

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.01.2021
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN
C.M.A.No.3829 of 2019

Mrs.Bhuvaneswari
D/o Nagarajan
W/o Jayakumar

.. Appellant

-vs-

Mr.S.K.Jayakumar

.. Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the order and decree dated 19.11.2018 made in F.C.O.P.No.36 of 2013 on the file of the Family Court, Salem.

For Appellant :: Mr.G.Saravanabhavan

For Respondent :: Mr.S.Xavier Felix

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

Mrs.Bhuvaneswari, Wife of Mr.S.K.Jayakumar has brought forth this civil miscellaneous appeal, having been aggrieved by the judgment and decree dated 19.11.2018 passed in F.C.O.P.No.36 of 2013 by the learned Family Court Judge, Salem, dissolving the marriage solemnized on 16.2.2011 between the parties under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, accepting the case of the respondent/husband that the appellant/wife has caused mental cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

2. Mr.G.Saravanabhavan, learned counsel appearing for the appellant/wife pleaded that when the marriage between the parties was solemnized on 16.2.2011 at Uthumalai Sri Balasubramaniam Sri Chakara Devi Thirukoil, Seelanaickenpatti, Salem, as per the Hindu rites and customs, in the presence of well-wishers of both the families, they were living happily. The respondent/husband was employed as software engineer in a private concern and was residing at Chennai, whereas the appellant/wife, employed as software engineer in IBM company at Bengaluru, was earning a sum of Rs.7,50,000/- per annum. Although the matrimonial life of the parties had commenced initially at Salem, they later shifted to Chennai and continued

their matrimonial ties. However, making false allegations that even prior to marriage, the mother of the appellant as well as the appellant started to pass ill-comments against the respondent and his family members, that the appellant has been attempting to physically assault the respondent/husband by using filthy words and that she used to threaten the respondent that a false case would be lodged for inducing her to commit suicide and that under the guise of delivery, she left the matrimonial home four months prior to the delivery of the girl child on 9.8.2012 and till date, she has not even come back to resume the matrimonial life, which in turn had caused continuous mental cruelty to the respondent herein and his family members, the respondent has filed the petition for divorce under Section 13 (1)(i-a) of the Hindu Marriage Act before the Family Court, Salem.

3. Opposing the above prayer, a detailed counter affidavit has been filed refuting the allegations made by the respondent/husband that he has not given silk sarees worth Rs.25,000/-, that the marriage reception expenses of Rs.4,00,000/- was not met by the respondent, that in order to pay the monthly instalments, the respondent/husband used to avail the ATM card of the appellant till February, 2014 and that in order to pay the advance amount of Rs.5,00,000/- for purchase of a house, the respondent had also sold out the gold jewels of the appellant. Moreover, when the appellant and the respondent were blessed with a girl child, only the mother of the respondent alone visited the hospital to see the newly born child and they never came up to the house of the appellant to see them. Besides, when the naming ceremony of the child was held, the respondent alone came, but none of his family members attended the function. In addition thereto, it was specifically averred that even on the day of naming ceremony of the child, the respondent came and quarrelled with the appellant that on that date itself, he intended to take back the appellant along with the child to the matrimonial home. However, under the guise of calling the auto-rickshaw, the appellant left the place at about 11.00 A.M., and during the month of January, 2013, he has suddenly filed the present petition seeking divorce against the respondent/wife, which is unjust and unfair. Therefore, it was pleaded before the trial Court that for the simple reason that the appellant is black in complexion, the respondent and his family members have not even entertained the appellant/wife. Moreover, when the mother of the respondent also unfairly used to coerce the respondent/husband to divorce the appellant accepting the frivolous request made by the family members, the

petition for divorce should have been dismissed. Even a cursory reading of the petition filed by the respondent before the Family Court, Salem clearly shows that the respondent/husband has filed the petition for divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. But, whereas, paragraph-46 of the impugned judgment reflects clearly that the trial Court has travelled beyond the pleadings and has erroneously given a finding on the ground of desertion that was not even asked for by the respondent/husband. Therefore, the findings and conclusions reached by the trial Court for granting the decree of divorce by dissolving the marriage solemnized on 16.2.2011 between the parties, are liable to be set aside by allowing this appeal.

4. Mr.S.Xavier Felix, learned counsel appearing for the respondent/husband, opposing the above arguments, pleaded that when the marriage was solemnized on 16.2.2011 between the parties as per the Hindu rites and customs at Uthumalai Sri Balasubramaniam Sri Chakara Devi Thirukoil, Seelanaickenpatti, Salem, even before the marriage, the appellant's family was not showing any courtesy to the members of the respondent's family. Every time the appellant/wife used to make false allegations against the respondent and his family members. In support of his submission, Mr.Xavier Felix, drawing our attention to the pleadings made by the appellant in the counter affidavit, demonstrated that when the appellant has filed the counter affidavit before the trial Court refuting the averments made in the petition for divorce, she has denied the factum of purchase of marriage sarees worth Rs.25,000/- and also denied yet another factum of marriage reception expenses of Rs.4,00,000/- spent by the respondent/husband. Whereas, when she stood in the witness box before the Family Court, she has taken a diametrically opposite stand and conceded before the Family Court that the marriage photographs produced before the Family Court showing her appearance with three silk sarees were presented by the respondent/husband, which would be worth about Rs.25,000/-. She also further admitted before the Family Court during the enquiry that it is the usual customary practice of the husband's family to meet out the marriage expenses that would be around Rs.4,00,000/-. Therefore, when the appellant/wife has come to the Family Court with unclean hands that she was all the time pleading a false case, the Court below, bearing in mind the averments made in the counter affidavit filed to the divorce petition and the oral testimony made before the Court, disbelieved her entire averments. Moreover, when she left the respondent/husband in the guise of delivery four months before

the birth of the girl child on 9.8.2012, she did not even come back to resume the matrimonial bond.

5. Arguing further, learned counsel appearing for the respondent/husband further pleaded that when the respondent/husband has undergone many nightmares at the hands of the appellant/wife within few months from the date of marriage and he has consistently pleaded that she was not showing any interest to cooperate with the respondent/husband to lead a normal matrimonial life, specifically pleading that she is not even cooperating for cohabitation, nothing has prevented the appellant to move an application invoking Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. When the appellant/wife is a software engineer employed in IBM company at Bengaluru, she could have been well advised not to move any application for restitution of conjugal rights, for the reason that once the application is filed, the Family Court was expected to answer the said application either in favour of the appellant/wife or the respondent/husband. Learned counsel appearing for the respondent/husband also pleaded that once the application invoking Section 9 of the Hindu Marriage Act for restitution of conjugal rights is filed, the ground of divorce sought under Section 13(1)(i-a) of the Hindu Marriage Act would normally disappear. But in the present case, the appellant/wife has deliberately chosen not to move any application under Section 9 of the Hindu Marriage Act. Such a conduct clearly shows that the respondent/husband was justified in seeking divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the ground that his wife was all the time causing mental cruelty by getting herself away from the matrimonial home and that she has deserted the respondent. Therefore, the trial Court, rightly reading the case of both parties, has given a clear finding that the appellant/wife was responsible for causing mental cruelty to the respondent and his family members by choosing to live away from the matrimonial home. Yet another fact that was conceded by the appellant also needs to be reiterated here with emphasis that when the respondent/husband unfortunately met with an accident on 20.6.2012 and was undergoing inpatient treatment at the Apollo Hospital, Chennai for a period of 45 days, for the reasons best known to the appellant, who claims to be a dutiful wife, did not even bother to visit her husband in the hospital bed for 45 days. The said act also clearly shows that the appellant has willfully and intentionally deserted the respondent/husband.

6. We also find merits on the submissions made by

Mr.S.Xavier Felix, learned counsel appearing for the respondent/husband, for the following reasons.

7. When the marriage of the parties was solemnized on 16.2.2011 at Uthumalai Sri Balasubramaniam Sri Chakara Devi Thirukoil, Seelanaickenpatti, Salem as per the Hindu rites and customs, it may be mentioned herein that both the appellant and the respondent are well placed, as both of them are software engineers and that the respondent is employed in a private concern at Chennai and the appellant is employed in IBM company at Bengaluru earning a handsome salary of Rs.7,50,000/- per annum. When the appellant and the respondent are well educated, it is expected that when they are coming to Court, they cannot take an inconsistent stand to blow hot and cold simultaneously, that would be considered as rudimentary disqualification for even considering their case. Admittedly, when the respondent/husband filed the petition for divorce under Section 13(1) (i-a) of the Hindu Marriage Act before the Family Court, Salem in F.C.O.P.No.36 of 2013 listing out the various unpleasant experiences faced by him and his family members, the appellant/wife, in her counter affidavit, started denying the purchase of marriage silk sarees worth about Rs.25,000/- given to her. Again she also vehemently denied the marriage reception expenses of Rs.4,00,000/- spent by the respondent/husband. The appellant also pleaded that when her husband pressurized her to purchase a house at Chennai for a sum of Rs.55,00,000/-, in order to pay the advance amount of Rs.5,00,000/-, the respondent/husband sold away her gold jewels. However, the appellant/wife, after stepping into the witness box, has clearly admitted before the trial Court that her husband only had presented the three marriage silk sarees worth about Rs.25,000/- and she also further admitted the incurring of the marriage reception expenses of Rs.4,00,000/- by her husband. Secondly, when she alleged that her husband only pressurized her to purchase a house at Chennai for a sum of Rs.55,00,000/- by selling away her gold jewels so as to pay the advance of Rs.5,00,000/-, she has not even indicated which jewel either bangle or gold chain or any other gold ornament was sold away for such purpose. That clearly shows that she was oblivious of making a wrong statement before the Court blowing hot and cold.

8. Secondly, the appellant being well educated and working as software engineer in the IBM company at Bengaluru, ought not to have taken a false stand either before the trial Court or before this Court. As a matter of fact, the trial Court also has vividly indicated that the appellant has clearly and

categorically admitted the factum of payment of advance amount of Rs.5,00,000/- for purchase of the house, which is extracted as follows:-

“மனுதாரர் என்னுடைய நகைகளை விற்றுதான் முதல் தவணை ரூ.5 லட்சத்தை கட்டினார் என்று சொல்லியிருக்கிறேன். எந்தெந்த நகைகளை அவர் எப்போது விற்றார் என்று நான் குறிப்பிட்டு சொல்லவில்லை.”

9. Thirdly, when the appellant, as highlighted above, is a software engineer and employed in the IBM company at Bengaluru, after hearing the news that her beloved husband met with an accident on 20.6.2012 and subsequently taken to Apollo Hospitals, Chennai, where he was undergoing treatment as an inpatient for a period of 45 long days, it is not known why the appellant, as a dutiful wife, or her family members refused to visit him at the hospital. That clearly shows that the appellant/wife has miserably failed to show any iota of trust as a dutiful wife to her husband.

10. In addition thereto, when the respondent/husband took out an application seeking a decree of divorce to dissolve the marriage solemnized on 16.2.2011 before the Family Court, Salem, nothing prevented the appellant/wife to move an application invoking Section 9 of the Hindu Marriage Act for restitution of conjugal rights. In fact, when the F.C.O.P.No.36 of 2013 was pending for consideration from 21.1.2013 till the date of disposal on 19.11.2018 i.e., for a period of five long years, we do not find any justification on the part of the appellant/wife not to move any application for restitution of conjugal rights. That clearly shows that at no point of time she was showing any interest to resume or rejoin the matrimonial home.

11. It is also relevant to mention herein that before the Family Court proceeded to answer the issue raised on merits, it has also taken into account the conduct of the parties. When both the parties were directed to explore the chances for reconciliation, they were unable to arrive at an amicable settlement, therefore, the matter was sent back to the Family Court. When the trial Court has also taken sufficient care to unite the parties, unfortunately, they did not come forward to reconcile their ifs and buts.

12. In the case on hand, the trial Court, to support its reasonings and conclusions, has rightly relied on the judgment of a Division Bench of this Court in the case of *Suguna v. Kubendiran*, 2017 (1) CTC 695, wherein it has been held that if the acts of the wife are of such quality or magnitude and consequence as to cause pain, agony and suffering to the husband, the same would amount to cruelty in matrimonial law for granting the decree of divorce. The Supreme Court has ruled that the Court, before granting divorce, should be satisfied whether the husband or wife pleading divorce on the ground of mental cruelty, has placed ample evidence on record to substantiate his/her claim. Going further, the Apex Court has also indicated several instances of cruelty in *Pankaj Mahajan v. Dimple alias Kajal*, (2011) 12 SCC 1, in paragraphs 36 & 37, which read as follows:-

"36. From the pleadings and evidence, the following instances of cruelty are specifically pleaded and stated. They are:

(i) Giving repeated threats to commit suicide and even trying to commit suicide on one occasion by jumping from the terrace.

(ii) Pushing the appellant from the staircase resulting into fracture of his right forearm.

(iii) Slapping the appellant and assaulting him.

(iv) Misbehaving with the colleagues and relatives of the appellant causing humiliation and embarrassment to him.

(v) Not attending to household chores and not even making food for the appellant, leaving him to fend for himself.

(vi) Not taking care of the baby.

(vii) Insulting the parents of the appellant and misbehaving with them.

(viii) Forcing the appellant to live separately from his parents.

(ix) Causing nuisance to the landlord's family of the appellant, causing the said landlord to force the

appellant to vacate the premises.

(x) Repeated fits of insanity, abnormal behaviour causing great mental tension to the appellant.

(xi) Always quarrelling with the appellant and abusing him.

(xii) Always behaving in an abnormal manner and doing weird acts causing great mental cruelty to the appellant.

37. All these factual details culled out from the pleadings and evidence of both the parties clearly show the conduct of the respondent wife towards the appellant husband. With these acceptable facts and details, it cannot be concluded that the appellant husband has not made out a case of cruelty at the hands of the respondent wife. We are satisfied that the appellant husband had placed ample evidence on record that the respondent wife is suffering from "mental disorder" and due to her acts and conduct, she caused grave mental cruelty to him and it is not possible for the parties to live with each other, therefore, a decree of divorce deserves to be granted in favour of the appellant husband. In addition to the same, it was also brought to our notice that because of the abovementioned reasons, both appellant husband and the respondent wife are living separately for the last more than nine years. There is no possibility to unite the chain of marital life between the appellant husband and the respondent wife."

13. In the light of the above, if the case of the appellant/wife is taken up for examination, the respondent/husband has brought home the charges of mental cruelty as enunciated in clauses (vii), (xi) & (xii) of paragraph-36 of the aforesaid judgment that his wife has been insulting his parents and that she has been quarrelling with him and abusing him every now and then. Besides, she was always behaving in an abnormal manner, causing great mental cruelty to the respondent. Therefore, when all these factual details from the pleadings and evidences of both parties clearly show that

the conduct of the appellant/wife towards her husband has been substantiated, resultantly, they are living separately for more than seven long years, we are of the view that it is not possible to unite the chain of marital life between them. Accordingly, finding no infirmity or error in the judgment and decree passed by the Family Court, Salem granting the decree of divorce by dissolving the marriage solemnized on 16.2.2011 between the parties on the ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act, 1955, the civil miscellaneous appeal is dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

SS

TO

THE JUDGE,
FAMILY COURT,
SALEM

+1cc to M/s.M.THANGARAJAN, ADVOCATE, SR.NO. 2779

+1cc to M/s.S.XAVIER FELIX, ADVOCATE, SR.NO. 3076

C.M.A.No.3829 of 2019

SRA (CO)
KKN 26.04.2021

सत्यमेव जयते

WEB COPY