



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.Nos.21 and 22/2017 and CMP.Nos.117 and 118/2017

A.M.Suresh

... Appellant/Petitioner
in both CMA's

-vs-

D.Lakshmi

... Respondent/Respondent
in both CMA's

Civil Miscellaneous Appeals filed under Section 19 of the Family Court Act, 1984, against the Fair and decreetal orders passed by the learned Principal Judge, Principal Family Court, Chennai, in O.P.Nos.2030/2009 and 3340/2013 dated 15.11.2016.

For Appellant : Mr.S.Ilamvaludhi

For Respondent : Ms.C.Shyamala

COMMON JUDGMENT

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

The CMA No.21/2017 has been filed by the appellant-husband, challenging the fair and decreetal order dated 15.11.2016 passed in HMOP.No.2030/2009 by the learned Principal Judge, Principal Family Court, Chennai, refusing to grant divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, as prayed for by the appellant-husband whereas CMA.No.22/2017 has been filed by the appellant-husband, challenging the fair and decreetal order dated 15.11.2016 passed in HMOP.No.3340/2013 thereby allowing the petition seeking restitution of conjugal rights filed under Section 9 of the Hindu Marriage Act, 1955 by the respondent-wife.

2. Learned Counsel appearing for the appellant-husband submitted that the marriage between the appellant and the respondent was solemnized on 01.02.2008 at PSD Kalyana Mandapam, West Saidapet, Chennai-600 015 as per the Hindu rites and customs in the presence of the elders of both the families and after the said wedlock, both the parties were happy and their matrimonial life was also started in the appellant's house where



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the appellant has been living with his widow mother. In the beginning, the respondent behaved normally with affection and she was taking care of the family. Immediately after few days, the respondent started showing her true colour that sudden change on her behaviour occurred within two weeks from the date of the marriage and the words and deeds used by the respondent were abusive and explosive. Always, she was money oriented and showing her unusual behaviour because she was acting as per the instigation of her brother and she was not giving any positive response to the appellant's requests to put the house in order. Therefore, the appellant found it very difficult to cope up with the torture the respondent has levelled against him and his family members, however, the appellant was adjusting her hoping that things would come back to normal. Finally, the respondent-wife herself left the matrimonial home during the 2nd week of March, 2009. Thereafter, the respondent and his brother used to threaten the appellant that they would approach the Commissioner of Police and file a complaint against them on the ground that they were demanding dowry, as a result, the appellant was put to face severe mental agony. Therefore, he issued a lawyer's notice during the 1st week of May, 2009 that was also served on her. Finding no response for the same, the appellant left with no other option, approached the Principal Family Court, Chennai, seeking a Decree for Divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the ground of cruelty.

3. A detailed counter affidavit was filed denying all the allegations and after the pleadings on both sides were completed, the Family Court took up the matter for trial. Though averments were made by the appellant-husband to justify the allegation of cruelty caused to them, disbelieving the same, the learned Family Court dismissed the HMOP filed by the appellant-husband seeking divorce and allowed the HMOP filed by the respondent-wife seeking restitution of conjugal rights. Therefore, the appellant-husband is before this Court with these Civil Miscellaneous Appeals.

4. Learned Counsel appearing for the appellant contended that it is an admitted case that since the parties got married on 01.02.2008 and within few months, they were separated and the appellant has been serving only as a Cashier at Prakash Foods and Feed Mills Private Limited, Prakash Towers, No.1, Mettukuppam Main Road, 3rd Floor, Maduravoyal, Chennai-600 095 and eking out his livelihood with a meagre monthly salary of Rs.15,952/- after deduction of Rs.1,048/-, he finds it difficult to meet out the litigation expenses and also the maintenance of his day-to-day affairs including his widow mother. Therefore, the learned Counsel for the appellant submitted that when the husband and wife have been living separately from 2008 onwards,



within a short while from the date of marriage, they have lost the prime age to live, entertain, recreate and procreate. Now, they are aged about 53 and 50 respectively. Hence, the appellant is prepared to pay a reasonable permanent alimony to the respondent under Section 25 of the Hindu Marriage Act, 1955 and accepting the reasonable permanent alimony, the marriage solemnized between the parties on 01.02.2008 can be dissolved and decree for divorce can be granted, he pleaded.

5. Opposing heavily the above submissions made by the learned Counsel for the appellant, learned Counsel for the respondent-wife replied that the poor lady-respondent was unnecessarily put to face innumerable problems at the hands of the appellant and his family members within few weeks from the date of the marriage and the misunderstanding that cropped up on frivolous grounds has been blown out of proportion by the appellant, as a result, she was driven out to her parental home. When the appellant was not coming to her parental home to take her back to matrimonial home, the respondent's elder brother took her back to the matrimonial home. Again due to the continuous non-co-operation of the appellant to lead the matrimonial life, the respondent was driven away from the matrimonial home. Therefore, the fault does not lie on the respondent for leaving the matrimonial home. It is, only the appellant, who was responsible for driving her out from the matrimonial home to her parental home, therefore, the question of desertion does not arise. Hence the relief sought for by the appellant under Section 13(1)(i-a) of the Hindu Marriage Act, 1958 on the ground of cruelty has rightly been disbelieved by the Family Court. Therefore, the passage of time cannot be taken as a ground for dissolution of the marriage.

6. Learned Counsel for the respondent-wife further contended that when the respondent has also brought 25 sovereigns of gold, besides, 5 more sovereigns in the form of bracelets were gifted to the appellant, but the same have not been returned. Therefore, these jewels also have to be returned, if the appellant is concerned only for getting a decree of divorce subject to the payment of reasonable permanent alimony.

7. We have carefully gone through the typed set of papers including the findings and conclusions reached by the learned Family Court below.

8. The following two issues arise for consideration:

a. Whether the parties lived shortly in the matrimonial family, can ask for divorce? And



b. Whether any threat by a wife that she would go to police station to lodge a criminal complaint against husband and his family members would amount to mental cruelty?

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9. Admittedly, three things were emerged before us for consideration. Firstly, when the marriage took place between the parties on 01.02.2008 at PSD Kalyana Mandapam, West Saidapet, Chennai-600 015, as per the Hindu rites and customs in the presence of the elders of both the families, they lived together only for few weeks. Thereafter, both started making allegations against each other justifying their separation. But the facts of the matter would show that the respondent came to her parental home in the second week of March, 2009 and thereafter, they have not reunited. Even the consummation of the marriage has not been substantiated before us. Therefore, the appellant-husband has approached the Family Court seeking divorce citing various reasons. One among them is that the respondent-wife was all the time threatening the appellant that she would commit suicide by jumping from the upstairs or fall in front of the train in the track, but it appears that no evidence has been placed before the trial court. But now one thing is very clear that they have been living separately for the past 12 years. Hence the first issue is answered accordingly.

10. Secondly, though the allegation of threat said to have been made by the respondent that she would go to the police station and make a false complaint and that the appellant and his widow mother would be taken into the police station and resultantly put them to jail, the same has been emphatically pleaded in the petition and also in the proof affidavit filed, no doubt, these are all matters difficult to be established by the parties concerned. What is happening within the four walls of the room cannot be substantiated at all the times. But the evidence of their separation clearly shows that they have passed through the matrimonial life with great difficulty for about 12 years. In this regard, it is pertinent to rely on the evidence of CW1 J.Shanthi attached with Indian Red Cross Society, Tamil Nadu Branch, Family Counselling Centre, recorded on 19.04.2015 by the Family Court in H.M.O.P.No.3340/2013 who deposed that she had three counselling sittings with the parties and after conversing and discussing with them in detail, she found that the parties have set up their mind for not living together and accordingly, gave a report Ex.P.4 stating that both of them were not able to continue the matrimonial life. Therefore, when the act of both the appellant and the respondent demonstrated before us that they were not able to live together within few weeks from the date of marriage and this has been rightly deposed by the C.W.1 before the Family Court, the case of the appellant could have been accepted for dissolution of marriage. But as



this has been overlooked, we are of the considered view that the findings and conclusions reached by the learned Family Court are liable to be set aside. Accordingly, the second issue is answered in favour of the appellant.

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11. Thirdly, coming to the payment of permanent alimony under Section 25 of the Hindu Marriage Act, 1955, as we have already held, the appellant after deduction is only getting a sum of Rs.15,952/- towards monthly salary by working as Cashier in Prakash Foods and Feed Mills Private Limited, Prakash Towers, Mettukuppam Main Road, Maduravoyal, Chennai and as he is now aged about 53 years and scheduled for superannuation at the age of 58 years, we are of the considered view that he shall pay a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) towards permanent alimony. Therefore, on the last occasion, we have instructed the learned Counsel for the appellant to bring a cheque for Rs.6,00,000/-. To-day, the learned Counsel for the appellant husband brought two Demand Drafts one for a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) dated 20.11.2021 and another for a sum of Rs.1,00,000/- (Rupees One Lakh Only) dated 20.11.2021 and the same were accepted by the learned Counsel for the respondent and she has also made an endorsement to that effect. The same was recorded.

12. In view of all the above, both the Civil Miscellaneous Appeals are allowed thereby dissolving the marriage between the appellant and the respondent that took place on 01.02.2008 and a decree for divorce is granted. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

TSI

To

The Principal Judge,
Principal Family Court,
Chennai.

+1cc to Mr.S.Ilamvaludhi, Advocate, S.R.No.60235

C.M.A.Nos.21 and 22 of 2017
and CMP.Nos.117 and 118/2017

MG (CO)
TE (04/01/2022)