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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.Nos.903 & 904 of 2017

J.Harikrishnan @ Kumar ... Appellant(in both appeals)

Versus

K.Kavipriya ... Respondent (in both appeals)

Common Prayer : Civil Miscellaneous Appeals have been filed under Section 19 of Family Courts Act, against the Judgment and Decree dated 03.02.2016 passed in H.M.O.P.No.147 of 2010, and H.M.O.P.No.1059 of 2010 respectively, by the Learned Principal Judge, Family Court at Chennai.

For Appellant : M/s. S.Kalyani
(in both appeals)

For Respondent : Mr.J.Ravikumar
(in both appeals)

COMMON JUDGMENT

(The Judgment of the Court was delivered by
Mr.Justice.D.Bharatha Chakravarthi)

The appellant/husband, J.Harikrishnan @ Kumar has filed these two appeals. CMA.No.903 of 2017, is filed as against the Judgment and Decree made in H.M.O.P.No.147 of 2010 whereby the petition filed by him, for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, on the ground of cruelty was dismissed and CMA.No.904 of 2017 is filed as against the Judgment and Decree made in H.M.O.P.No.1059 of 2010, whereby the petition filed by his wife, K.Kavipriya, for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 was allowed. Both the cases were decided by the Learned Principal Judge, Family Court at Chennai.



2.The fact that the appellant and the respondent got married on 22.02.2007 at Chennai in accordance with the Hindu rites and customs and during the month of December 2007, a male child was born and that there is a marital discord during the year 2009, leading to the husband and wife living separately, are all admitted.

3.The case of the appellant / husband is that the marriage did not work and marital discord has arisen, on account of the cruel acts of the respondent / wife. According to him, the appellant is working in a Bank, while the respondent is working as a Police Constable in the Police Department, Government of Tamil Nadu. According to the appellant the acts of cruelty are as follows:

- Even before the marriage, the respondent raised an issue relating to the purchase of a ring to her brother in connection with the marriage, and for that reason she started abusing the appellant in filthy language.
- Even two days prior to the marriage, the respondent / wife called the appellant / husband and informed the marriage was being performed much to her dislike.
- After the marriage the respondent/wife refused to cohabit physical relationship for nearly 10 to 15 days, stating that she did not have any interest or idea to live with the appellant/husband.
- The respondent / wife being a Police Constable always wanted to dominate the appellant/husband and she became physically aggressive to cause injuries to the appellant with a pen and bitten the appellant on his hands.
- The appellant and his family members were humiliated at the Thottil function after the child was born.
- The respondent / wife threatened the appellant that she will lodge a false complaint of harassment if the appellant does not adjust with the respondent / wife.
- The appellant and his family members were manhandled by the respondent/wife and her family members, therefore, he was made to approach K-9 Police Station with the complaint.
- Thereafter, the respondent / wife had repeatedly made the appellant to appear before the Assistant Commissioner of Police, even without lodging any complaint.

The respondent / wife thus, continuously caused physical and mental agony and torture. Cumulatively, taking all the facts and actions of the wife amounted to cruelty, the appellant/husband is entitled for divorce.

4.The respondent / wife filed a counter and resisted the



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petition filed by the appellant and stated that she has already filed a petition for restitution of conjugal rights and she wanted to live with the appellant and child happily, without any disturbances of the family members of both sides. She denied the allegations of the appellant as false. It is only the appellant's mother, who picked up a quarrel with the respondent / wife. The enquiry by the Police was conducted only on the basis of the complaint given by the appellant / husband himself. The mother of the appellant always act that some goddess entered into her body and started saying "Arul" by pouring water into her body as well as the body of the respondent / wife and she will create a drama, which has absolutely spoiled the peace in the house. Only in this context, the respondent / wife, started requesting for living with the appellant at Police Quarters allotted to her peacefully. Accordingly, she filed a petition for restitution of conjugal rights and there is absolutely no ground for divorce. Hence, she prayed for dismissal of the petition.

5.The petition for restitution of conjugal rights filed by the wife and counter filed by the husband are also on similar lines.

6.Even after counseling there was no amicable settlement between them, therefore, the Family Court has no other option but to proceed with the joint trial of H.M.O.P.Nos.147 and 1059 of 2010.

7.On behalf of the appellant/husband, he examined himself as PW.1. The marriage invitation is marked as Ex.P1, the marriage photograph was marked as Ex.P2, the acknowledgment of the Police complaint is marked as Ex.P3. Similarly, the respondent wife, examined herself as RW.1. The marriage invitation was marked as Ex.R1, the marriage photograph as Ex.R2 and the copy of the voter Identity Card is marked as Ex.R3.

8.The Trial Court, after considering the evidence on record and the submissions made on behalf of both sides, had, by its common Judgment, dated 03.02.2016 dismissed the application for divorce filed by the appellant/husband and allowed the application for restitution of conjugal rights filed by the respondent/wife with the following findings:-

- Relying upon the cross-examination of Pw.1/husband, the Trial Court found that the act of physical cruelty of biting the hands and attacking with pen were not proved.
- Again in the cross-examination, the husband admitted that he did not give the Police complaint on the incident of his wife's relatives manhandling, after pleading the contrary



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and therefore, the said act of the cruelty is not proved.

- The appellant/husband had also admitted the activity of her mother in behaving like some goddess entered into her body and pouring water on herself and also on the wife/respondent's body, which caused trauma and agony to the respondent/wife.
- The respondent / wife on account of the above act was forced to set up separate residence in the Police Quarters.
- The Family Court found that the respondent/wife is very much interested in living with the appellant/husband and she did not take any articles like gold, silver, etc., from her matrimonial home.
- The Trial Court held that the appellant/husband had failed to prove the allegations of cruelty and found that the wife is ready and willing to live with the appellant/husband, therefore, dismissed the divorce petition and ordered the petition for restitution of conjugal rights.

9. Even during the pendency of the appeal, this Court directed the personal appearance of both parties and attempted to persuade the parties for an amicable settlement, which also did not fructify. Therefore, this Court proceeded to hear the arguments of the learned counsel on either side to decide the matter on merits.

10. Ms. K. Kalyani, learned counsel for the appellant would submit that the appellant has narrated all the incidents of cruelty in his pleadings and in his proof affidavit. She would submit that more specifically, the wife abusing her position in the Police Department and called her husband and family members repeatedly before the Assistant Commissioner of Police, even without any written complaint. Therefore, the same amounts to cruelty. The second specific allegation is that she wanted to dominate and disrespect the appellant's parents and left the matrimonial home, during April 2009. Now, the parties are living separately for more than 12 years and therefore, the marriage has not worked, therefore, the appellant/husband is entitled to the relief as he prayed for.

11. Per contra, Mr. J. Ravi Kumar, learned counsel appearing for the respondent/wife would submit that even today the respondent/wife is willing to join with her husband on whatever terms he may set. Further, he submitted that now the son is aged twelve years and for the sake of child, also the couple can live together. Mere efflux of time should not be put against his client. The husband having filed a petition for divorce and unable to prove any of the cruelty instances alleged



by him, the grant of relief would amount to taking advantage of his own wrong, if the divorce is granted by this Court, just on the basis of efflux of time. He would take the Court through the cross-examination of PW.1 and demonstrated as to how each and every allegation leveled by him in his petition were disproved and therefore, there is no any act of cruelty and prayed for dismissal of the petition.

12.Now, therefore, the points for consideration in these appeals are :

i) Whether or not, the appellant/husband has made out a case for dissolution of marriage on the ground of cruelty?

ii) Whether or not, the respondent/wife is entitled for the relief of restitution of conjugal rights?

iii) Or any other relief?

13.As far as the first act of the cruelty is concerned, viz., physically biting the husband on hand and injuring him with the pen, we also find that there is absolutely no evidence whatsoever to prove the same and held that same is not proved.

14.As far as harassment, by giving police complaint is concerned, a careful perusal of records and evidence shows that it is only the husband, who had first lodged a police complaint and only on his complaint, the police have called for enquiry. As seen from the evidence the respondent/wife has not taken any undue advantage just because of that she is part of the police force. From the cross-examination of both parties, it is clear that the wife had approached the higher officials only for uniting the couple and they had given only advise in the best interests of the couple. Therefore, there is no harassment by the wife, by giving repeated complaint before the Police and the said allegations are without any substance. The appellant/husband had admitted about the act of superstition of his mother. Naturally, it may annoy any young wife. Therefore, when the fault is on the part of the mother of the appellant, the appellant cannot be permitted to take advantage of the fact that the respondent/wife forced to set up an abode in the Police Quarters for living peacefully. The Trial Court also believed the testimony of RW.1, regarding the fact that there was some disturbances by the mother-in-law, which resulted in the marital discord. Hence, the first issue is answered against the husband.

15.Regarding the other allegations, it appears to be a matter of normal wear and tear in the family life and in the teeth of the stand of the husband and his oral evidence and



stand of the wife and her oral evidence, when the Trial Court has sought to believe the version of wife and as the Trial Court which had observed closely the demeanor of the witness, their behaviour during counseling, etc., this Court cannot likely interfere with the findings of the Family Court and dislodge the same. The appellant / husband has not projected any proper and serious act of cruelty with specific allegations before us, so as to reverse the Judgment of the Family Court. Accordingly, issue no.2 & 3 are answered. In the light of the above, the respondent/wife is entitled for the relief of restitution of conjugal rights as claimed by her.

16. Accordingly, we find no merits in the Civil Miscellaneous Appeals and the same are dismissed. The Judgment and decree of the Learned Principal Judge, Family Court, Chennai made in H.M.O.P.Nos.147 & 1059 of 2010 are confirmed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

klt

To

The Learned Principal Judge,
Family Court, Chennai.

Copy To

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

+2cc to Mr. Suchit Anant Palande, Advocate SR.No.66485

C.M.A.Nos.903 & 904 of 2017

RP(CO)
GN(04/03/2022)