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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A. (MD) No.286 of 2016

and

C.M.P. (MD) Nos.3922 of 2016 & 7761 of 2021

P.Deepa ... Appellant/Respondent
-vs-

B.Karthick ... Respondent/Petitioner

Civil Miscellaneous Appeal filed under Section 190 of the Family Court Act, 1984, praying to set aside the order made in H.M.O.P.No.49 of 2015, on the file of the Family Court, Tirunelveli, Tirunelveli District, dated 15.03.2016.

For Appellant : Mr.S.Palanivelayutham

For Respondent : Mr.K.Muthu Ganesa Pandian

J U D G M E N T

S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This civil miscellaneous appeal is directed against the Judgment and Decree, dated 15.03.2016, passed in H.M.O.P.No.49 of 2015, on the file of the Family Court, Tirunelveli, dissolving the marriage held between the appellant and the respondent.

2. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

3. The petition for divorce under Sections 13(1)(i-a) & 13(1)(i-b) of the Hindu Marriage Act, 1955 was filed by the petitioner on the ground that he married the respondent on 31.05.2012 at Madurai Kalavasal, as per the Hindu rites and customs. The matrimonial home was set up at Chennai Velacherry. They lived as husband and wife for two months and thereafter, the respondent, under the pretext of her ill health, went to her parents home on 14.09.2012. Thereafter, on 28.09.2012, the respondent joined the petitioner's family to go to Tirupathi and after the visit to Tirupathi, within a week's time, the parents of the respondent came to Velacherry and quarreled with the petitioner and took the respondent back to Tirunelveli. After some reconciliation, the respondent joined the petitioner on 08.11.2012. The said reconciliation did not long-last. On 20.06.2013, the respondent was tested positive for pregnancy and was

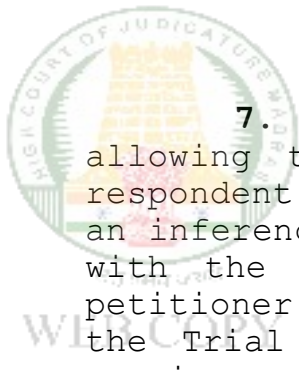


taken to her parents' house. Thereafter, there was no information about her health condition or contact with the petitioner. It is alleged in the petition that the petitioner was unable to concentrate on his work due to the mental torture caused by the respondent and he was forced to resign his job. He came down to Madurai and joined his parents to look after the family business. On 25.02.2014, a male child was born to them. When the petitioner and his parents went to see the child, they were humiliated and sent out by the respondent's family. In the said circumstances, since the attempt for mediation and conciliation got failed, notice was exchanged between the parties and the petition for divorce was filed on the ground of cruelty.

4. The respondent wife filed a counter contending that at the time of marriage, there was a demand of dowry and after negotiation, the respondent agreed to give 75 sovereign of gold and thereafter, the marriage was solemnized. The averments of temporary desertion and cruelty were stoutly denied by the respondent. It is specifically alleged in the counter affidavit that the petitioner was under the control of his mother and shattered her colourful dream about the matrimonial life. There was a misrepresentation on the part of the petitioner about his salary and financial status. The petitioner's family was heavily indebted and to clear the debts, the petitioner was spending all his income neglecting the respondent. Also, the petitioner had no interest in the matrimonial life and had sexual intercourse rarely with the respondent. Under the pressure of his parents, the petitioner resigned his job and taken up his family business, which was under the heavy loss and thereafter, he has chosen to ruin his future as well as the future of the respondent.

5. Before the Trial Court, the petitioner was examined as P.W.1 and 16 documents were marked on his support. On behalf of the respondent, apart from the respondent, three other witnesses were examined as R.W.1 to R.W.4. Ex.R1 reply notice of the respondent was marked as Ex.R1.

6. The Trial Court, on considering the evidence adduced by the parties, held that the witnesses examined by the respondent in support of her case, including her father, has not substantiated her case that she was ignorant of even the very basic facts of the marital relationship between her and the petitioner. Particularly, in respect of demand of rupees twenty lakhs to meet out the family debt, the respondent herself has retracted. Whereas, R.W.3 had spoken about it, which indicates and exposes the embellishment in respect of the debts of the petitioner and the demand of Rs.20 lakhs. The Trial Court has taken serious exception to the evidence of R.W.4, who is a neighbouring shop owner of the petitioner's father, who had deposed about intimate details about the parties' matrimonial relation.



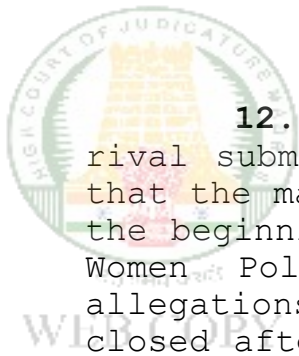
7. The yet another ground highlighted by the Trial Court for allowing the divorce petition is the serious allegation of the respondent about the sexual interest of the petitioner, which led to an inference that the respondent has no inclination to join and live with the petitioner. By making a wild allegation against the petitioner and his family members that she was subjected to cruelty, the Trial Court has concluded that there is no possibility for reunion. Hence, the Trial Court dissolved the marriage of the petitioner and the respondent.

8. Taking note of the fact that the respondent is taking care and protection of the minor boy, the Trial Court has awarded maintenance of Rs.10,000/- per month payable on or before tenth of every month. Aggrieved by the said order of dissolution of marriage, the present appeal is filed by the respondent on the ground that the order of the Trial Court is contrary to the facts and settled principles of law.

9. It is submitted by the learned counsel for the appellant that the minor contradictions between the witnesses and the usual wear and tear in the matrimonial relationship has been exaggerated and the Trial Court had accepted the falsehood of the respondent and dissolved the marriage, as a result, the respondent and the seven years old boy is left without any support, care and protection. When the chance of reunion is very bright and possible, the Trial Court has not explored the same. It is also submitted that the Trial Court, without any valid reason, has granted divorce and the payment of alimony of Rs.10,000/- is not sufficient to a boy considering the present day escalation of price and cost of living.

10. The learned counsel appearing for the appellant would strenuously argue that for trivial issues, the spouse got separated and due to lack of counselling and mediation, the drift between the spouse got widened. Even now, the respondent is ready to join with the petitioner, whereas the petitioner, in his counter affidavit filed in the interlocutory application, has reiterated his stand and expressed his unwillingness for reunion on the grounds that the messages uploaded by the respondent in her Facebook maligned him as well as his parents' dignity and it was a disrepute to his family members. The present offer made by the respondent is only to further harass him and his family members. But, there is no genuine attempt on her part to join him. The respondent had no remorse for her conduct or expressed regret all these years. Therefore, since the marriage has not reached sanctity at any point of time, the dissolution of marriage is liable to be sustained.

11. Heard the learned counsel appearing for the appellant / respondent and the learned counsel appearing for the respondent / petitioner.



12. This Court, after giving anxious consideration to the rival submissions and the evidence placed before this Court, finds that the marriage took place on 31.05.2012 was in turmoil right from the beginning. The petitioner has given a complaint before the All Women Police Station, Madurai, on 28.10.2013 making serious allegations against the respondent and her family members. This was closed after reconciliation between the parties. In spite of this, the trouble in the matrimonial life did not fade or stop. The Facebook chat (Ex.P3) do not support the present offer of the respondent for reconciliation as genuine or workable. In such circumstances, this Court finds no reason to interfere with the well settled order of the Trial Court regarding the ground of cruelty.

13. However, taking note of the status of the respondent and the earning capacity of the petitioner, this Court is of the view that from the month of December, 2021 onwards, the petitioner shall pay a sum of Rs.25,000/- (Rupees twenty five thousand only) per month towards the maintenance of the minor boy, for which the learned counsel appearing for the petitioner has no objection and in fact, he is also agreeable. It is made clear that the said amount shall be deposited to the credit of the minor boy's account on or before tenth of every English calendar month without fail and the respondent, being a mother and natural guardian of the minor boy, is entitled to withdraw the same for the welfare of the minor boy. The said amount shall be modified or altered in due course as and when required and it is open to the parties to approach the Family Court, if any modification is required and the matter need not be referred back to this Court.

14. With the above observations, the civil miscellaneous appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note :

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To:

1.The Judge,
Family Court,
Tirunelveli.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.S. PALANI VELAYUTHAM, Advocate (SR-35241[F]
dated 19/11/2021)

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