



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	22.09.2021
DELIVERED ON:	29.10.2021

CORAM

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

C.M.A.No.3219 of 2017 & C.M.P.No.19969 of 2017
and C.M.A.No. 3220 of 2017

Geetha Kuppusamy
Rep by the Power of Attorney
Kuppusamy

...Appellant in
C.M.A.No.3219 of 2017 and C.M.A.No. 3220/2017

Dr.Vivekananth Kanaganayagam

Vs.
... Respondent in
C.M.A.No.3219 of 2017
and C.M.A. No. 3220/2017

PRAYER in both the C.M.A's: Civil Miscellaneous Appeals filed under Section 19 of the Family Court Act to set aside the fair and final orders dated 14.07.2017 passed in H.M.O.P.Nos.287 of 2016 and 1168 of 2011 on the file of the Principal Family Court, Coimbatore.

In both the C.M.A's.:

For Appellant : Mr.R.Jayaprakash
For Respondent : Mr.J.Sivanandaraj

C O M M O N J U D G M E N T
(V.SIVAGNANAM, J,)

These Civil Miscellaneous Appeals have been filed by the appellant-wife, being aggrieved by the fair and final orders dated 14.07.2017 in H.M.O.P.Nos.1168 of 2011 and 287 of 2016 on the file of the Principal Family Court, Coimbatore.

2.Both the appellant-wife and the respondent-husband are Doctor by profession. Marriage between the appellant and the respondent was solemnized on 04.11.2005 at Ramakrishna Kalyana Mandapam, Coimbatore as per Hindu Rites and Customs. Out of the



wedlock, a female child was born to them on 22.12.2007 and they named her as Dheeksha.

3. After marriage, both the appellant and the respondent lived together at Pollachi for a period of one month. Thereafter, they went to UK and started their life there. When they are in UK their relationship has become strained and frequently, they picked quarrel with each other. Due to continuous intimidations between them, the respondent, with no other option returned to India on 06.10.2010. In spite of several mediations, the appellant did not turn to her matrimonial home. Thereafter, the appellant/wife filed a H.M.O.P.No.1168 of 2011 under Section 9 of the Hindu Marriage Act. Besides, she filed a petition in M.C.No.196 of 2011 under Section 125 Cr.P.C., to direct the respondent/husband to pay a monthly maintenance of Rs.1 lakh each to the appellant and her daughter. The respondent/husband also filed a petition in H.M.O.P.No.287 of 2016 under Section 13(1) (ia) of the Hindu Marriage Act, to dissolve the marriage solemnized between the petitioner and the respondent.

4. Before the trial Court, the respondent/husband examined himself as P.W.1 and one Renukadevi as P.W.2; marked 12 documents as Exs.P.1 to 12; appellant/wife examined herself as R.W.1 and marked 11 documents as Exs.R.1 to 11.

5. The trial Court after considering the oral and documentary evidences allowed the petition in H.M.O.P.No.287 of 2016 and granted divorce as prayed for by the respondent/husband and dismissed the petition in H.M.O.P.No.1168 of 2011 and also allowed the maintenance petition in M.C.No.196 of 2011 in part.

6. The appellant/wife challenging the order of the trial Court, filed these two Civil Miscellaneous Appeals against the order dated 14.07.2017 passed in H.M.O.P.Nos.1168 of 2011 and 287 of 2016 and M.C.No.196 of 2011. Further, the appellant/wife has not preferred any appeal against the order passed in M.C.No.196 of 2011.

7. The learned counsel for the appellant/wife submitted that the trial Court failed to appreciate the evidence of the parties. The allegations that the wife is not willing to live with the husband is false one and the other allegations raised by the husband in the divorce petition are not true and the respondent/husband failed to prove the cruelty attributed towards the wife. Further, contended that the sacred relationship arising out of the marriage cannot be broken on the basis of the alleged text messages sent by the wife. The cruelty is distinguishable from ordinary wear and tear of family life. The learned counsel further contended that the husband did not



proved the cruelty as a ground for divorce and reiterated other grounds raised in the grounds of appeal. Further, in order to support his arguments, he relied on the following decisions:-

1.S.Valli Vs. N.Rajendran reported in MANU/TN/4518/2010.

2.Suman Singh Vs. Sanjay Singh reported in (2017) 4 SCC

85

3.R.Padmini Vs. T.Hemachandran reported in MANU/TN/5444/2018

4.Mangayarkarasi Vs. M.Yuvaraj reported in 2020 SCC Online SC 273.

8.The learned counsel for the respondent supported the order of the trial Court and further contended that the appellant/wife is not willing to live with him in India and she want to live only at UK. She refused to discharge her duties as wife and she frequently used to have heated arguments with the respondent for each and everything and attempted to consume sleeping tablets. Further, she blackmailed the respondent to report to UK border agency to cancel the visa of the respondent, when it was about to expire. Under these circumstance, the respondent/husband returned to India. Upto his return to India, the respondent's pursuation and mediation to get the appellant/wife back to the matrimonial home become failed. Therefore, he filed a petition in H.M.O.P.No.287 of 2016 and also got decree of divorce.

9.Heard the counsel for the parties and perused the records.

10.The admitted fact is that both the appellant and the respondent are Doctors by profession. They got married on 04.11.2005. At the time of marriage the appellant/wife was at UK and the respondent/husband was in India. After marriage, both of them went to UK and they have blessed with a female child, by name Dheeksha.

11.Perusal of averments made in the divorce petition and the restitution of conjugal rights petition would show the disagreement between the parties. According to the respondent/husband, the appellant initially agreed to look after his mohter, but after the marriage, she refused to do so. Frequently, the appellant/wife picked up quarrel with the respondent and she said that the child was not born to the respondent. On some other occasion, the appellant/wife attempted to consume sleeping tablets and after a long struggle, the respondent managed to remove the sleeping tablets from the appellant. When both of them got job in a same hospital, the



appellant/wife refused to stay along with the respondent. Apart from this, it is clear from the documents that the relationship between the parties is not in good terms. The reliance placed by the learned counsel for the appellant are considered. In all these judgments, the Hon'ble Supreme Court and this Court has clearly held that the decree of divorce cannot be granted for mere asking. The cruelty must be proved by clear evidence. The legal principles stated in the decisions are not in dispute. In this case, the appellant/wife has not made up her mind to live with her husband in India. Admittedly, the respondent living in India from 07.10.2010, nearly 10 years, they are living separately.

12. Therefore, considering the facts and circumstances of this case, this Court is not inclined to interfere with the order of the trial Court dated 14.07.2017 passed in H.M.O.P.Nos.1168 of 2011 and 287 of 2016 on the file of the Principal Family Court, Coimbatore. Hence the order of the trial Court in dissolving the marriage held between the appellant and the respondent is hereby confirmed. Accordingly, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Jer
To
The Principal Judge
Family Court, Coimbatore.

+2 Ccs to Mr.R.Jayaprakash, Advocate sr 56326
+2 Ccs to Mr.K.Chandrasekaran, Advocate sr 56116.

C.M.A.No.3219 of 2017 & C.M.P.No.19969 of 2017
and C.M.A.No. 3220 of 2017

RSI (CO)
SP(24/01/2022)