



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A. No.4710 of 2019

C.Yogesh

... Appellant

vs

P.Jayanthi

... Respondent

Prayer: Appeal filed under Section 19 of the Family Court Act 1984 against the judgment and decree dated 17.10.2019 passed by the IV Additional Family Court, Chennai in O.P. No.4455 of 2017.

For Appellant : Mr.N.Veerasamy

For Respondent : Mr.R.Ravi

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This appeal has been directed against the judgment and decree dated 17.10.2019 passed by the IV Additional Family Court, Chennai in O.P. No.4455 of 2017, in and by which, the IV Additional Family Court, Chennai, dismissed the petition filed by the appellant, disagreeing with the prayer for grant of divorce under Section 13(1)(i-a) of the Hindu Marriage Act and refusing to dissolve the marriage solemnised on 22.02.2015 between the appellant and the respondent.

2.Learned counsel appearing for the appellant/husband submitted that the respondent wife was a mentally retarded person and behaved like a child below the age of 5 years, as a result, she never stayed continuously in the matrimonial house and whenever she decided to go her parent's house, she had created problems with the appellant husband. Learned counsel appearing for the appellant further submitted that the respondent and her mother picked up quarrels with the appellant



and his parents and abused them with filthy language and tarnished their image in the Society and thereby, caused mental cruelty on the appellant. Therefore, when the appellant has filed a petition in O.P. No.4455 of 2017 before the IV Additional Principal Judge, Family Court, Chennai seeking dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act, the Family Court, without considering these aspects, though has given findings that the I.Q. level of the respondent is below normal, dismissed the petition filed by the appellant. Aggrieved by the same, the appellant has been advised to come to this Court.

3.Opposing the above prayer, learned counsel appearing for the respondent submitted that the respondent has also admitted in the counter affidavit filed before the Family Court that she snores, stutters a little, bad odour emanates from her mouth and she was not intelligent enough in the estimation of the appellant. But, the difficulty in speaking and stammering/stuttering problems are not the grounds for divorce. Therefore, the observation made by the Trial Court that the I.Q. level of the respondent wife is below normal cannot be put against her. Learned counsel appearing for the respondent further submitted that when the appellant has accepted the respondent as his wife and lived with her for two years from the date of marriage, he cannot complain about her after two years of their marriage life on the ground that she is mentally retarded and that the observation made by the Trial Court that her I.Q. level is below normal, has not been supported by any medical evidence. Although the Trial Court has valued and assessed the discretionary attitude and conduct of the respondent wife during the Trial, the same cannot be acceptable unless it is supported by any medical evidence. Moreover, the appellant, while pleading for divorce, has invoked only Section 13(1)(i-a) of the Hindu Marriage Act, but, has not chosen to invoke Section 13(1)(iii) of the Act, which alone deals with unsound mind or mental disorder.

4.In this regard, it is useful to refer 13(1)(iii) of the Hindu Marriage Act as under:

'...13.Divorce - (1)Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

...

(iii)has been incurably of unsound mind, or has been suffering continuously or intermittently from mental



disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.'

5.A perusal of the above act shows that either the husband or the wife, when files a petition seeking dissolution of marriage, on the ground that the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent, any marriage solemnised before or after the commencement of this Act, may invoke Section 13(1)(iii) of the Hindu Marriage Act. In the present case, although the appellant has not chosen to invoke Section 13(1)(iii) of the Hindu Marriage Act, has pleaded that the respondent is a mentally retarded person, while filing the above O.P. No.4455 of 2017 before the IV Additional Family Court, Chennai, therefore, in our considered view, the Family Court had not referred the matter to the medical board. Therefore, we are inclined to remand the matter back to the Trial Court, giving liberty to the appellant to amend his grounds. Accordingly, the judgment and decree dated 17.10.2019 passed by the IV Additional Family Court, Chennai in O.P. No.4455 of 2017 are set aside and the matter is remitted back to the IV Additional Family Court, Chennai for fresh consideration and the appellant is given liberty to amend his grounds.

6.It is made clear that if the appellant makes any amendment under Section 13(1)(iii) of the Hindu Marriage Act and pays sufficient Court Fee for the same, the IV Additional Family Court, Chennai shall refer the matter to the Medical Board to ascertain as to whether the appellant has made out a case under Section 13(1)(iii) of the above Act.

7.In any event, the matter shall be disposed of, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order. With the above observation, the appeal stands disposed of. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



To

WEB COPY

1.The IV Additional Family Court,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+lcc to Mr.N.Veerasamy, Advocate Sr.66470

C.M.A. No.4710 of 2019

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srg 05/01/2022