she had never behaved irritably or disrespectfully or attempted to commit suicide. Therefore, we have to find out whether the medical condition alleged against the appellant is true and whether this medical condition is in anyway trigger her headache, dizziness, tinnitus, imbalance, sleeping disorder, nervousness, depression irritable behavior and the alleged acts of cruelty against the respondent and his family members. The medical records, namely, pre-wedding medical records and post-wedding medical records have been produced as Exs.P5 and P6. The appellant has also produced Exs.R3 and R4 medical records to show that her medical condition will noway affect her family life and procreation of child. The copies of Whatsapp chat and e-mail printouts have also been produced as Exs.P14 and P15. These are important documents to find out the veracity of claim and counter claim made by both the parties with regard to the reason for their separate living and necessity for initiating the present proceedings.

12. Ex.P4 - pre-wedding medical records show that there are 15 medical records starting from 12.12.2013 to 25.08.2015 with regard to medical test and treatment underwent by the appellant. The marriage between the appellant and respondent was solemnised on 18.11.2015 and these records show that she had been in continuous medical treatment for three years before the marriage. CT brain study report dated 21.02.2014 shows that the appellant had 'agenesis of corpus callosum noted with lipoma' measuring 38x7x15mm. The reference letter from Kavitha Neuro Clinic, Chennai, through Dr.Baskaran shows that she had imbalance and giddiness and hearing of sound in left ear. The medical summary dated 14.03.2014 given by Apollo Hospital shows that the appellant had complaints of giddiness, hearing near left ENT (tinnitus) and lack of concentration to study. X-ray chest report dated 14.03.2014 shows that she had 'left arterial enlargement' and echo cardiogram report dated 15.03.2014 shows that she had 'mild prolapse of AML'. The report of Accura Diagnostic Centre India Private Limited dated 27.12.2014 confirms that the appellant had 'partial agenesis of corpus callosum with posterior supra callosal lipoma'. The prescriptions dated 27.12.2014, 22.05.2015 and 11.06.2015 show that the appellant complained of tinnitus, head ache and intermittent dizziness. It was suspected that she had migraine vertigo. Thus, it is seen from pre-marriage medical records that the appellant had the condition of 'partial agenesis of corpus callosum with peri-callosal lipoma' and suffered headache, tinnitus, intermittent dizziness e.t.c.

13. The case of the respondent is that the appellant and her family members had suppressed her medical condition prior to marriage and she had also taken treatment even after the engagement. Had it been brought to the notice of the

respondent and his family members about the medical condition of the appellant, respondent would not have married the appellant. By suppressing her medical condition, it is alleged by the respondent, that the appellant and her family members cheated the respondent and his family members into unsavory marital life with the appellant. There is no evidence to show that appellant or her family members informed respondent or his parents about her medical condition. Had it been informed to the respondent or his parents, the respondent would not have married the appellant as claimed by him.

14. Ex.P6 is post-marriage medical reports. It is specifically stated in the petition filed by the respondent that the respondent had taken the appellant to various doctors and neurological experts for giving treatment to the appellant. In spite of his best efforts, the medical condition of the appellant had not improved. The appellant had also admitted the medical treatment provided by the respondent when she was with the respondent. Ex.P6 shows that the appellant's medical condition continued to haunt the appellant even after the marriage. The medical record dated 08.09.2016 shows that the appellant still had the complaints of dizziness, headache, tinnitus and imbalance. The MRI brain scan report dated 25.02.2016 confirms the presence of 'partial agenesis of corpus callosum with peri-callosal lipoma noted overlying the corpus callosum with measurement of 2.8cm x 1.7 cm and the medical report dated 03.03.2016 shows that the appellant complained of ringing noise in her left ear, giddiness, headache and tinnitus. Assessment report dated 05.05.2016 shows that the appellant informed the history of her illness, left ear tinnitus, dizziness since February 2014. MRI study showed that an 'incidental corpus collasal lipoma with partial corpus collasum agenesis'. It was suspected that she had possible vestibular migraine. It was suggested to her that either she has to continue Amitone-10mg (HS) or she should stop the medicine and plan for conception, meaning thereby, she cannot plan conception without stopping her medication. She was examined at Manipal Hospital by Dr.Sridevi Hegde on 25.10.2016. Doctor noted the history of appellant's disease like occipital headache, heaviness of head, disturbed sleep, tinnitus, migraine, feeling giddiness while walking or in general. The appellant told her that she was happy and cheerful till her third year of Engineering. When she lost marks in a subject, she got depressed. After completing the Engineering, she wanted to work, but due to family pressure, she had to marry. After marriage, she felt bored at her home. She did not feel free with her mother-in-law and in fact, she felt she was bullied by her mother-in-law. She felt lonely at home. Her husband and father-in-law worked late hours. She was happy at her parent's home in Chennai and she likes to work, but not in the family business. She was also advised to consult a psychologist. She was

advised to consult a specialist to treat for losing the hair and thinning of nails. Ex.P6- post-marriage medical records show that the appellant continued to struggle with her medical condition called 'partial agenesis of corpus callosum with peri-callosal lipoma' with associated headache, dizziness, tinnitus, sleep disorder etc.,

15. It is the case of the respondent that due to the aforesaid medical conditions, the appellant was not able to do any work independently, she easily became irritable, showed disrespect towards the respondent and his family members, not cooperated for cohabitation and attempted suicide. He reiterated these allegations made against the appellant in the divorce petition, during the course of his examination as a witness in the Court. It is seen from his evidence, the medical records produced and also from the admission made by the appellant that he was an understanding husband and he was trying his level best to treat the appellant for curing the disease she was suffering from. Though the respondent filed 26 pages counter, the allegations/averments are mostly repetitive, verbose and laborious to read. In fact, appellant has not chosen to specifically deny the important allegations made in para-7 to 11 in the divorce petition.

16. In para-7, it was alleged that the appellant complained of day-long headache, dizziness, was in bad mood, cried the whole night, not slept properly and fought with respondent. The respondent noticed that the appellant was taking 'Amitriptyline', a neuropsychiatric anti-depressant drug. In para-8, pre-marriage medical condition was specifically alleged. In para-10, it was alleged that appellant's behaviour was uncontrollably erratic, always fighting, crying, refusing to stay with the respondent, torn her own dress, threw pillows, bedsheets, slippers all around the room, cried the whole night and created ruckus at home. These are sweeping allegations made against the appellant. Strangely none of these allegations were specifically denied. Absolutely, there is no denial with regard to the allegations made in paras-8, 9, 11 and 12. The allegations are not specifically denied. The legal consequence under Order VIII Rule 5(1) of CPC is that these allegations are to be taken as admitted. Order VIII Rule 5(1) of CPC reads as under:-

"5. 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."

17. Learned counsel for the appellant highlighted that the respondent has not chosen to examine the doctors, who examined the appellant with regard to their assessment and

findings on the health condition of the appellant. Without the evidence of doctors, assessment report given by the Doctors on the medical condition of the appellant cannot be accepted as evidence. He also drew the attention of this Court that learned Family Court Judge has committed an error in relying on Wikipedia post to understand the medical condition of the appellant and base her findings. In this regard, he relied on the rulings reported in:

(i) MANU/SC/0169/2011 (T.V.Venugopal ..vs.. Ushodaya Enterprises Ltd. and Ors) . The relevant portion is extracted hereunder:-

"37. The appellant further submitted that the evidence relied upon by the respondent company in order to allege that 'Eenadu' is a reputed and distinctive mark, is a compilation of documents handed over before this court during the course of arguments on 23.3.10. In order to show that 'Eenadu' is a household name, an extract from Wikipedia printed on 13.4.09 was submitted by the respondent company before this court. In fact, all the other internet print-outs annexed by the respondent company are based on Wikipedia itself. It is the submission of the appellant that it is now an established position, internationally in law that Wikipedia does not have any evidentiary value in the court proceedings. The same has been held by the US Court of Federal Claims in Taylor Mary Campbell v. Secretary of Health and Human Services 69 Fed. Cl. 775 (2006) and by the US Court of Appeals in Lamilem Badasa v. Michael B. Mukasey 540 F.3d 909."

and

(ii) MANU/SC/4087/2007 (Commissioner of Customs, Bangalore ..vs.. ACER India Pvt. Ltd.), wherein it is held as follows:-

"17. We have referred to wikipedia, as the learned counsel for the parties relied thereupon. It is an online encyclopaedia and information can be entered therein by any person and as such it may not be authentic."

for the proposition that the Wikipedia post is not a conclusive authority on the topic discussed.

18. It is true that the Wikipedia post is not an authority to decide on the issue discussed. The learned Family Court Judge referred Wikipedia post just to understand the medical terminologies and not beyond that and the decision was not based on the information provided in the Wikipedia post. The decision was arrived on the basis of informations given in medical records and oral evidence. It is seen from the medical records produced by the respondent i.e., Exs.P5

and P6 - pre-wedding and post-wedding medical records with the prescriptions and reports that they are self-explanatory with regard to medical condition of the appellant. Doctors evidence is not required to understand the medical condition of the appellant. In fact, pre-wedding medical records had been given by the appellant's family to the respondent. Therefore, the appellant cannot deny pre-wedding medical records and also the post-wedding medical records for the reason that the appellant candidly admitted that the respondent had taken her to various doctors for medical treatment.

19. The reading of her evidence shows that she admitted taking treatment with neurologist at Chennai, prior to her marriage. She also admitted that she had taken treatment with two or three doctors, apart from taking treatment in Apollo Hospital. It is her evidence that the respondent had taken her to various doctors and during those occasions, they had shown pre-wedding medical records. It is her admission that the respondent had taken her to Chennai, Coimbatore, Bangalore to good doctors. She admitted that since she was under depression, she was physically and mentally weak.

20. One interesting aspect is that the appellant had made repeated allegations of ill-treatment and harassment when she was in the respondent's family, especially she made allegations against her mother-in-law. However, none of the allegation against her mother-in-law found a place in the petition filed by her for restitution of conjugal rights. She admitted during the course of her examination that she has not made any allegation against mother-in-law in the transfer petition filed before the High Court. It is her evidence that she made allegations only against her husband in para-2 of her proof affidavit and she had not made any allegations against her husband in the additional counter. She stated that she had not mentioned in the petition for restitution of conjugal rights that her husband was acting at the behest of his mother. She said that her husband was harassing her at the instance of his mother, but also said that she did not say this allegation in her petition. Thus, it is clear that when the appellant filed a petition for restitution of conjugal rights against the respondent, she had not made any allegations against her mother-in-law or other family members of the respondent. Only when she filed counter and additional counter in the divorce petition, she had made several repeated allegations of ill-treatment and harassment at the hands of respondent's mother and his family members. Therefore, it is clear that only for the purpose of the case, the allegations of harassment, cruelty and ill-treatment had been made against the respondent's mother and his family members.

21. One important piece of evidence is the Whatsapp and e-mail messages exchanged between the appellant and respondent. Though the learned counsel for the appellant submitted that Whatsapp and e-mail messages cannot be relied on by the respondent for the reason that they are privileged communications, this Court is of the view that under Section 122 of Indian Evidence Act, there is no prohibition for the parties to use the communications between them in a suit between married persons. Section 122 of Indian Evidence Act reads as follows:-

"122. Communications during marriage. --

No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other. "

Therefore, there is nothing wrong in relying on the Whatsapp and e-mail messages, which had been marked as Exs.P14 and P15.

22. Ex.P14-Whatsapp message shows the desperate attempt made by the appellant to save her marriage. However, some of the messages are relevant to understand her state of mind. They are (i) worse wife for best husband; (ii) Ennayae ennaku pidikala (iii) Appa, Ammava pidikala. Na eppadi behave panranu ennake theriyala" (என்னையே எனக்கே பிடிக்கலை. அப்பா, அம்மா பிடிக்கலை. நான் இப்படி பிகேவ் பண்ணேன்னு எனக்கே தொய்யலை.)" (iii) I love you because you loved me before like a mad. Naan panda ore a mistake ungala marriage pannadhu ("நான் பண்ணினை ஒரே மிஸ்டேக் உங்களை மேரேஜ் பண்ணினது.") (v) I wasted ur life unknowingly. I'm soooo depressed n worried. (vi) I would have died before my bday, but God saved me. Don't tell to anyone, I had took 15 sleeping pills. Two days endhurikavae ella (எந்திரிக்கவே இல்ல)/ God saved me. I hate that God. Nimmadhiya (நிம்மதியா) I would have died. Ningalum tholla ellama erunthrupinga. Ellarum happya erundhurupanga. (நீங்களும் தொல்லை இல்லாம இருந்திருப்பீங்க. எல்லோரும் ஹேப்பியா இருந்திருப்பாங்க)/ Only two days sadness. E-mail messages also showed her desperateness to live with her husband. It is really sad and disheartened to know that such a loving young wife has to suffer all these things. The reason is that her physical condition, especially the brain related 'partial agenesis of corpus callosum with peri-callosal lipoma' associated with headache, dizziness and tinnitus e.t.c. In fact, this condition had made her physical and mental condition worse, driven her to the extent of attempting to commit suicide. It was specifically alleged in para-15 of the divorce petition that the appellant tried to

commit suicide by jumping out of a running car. This allegation is not specifically denied either in the counter or in the cross-examination of the appellant. There is proof from her own message sent to the respondent that she had suicidal tendency.

23. Though Exs.R3 and R4 show that she is capable of giving birth to a child, earlier report indicated that she has to stop medication and plan conception. If she stopped medication, the chances of getting her headache, dizziness, tinnitus, imbalance, sleeping disorder, nervousness and depression worsen further cannot be ruled out. Constant headache, dizziness, tinnitus, imbalance, nervousness, depression and sleeping disorder normally causes irritation in one's physical and mental equilibrium and they may not be in a position to comprehend properly and interact normally with the persons they are associated. Even in the absence of independent witness with regard to the alleged acts of cruelty levelled against the appellant, it can be presumed and inferred from the surrounding circumstances of the case and from the aforesaid medical condition and associated illness suffered by the appellant that the appellant had committed the acts of cruelty alleged by the respondent. The denial of conjugal relationship and attempt to commit suicide certainly constitute mental cruelty on the husband. What amounts to cruelty cannot be confined into a strait jacket formula. It differs from case to case. The rulings relied on by both the sides, discuss about the term 'cruelty'. As stated earlier, what amounts to cruelty to one person is to be decided on the facts and circumstances of each and every case. Except the first ruling, other rulings relied on by the learned counsel for the appellant mainly deals with the case filed under Section 13(1)(i)(iii) of Hindu Marriage Act, 1955, dealing with the case of unsound mind person. Here, the divorce petition is not filed on the ground that the appellant is an unsound mind person. The petition is filed under Section 13(1)(i)(a) of Hindu Marriage Act, 1955, on the ground of cruelty, which was result of 'partial agenesis of corpus callosum with peri-callosal lipoma' with associated headache, dizziness, tinnitus, sleep disorder etc., Therefore, this Court finds that the rulings relied on by the learned counsel for the appellant are not applicable to the facts of this case. In view of the reasons stated above, this Court finds that the respondent had made out the case of mental cruelty for dissolving the marriage between him and appellant and for seeking divorce. Learned Family Court Judge has rightly found favour with the case of the respondent and allowed the petition for divorce and dismissed the petition for restitution of conjugal rights. We find no reason to interfere with the common order passed by learned Family Court Judge in O.P.No.261 of 2019 and O.P.No.142 of 2019 on 28.05.2019 and we confirm the order of learned Family Court

Judge, Krishnagiri.

24. At the conclusion of hearing, when this Court drew the attention of Section 25 of Hindu Marriage Act, 1956 to the learned counsel for the respondent/husband and respondent's responsibility and liability to pay permanent alimony to the wife, learned counsel for the respondent fairly conceded respondent's responsibility to pay the permanent alimony. Considering the fact that the respondent owns a lucrative business, appellant is not employed and also the status of the parties, this Court directs the respondent to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as permanent alimony for the maintenance and support to the appellant, within a period of one month.

25. Resultantly, these Civil Miscellaneous Appeals are dismissed with a direction to the respondent to pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as permanent alimony to the appellant, within a period of one month from the date of receipt of a copy of this Judgment. No costs. Thus, the points are answered.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

mra

To

The Judge,
Family Court.
Krishnagiri.

Copy To

The Section Officer,
VR Section, High Court,
Madras-104 +2 Copies

+1cc to M/s.A.S.Kailasam & Associates, Advocate SR.No.19830

+2cc to M/s.Usha Ramman, Advocate SR.No.19660, 19659

CMA Nos.3653 and 3654 of 2019

RLD (CO)
GMY (30/04/2021)