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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

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

C.M.A. Nos.1347 and 1348 of 2017

S.Muthu Navaneetha Krishnan  
@ Balaji @ Navaneethakrishnan  
S/o.R.Sampath  
Rep. by his power agent R.Sampath

...Appellant/Respondent/Petitioner  
in both the appeals

Vs.

R.Srividya  
D/o.R.Rajagobalan

...Respondent/Petitioner/Respondent  
in both the appeals

[Cause titles accepted vide order  
this Court dated 27.03.2017 in CMP.Nos.5501  
& 5500 of 2017 in CMA.SR.Nos.12103  
& 12105 of 2017, respectively]

Prayer in 1347 of 2017: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act to set aside the order and decreetal order dated 16.11.2016 passed in O.P.No.1125 of 2011 on the file of III Additional Family Court, Chennai and allow this appeal.

Prayer in 1348 of 2017: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act to set aside the order and decreetal order dated 16.11.2016 passed in O.P.No.3632 of 2012 on the file of III Additional Family Court, Chennai and allow this appeal.

For Appellant : Mr.P.R.Thiruneelakandan  
For Respondent : No Appearance



## C O M M O N J U D G M E N T

[Judgment of the Court was delivered K.KALYANASUNDARAM, J]

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The appeals are heard through video conferencing.

2. These appeals are directed against the common judgment made in O.P.No.1125 of 2011 and O.P.No.3632 of 2012 by the III Additional Family Court, Chennai.

3. The appellant is the husband and the respondent is the wife. O.P.No.1125 of 2011 was filed by the wife under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, while O.P.No.3632 of 2012 was filed by the husband under Section 13(1) (1a) of Hindu Marriage Act for divorce.

4. The case of the wife is that the marriage between her and her husband was solemnised on 24.05.2010 at Shri Easwari Mahal, No.11, Ganesh Nagar, First Main Road, Madipakkam, Chennai 91. It was an arranged marriage. After the marriage, when the newly married couple along with their respective parents, went to their Kuladeivam Temple in a Van from Chennai to Tirunelveli, her husband, and his family members behaved strangely. After the marriage, her mother-in-law never allowed them to stay together and they were never given a chance to share each other's desires and feelings. Even on the first night, her husband's behaviour made her to be nervous and anxious, as she was never given time to share her feelings. Due to the irresistible behaviour of both her husband and in-laws, she was shocked and became speechless, for which, she was abused stating that she was mentally abnormal and took treatment for her mental disorder before the marriage, which was suppressed by her parents.

5. She would further state that she is an M.Sc.-I.T. Graduate of 2007 and worked for more than 1-1/2 years in E4e business solutions at Chennai up to 15.05.2010. However, she was unable to continue her service after the marriage due to the marital problems. It is alleged that, on 27.5.2010, both the families discussed this matter at the residence of her husband, where her husband and his family members insisted to give a written undertaking stating that she will not repeat her behaviour. On the next day, her husband along with his relatives, visited her father's house at Keelakattalai and she was requested to attend for a family check-up. She was also examined by a Doctor, who confirmed that everything is normal. It was her case that she was always willing to live and lead a



happy and peaceful married life, but the appellant-husband without reasonable excuse, has withdrawn from the society of the respondent-wife. Hence, the petition is filed by the wife for restitution of conjugal rights.

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6. The appellant-husband, while admitting that the marriage was solemnized on 24.05.2010 at Sri Easwarimahall, Chennai, would allege that his wife was suffering intermittent mental disorder and she took treatment for her mental disorder and used to take medicine, viz., Franxit tablet, even prior to the marriage, but it was not revealed to him or to his parents. He has further alleged that on the date of betrothal, his in-laws purposely avoided him to meet his wife and even before the marriage also, the wife had not shown any interest in the marriage. It is his further case that, on the date of marriage, "Shanthi Mugurtham" was arranged, but she had not shown any interest in the marriage or to have intercourse with him. When he asked her about the behaviour, she narrated her love affair before her marriage and sexual abuse, which had taken place at the work place.

7. It is alleged that on 26.05.2010, the family decided to worship their Kuladeivam at Tirunelveli and when they were travelling in a Van from Chennai to Tirunelveli, his wife refused to sit near him, which caused disappointment. When he asked his wife, she misbehaved violently and assaulted him and removed her "Thali" and threw it away. Thereafter, she tried to remove her dress and tried to jump out of the moving Van. It is also stated that on 27.05.2010 and 28.05.2010, she behaved violently as a mental disorder person.

8. It is further stated that she used to pick up frequent quarrels with his parents and assaulted them with cooking vessels. On 11.09.2010, when she was questioned, she went into the room and threatened to commit suicide and the said incident was reported to her parents and Police. Hence, he filed HMOP.Sr.No.9365 of 2010 to nullify the marriage and thereafter, filed this petition seeking dissolution of marriage.

9. During trial, wife examined herself as PW1 and marked Exs.P1 to P20 marked. The husband gave evidence as RW1 and also examined RW2 to RW5 and produced Exs.R1 to R28.

10. The Family Court, on appreciation of evidence adduced by the parties, oral and documentary, held that the appellant is not entitled for divorce and allowed the Original Petition filed by the wife for restitution of conjugal rights. Assailing the



11. Mr.P.R.Thiruneelakandan, learned counsel appearing for the appellant/husband while reiterating the allegations made in the divorce petition, contended that, though the appellant had sought for divorce on the ground of suppression of material fact, but the fact remains that both are living apart for about 10 years, and there is no possibility for reunion. He further added that the marriage had become dead-wood, since it was not consummated. Therefore, the appellant is entitled for divorce on the grounds of cruelty and the marriage had irretrievably broke down.

In the case in hand the foundation of the case of 'cruelty' as a matrimonial offence is based on the allegations made by the husband that right from the day one after marriage the wife was not prepared to cooperate with him in having sexual intercourse on account of which the marriage could not be consummated. When the husband offered to have the wife treated medically she refused. As the condition of her health deteriorated she became irritating and unreasonable in her behaviour towards the husband. She misbehaved with his friends and relations. She even abused him, scolded him and caught hold of his shirt collar in presence of elderly persons like Shri S.K.Jain. This Court in the case of Dr.N.G.Dastane Vs. Mrs.S.Dastane (supra), observed : "Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfillment".

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and her parents to agree to go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behavior of the appellant."

13. The Division Bench of the Delhi High Court in the case of Sakunthala Kumari vs. Om Prakash Ghai, reported in AIR 1983 Delhi 53, has held as follows:

"(25) A normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. If this is not possible due to ill health on the part of one of the spouses, it may or may not amount to cruelty depending on the circumstances of the case. But willful denial of sexual relationship by a spouse when the other spouse is anxious for it, would amount to mental cruelty, especially when the parties are young and newly married."

14. The Hon'ble Apex Court in Samar Ghosh vs. Jaya Ghosh reported in 2007 4 SCC 511 has observed as follows:

"79. ....

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty."

15. In Naveen Kohli vs. Neelu Kohli reported in 2006 (4) SCC 558, the Hon'ble Apex Court has held that once the marriage has irretrievably breakdown, it should be dissolved by granting divorce. The relevant paragraph of the said judgment runs as follows:

"17.....

The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is



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gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic



Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant."

"8. This court in a series of judgments has exercised its inherent powers under Article 142 of the Constitution for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted [Manish Goel v. Rohini Goel<sup>2</sup>]. Admittedly, the Appellant and the Respondent have been living separately for more than 17 years and it will not be possible for the parties to live together and there is no purpose in compelling the parties to live together in 1 (2007) 4 SCC 511 [para101 (xiv)] 2 (2010) 4 SCC



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393 [para 11] matrimony [Rishikesh Sharma v. Saroj Sharma<sup>3</sup>]. The daughter of the Appellant and the Respondent is aged about 24 years and her custody is not in issue before us. In the peculiar facts of this case and in order to do complete justice between the parties, we allow the Appeal in exercise of our power under Article 142 of the Constitution of India, 1950.

9. For the aforementioned reasons, the Appeal is allowed and the application for divorce filed by the Appellant under Section 27 of the Act is allowed."

17. In Sandhya Rani vs. Kalyanram Narayanan reported in 1994 Supp (2) SCC 588, the Supreme Court has observed as follows:

"1. ....It is not disputed that the parties are living separately for the last more than three years. We have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. The parties have made joint request.-for mutual divorce. The written request by the parties has been Placed on the record. In order to do complete justice between the parties, we are inclined to grant decree in divorce on the following agreed terms:....."

18. The Hon'ble Apex Court in K.Srinivas Rao vs. D.A.Deepa reported in 2013 (2) SCALE 735, has taken the similar view. The relevant paragraphs are extracted hereunder:-

"26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

27. In V. Bhagat this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the



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marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind. In Naveen Kohli, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife."

19. In the instant case, it is evident from the records that the marriage was not consummated and the parties are living apart for about 11 years and that there is no possibility of reunion. Considering the facts and circumstances of the case and keeping in view the decisions of the Hon'ble Apex Court and the High Court referred supra, we are of the considered opinion that the appellant/husband has made out a case for grant of divorce and he is entitled to succeed in these appeals.



20. In such view of the matter, both the appeals are allowed. Consequently, the judgment and decree in O.P.No.1125 of 2011 and O.P.No.3632 of 2012 are set aside. The marriage solemnized between the appellant and the respondent on 24.05.2010 is dissolved. However, there would be no order as to cost.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

pvs

To

1. The III Additional Principal Judge  
Chennai

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

C.M.A. Nos.1347 and 1348 of 2017

CA(CO)

SP(15/02/2022)