



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 03.03.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A (MD) No.301 of 2015

WEB COPY

C.Kalaiselvi

... Appellant/Respondent

Vs.

A.Sureshkumar

... Respondent/petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of Family Courts Act, 1984, to set aside the Judgment and Decree, dated 23.01.2015 made in H.M.O.P.No.52 of 2014 on the file of the Family Court, Dindigul.

For Appellant

: Mr.A.Arumugam

for Ajmal Associates

For Respondent

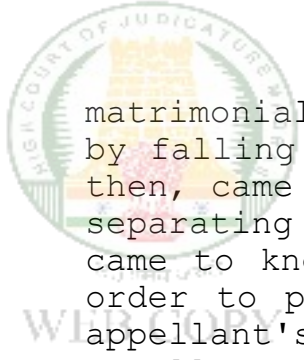
: Mr.N.Shanmugaselvam

J U D G M E N T

[Judgment of the Court was delivered by S.KANNAMMAL, J.]

This Civil Miscellaneous Appeal is preferred against the judgment and decree passed in H.M.O.P.No.52 of 2014, dated 23.01.2015 by the Family Court, Dindigul.

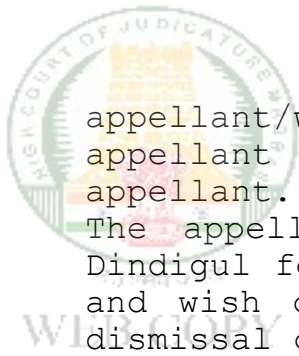
2.The case of the respondent/husband is that the marriage between appellant/wife and the respondent/husband was solemnized on 15.02.2009 at Virudhunagar Hindu Nadar Marriage Hall, Dindigul as per Hindu Rites and customs. The appellant, a B.E graduate, was working in WIPRO and was earning Rs. 24,000 per month and the respondent is a MCA graduate, earning Rs. 10,000 per month by working in a small software company. After the marriage both the appellant and the respondent started their matrimonial home at Besant Nagar, Chennai happily. The appellant's father often used to visit Chennai and along with the appellant he often defamed the respondent by denoting his lesser income than the respondent. Following which the appellant changed her attitude and started to show her hatred towards the respondent/husband. The father of the appellant always used to interfere in the personal life and family affairs of the appellant and the respondent. The appellant isolated the respondent totally by heeding the ill-advise of her father and thereby treated the respondent with mental cruelty. The appellant was conceived and the parents of the appellant even attempted to abort the foetus but failed. The respondent/husband has gone to the extent of committing suicide because of the mental cruelty caused to him. Both the appellant and the respondent came back to Dindigul after the respondent lost his job and the appellant left the



matrimonial home on 27.06.2009, in spite of the respondent's request by falling on the feet of his father in law. The respondent/husband then, came to know the plan of the appellant's father of permanently separating the appellant from the respondent/husband and he also came to know that the appellant has resigned her job at Chennai in order to permanently stay at her parent's house in Dindigul. The appellant's father deliberately told the respondent that the appellant will live in his house only and if the respondent is willing he can come and live with his daughter otherwise will be given her daughter into other marriage. The appellant has also stopped all the communications with the respondent/husband from June 2009 onwards. The appellant/wife did not object when her father told that there should not be any relationship with the respondent. On numerous occasions, the respondent/husband was sent out by the parents of the appellant/wife with insults and obscene language. The respondent/husband was not allowed to see the appellant. The appellant delivered a child on 28.12.2009 and when the respondent/husband went to see the child, the appellant and her parents did not allow the respondent/husband and also defamed him.

3.The respondent/husband has been defamed, insulted and has gone through a lot of pain right from the date of marriage because of the attitude of the appellant and her parents. The respondent issued a legal notice, dated 03.02.2011 for restitution of conjugal rights, which was received by the appellant on 20.05.2011 and issued a reply with false allegation but admitted to have a conjugal life for two years at Dindigul and thereafter at any place where the respondent is willing but the appellant has not taken any steps for having conjugal life. The appellant has deserted the respondent/husband and living with her parents since June 2009 without any valid reason. The respondent/husband filed a petition for restitution conjugal rights in H.M.O.P.No.161 of 2011 which was referred to Lok Adalat, but the appellant/wife failed to appear before the mediation. The respondent has been living separately without the company of the appellant for the past 34 months. The respondent/husband was also not allowed to see the appellant or his child. Hence, he filed a petition for divorce.

4.The appellant/wife denied all the allegations and contended that within few days from the date of marriage, the respondent/husband harassed the appellant by accusing that the ''Sridhana'' brought by the appellant was insufficient and abused the parents of the appellant/wife. The appellant's father never interfered with the family and personal life of the parties. The respondent would withdraw the entire salary of the appellant on the date of salary but refused to fulfill the basic needs of the appellant. It is the respondent who wanted to abort the foetus and the appellant in order to save herself and her baby, resigned her job and came to the respondent/husband house at Dindigul. The appellant was constrained to leave the matrimonial home because of



appellant/wife delivered the child on 28.12.2009 and since then the appellant and the child are in the house of the parents of the appellant. The respondent never attempted to see the appellant/wife. The appellant was ready to live with the respondent/husband at Dindigul for few months and thereafter at any place as per the will and wish of the respondent. Hence, the appellant/wife prayed for dismissal of the petition.

5 Before the Family Court, the respondent/husband examined himself as P.W.1 and marked Ex.P1 to P6. On the side of the appellant/wife, she was examined as R.W.1 and Exs.R1 to R3 were marked.

6.The learned Family Court Judge, Tirunelveli, after perusing the materials available on record, both oral and documentary, has granted decree of divorce in H.M.O.P.No.52 of 2014, dated 23.01.2015. Aggrieved by the said order, the appellant/wife is before this court.

7.Heard both sides and perused the materials available on record.

8.The points for consideration in this Civil Miscellaneous Petition are:

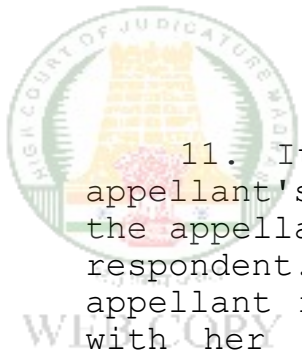
i) whether the acts of the appellant amounts to cruelty and whether the respondent is entitled for divorce under this ground?

ii) whether the acts of the appellant amounts to desertion and whether the respondent is entitled for divorce under this ground?

iii) whether the learned Family Court Judge was right in allowing the petition filed by the husband in H.M.O.P No. 52 of 2014?

9. There is no dispute about the marriage between the appellant/wife and respondent/husband and a child was born on 28.12.2009 out of wedlock. Admittedly, the appellant/wife was working as a Software Engineer in WIPRO at Chennai and the respondent/husband was working in a private concern at Chennai getting a lesser salary than the appellant at the time of marriage. The appellant/wife has also admitted in her cross examination that she was earning more than her husband. It is also an admitted fact that both the appellant/wife and the respondent/husband lived together only for four months.

10.According to the respondent, the appellant was always influenced by her father and due to the ill advises given by the appellant's father, the appellant ill-treated and insulted the respondent and his family members and thereby treated the respondent with mental cruelty.

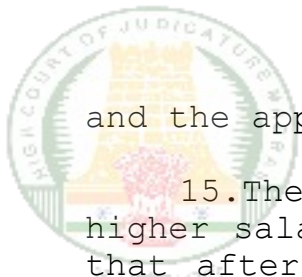


11. It is also the case of the respondent herein that the appellant's father insulted the respondent for his low income than the appellant and the appellant openly showed her hatred towards the respondent. Further, heeding the ill advise of her father, the appellant neglected the respondent totally and spent her time only with her colleagues and her father by isolating the respondent totally which caused him mental cruelty. When the same was questioned, the father of the appellant told that her daughter would talk and go with anybody and the respondent should not question that. The father of the appellant insulted the respondent and treated him like a slave which pushed the respondent to the extent of attempting suicide.

12. It is further the case of the respondent that the appellant's father directed the respondent to have his food separately and if he fails so, they would be separated. The father of the appellant also threatened the respondent not to approach the respondent for anything including sexual relationship without his permission. It is further the case of the respondent that the appellant's father told that the appellant will be given married to a son of the milkman of his place after getting divorced from the respondent which made the respondent to attempt to commit suicide. The respondent also contended that when the appellant got conceived, the parents of the appellant attempted to abort the foetus.

13. On the other hand the appellant/wife contended that her father never interfered with the family life and it was the respondent/husband treated her with mental cruelty and as per the demand of the respondent/husband a sum of Rs.2,50,000/- was given as dowry apart from jewels. Further it is contended that as per the demand of the respondent/husband grocery for six months were purchased. It is also contended that the respondent/husband lost his job and never cared to spend for the family expenses. The appellant and her parents were insulted by the respondent and his parents that the "seervarisai" given was not enough. The appellant/wife has contended that she is willing for reunion.

14. The respondent/husband has clearly spoken about all the ill-treatments and insults, he was subjected to in the matrimonial life with the appellant. The respondent in his cross examination has also reiterated the same firmly. It is the firm and categorical allegations of the respondent that his father-in-law was the root cause for the separation and the appellant too joined with her father in insulting the respondent and refused to have a conjugal life. It is also the categorical statement of the respondent that the attitude of the respondent by heeding the words of her father caused him mental cruelty which made him to the extent of attempting to commit suicide. But on perusal of the depositions of PW1 in his cross examination no question, and not even a suggestion was put to respondent by denying all his allegations against his father-in-law



and the appellant.

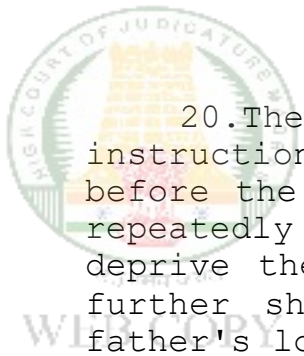
15.The appellant in her cross examination admitted about her higher salary than the respondent. The appellant had also deposed that after living with respondent for four months at Chennai both returned to Dindigul during February. She further deposed that she come to her father-in-law house during the month of June and returned to her parents home as there was no protection for her and her child and she never returned to her matrimonial home.

16.Though the appellant had made allegation that the respondent insisted her to abort the child and when the appellant refused the respondent in order to abort the child took her out in the two wheeler and drove the same in a rash and negligent manner on the speed breakers and further threatened to kill the appellant by making her starve without food admittedly not even a single complaint was lodged against the respondent. No specific day, date was stated by the appellant for her very serious allegations.

17.The Family Court has also rightly observed that the appellant arrived at Dindigul from Chennai by Vaigai Express accompanied by her father and the same night the appellant left the matrimonial home at night by 10.30 p.m. and it is highly ridiculous to say that the appellant found that she has no safety or security in her husband's house within two hours arrival.

18.On careful perusal of the entire averments of the appellants counter statement the appellant has not stated any gruesome incident that had happened during her stay at the matrimonial house. The husband asking for the salary of the wife is common and the wife need not project that as an offence. The appellant herein has threatened the respondent that if he asks for the salary she would run away from the respondent. The appellant's father also interfered and warned the respondent that he should not question about the salary of his daughter and he should take his food outside. Further the appellant's father told that if the respondent failed to do so, he would take his daughter to his home. Earning a salary less than the wife is not so very uncommon in the current society. But earning a lesser salary than that of the appellant/wife and the respondent/husband losing his job was the reason for the drift in the matrimonial life which made the appellant to leave the matrimonial home at the influence of her father is very unfortunate.

19.With regard to the resignation of job, the appellant had first stated that she resigned her job with the consent of her mother-in-law and later stated that she was scolded by her mother-in-law for resigning her job which is contradictory and would prove the attitude of the appellant. As rightly pointed out by the Family Court depriving the husband of conjugal bliss and marital pleasure itself amounts to a mental cruelty.



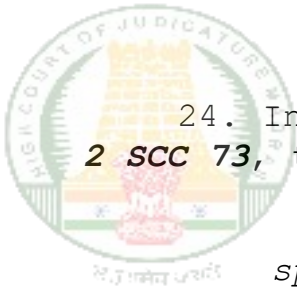
20.The Family Court has also made observation that despite the instructions of the court, the appellant has not produced the child before the Court even for a single hearing when the respondent had repeatedly requested for the same. The appellant has no right to deprive the right of the respondent from seeing his own child and further she has no right to deprive the right of the child of father's love and affection.

21.On 18.05.2011 the respondent issued a legal notice (Ex.P2), calling upon the appellant to have a conjugal life with him. The appellant sent a reply notice by denying all the allegations, but expressed her willingness to have a conjugal life with the respondent with a condition to live at Dindigul for two years and thereafter at any place suggested by the respondent.

22.As rightly pointed out by the Family Court, the appellant has not taken any steps for having a conjugal life with the respondent even after the lapse of five years which would clearly prove the intention of the appellant not to reunite with the respondent.

23.In the case of **V.Bhagat v. D.Bhagat (Mrs.) reported in (1994) 1 SCC 337**, the Court observed, in paragraph No.16 at page 347, as under:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."



24. In **Savitri Pandey v. Prem Chandra Pandey** reported in (2002) 2 SCC 73, the Court stated as under:

"Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

25.While coming to the issue of desertion, admittedly the appellant left the matrimonial home on 27.06.2009 to her parent's house and since then she has deserted the respondent without any valid cause or reason. It is an admitted case of the appellant that she is residing with her parents for the past six years and she has not contacted the respondent except for a single phone call. Hence it is clear that the appellant has deserted the respondent for more than the statutory period as required under Section 13(1)(1-b). The appellant has not stated any valid and convincing reason for her desertion.

26.The appellant in her cross examination, dated 11.12.2014 has deposed as follows:

“என்னை சேர்ந்து வாழ்சொல்லி மனுதாரர் திண்டுக்கல் சார்பு நீதிமன்றத்தில் என் கணவர் வழக்கு தொடர்ந்தார். அதில் நான் சேர்ந்து வாழ விருப்பப்பட்டதால் லோகஅதாலத்தில் சமரசத்திற்காக அனுப்பினார். அதற்கு நான் வரவில்லை சாட்சி தானே தனக்கு சென்னையில் தேர்வு என்று கூறுகிறார். லோகஅதாலத்தில் எனக்கு வரமுடியாத காரணத்தை குறிப்பிட்டு நான் தகவல் எதுவும் அனுப்பவில்லை”.

27.If the appellant really had any intention to join with the respondent, she could have very well expressed her willingness on coming to know about the filing of petition by the respondent for the restitution of conjugal rights or would have promptly attended the mediation in order to save her matrimonial life.

28.The Family Court has also rightly pointed out the attitude of the appellant about her unwillingness by mentioning about her reply notice, counter affidavit and the proof affidavit. For the legal notice sent by the respondent for reunion the appellant sent her reply notice asking the respondent to stay with her at Dindigul and thereafter shall move to any place of the



respondent choice. Then in her counter affidavit filed on 26.04.2013 the same condition has been imposed. Further in her proof affidavit filed on 11.12.2014, the appellant had stated the same condition. At para No.15 of her affidavit the appellant has stated as follows:-

'15.நான் எப்போதும் மனுதாரருடன் சேர்ந்து வாழ தயாராக உள்ளேன். எனது குழந்தைக்கு தற்போது 5 வயதாகிறது. அதனால் குழந்தையின் நலன் கருதி ஆனால் சில காலம் திண்டுக்கலில் சேர்ந்து வாழ்ந்து பின்பு மனுதாரர் விருப்பப்படி மனுதாரருடன் எங்கு வேண்டுமானாலும் சேர்ந்து வாழ தயாராக உள்ளேன்".

29.The above clear, categorical and firm decision of the appellant from 2011 onwards would clearly prove that the appellant has no intention to join with the respondent but only to harass him. If the appellant had been really interested in living with the respondent she would definitely had taken steps by filing petition for restitution of conjugal rights. At least she would have got reunited with the respondent after filing of petition for restitution by the respondent.

30.It was the respondent who took earnest efforts for saving the matrimonial life by sending legal notice by filing petition for restitution of conjugal rights in H.M.O.P.No.161 of 2011 (Ex.P4), and filed memo for referring the matter for Mediation (Ex.P6). Since the appellant failed to appear before mediation, the respondent left the petition for dismissal by not pressing the same.

31.The Family Court has rightly pointed out the attitude of the respondent in the order and observed that the intention of the respondent does not reflect her bonafide intention to continue the matrimonial consortium and cohabitation permanently and her desertion is also without any reasonable cause and valid reasons. The entire attitude of the appellant coupled with the failure on her part to take any steps in a considered manner to resolve the dispute and to join her husband in order to live together clearly establishes the grounds of desertion and entitling the respondent to have a decree for divorce on the ground of desertion also and held that the respondent is entitled for a decree of dissolution of marriage on both grounds of cruelty and desertion.

32.The Hon'ble Supreme Court in the case of Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi, reported in 2002 (1) SCC 308, has held as follows:-

'Desertion in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are :

1. The factum of separation;

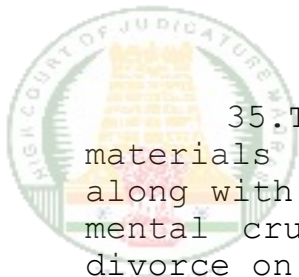


2. The intention to bring cohabitation permanently to an end animus deserendi;

3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period; The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include willful neglect of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes willful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.

33. In the present case, the appellant left the matrimonial home without any valid reason and deserted the respondent beyond the statutory period in spite of the respondents earnest efforts for reunion.

34. As discussed in the previous paragraphs, the appellant at the influence of her father had insulted, humiliated, refused cohabitation and made the respondent even to attempt suicide, deprived the husband of marital pleasure and deprived the right of respondent from seeing his own child and thus obviously caused mental cruelty to the respondent. Hence, we are left with no other option but to conclude that the acts of the appellant amounts to cruelty and the respondent is entitled for divorce on the ground of cruelty.



35.The Family Court also after considering the entire materials available on record has rightly held that the appellant along with her father and family members treated the respondent with mental cruelty and the respondent is entitled for the relief of divorce on the ground of cruelty and granted a decree of divorce.

36. We are of the considered view that the well considered decree of divorce granted by the trial Court, does not call for any interference by this Court.

37.In the result, the Civil Miscellaneous Appeal is dismissed and the order and decree passed by the Family Court, Dindigul, in H.M.O.P.No.52 of 2014, dated 23.01.2015, is confirmed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

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Sub Assistant Registrar(CS)

vsd

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Family Court,
Dindigul.

2.The V.R section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-8749[F] dated 04/03/2021)

C.M.A(MD)No.301 of 2015
03.03.2021

KMK(CO)
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