



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.08.2021

Delivered On : 09.09.2021

CORAM

THE HONOURABLE MRS.JUSTICE R. THARANI

C.M.A.(MD)No.996 of 2018

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D.S.Jenaris

... Appellant

Vs.

Shobana Jackulin

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, to set aside the fair and decretal order dated 11.05.2018 passed in I.D.O.P.No.20 of 2018 on the file of the learned District Judge, Family Court, Kanyakumari Division at Nagercoil.

For Appellant	: Mr.S.Louis
For Respondent	: Mr.R.T.Arivu kumar
	For Mr.N.Ga.Natraj

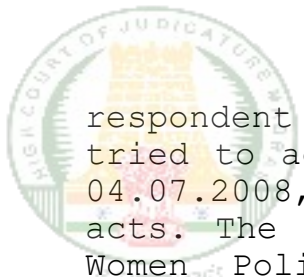
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order passed in I.D.O.P.No.20 of 2018 dated 11.05.2018, on the file of the learned District Judge, Family Court, Kanyakumari Division at Nagercoil.

2.The appellant herein is the petitioner and the respondent herein is the respondent in the petition. The appellant has filed a petition in I.D.O.P.No.20 of 2018, under Section 10(ix)(x) of the Divorce Act.

3.A brief substance of the petition in I.D.O.P.No.20 of 2018 is as follows:

The petitioner married the respondent on 16.04.2001 as per the Christian rites and customs. Even from the date of marriage, there was misunderstanding between the couples. The respondent used to scold the petitioner using filthy words. To convince the respondent, the petitioner took her to Vadakkankulam and set up a separate house. The respondent was adamant, arrogant and nagging. The mother of the petitioner let out her house for rent to discharge the debts that she incurred for the construction of the house. The petitioner wanted to occupy a portion of the house. The mother of the petitioner vacated the tenant and permitted the petitioner and respondent to reside there. The respondent ill treated the mother-in-law. From 05.03.2008, the petitioner and the respondent are living separately. The petitioner sent a notice on 04.07.2008. The



respondent could not bear a child, due to some physical ailment. She tried to adopt a child without the knowledge of the petitioner. On 04.07.2008, the petitioner sent a notice not to indulge in such acts. The respondent filed several false complaints before the All Women Police Station, Nagercoil and in Nesamony Nagar Police Station. On 29.12.2010, the respondent filed a false complaint before the All Women Police Station, Nagercoil against the petitioner, his mother, sister and brother in law. They had to get anticipatory bail from this Court. After enquiry, the police dropped the action against the petitioner. The petitioner suffered from Bacillary Dysentery and he was taken to George Mission hospital at Nagercoil, where he was kept in ICU for 10 days. There is no possibility of a healthy re-union and prayed an order of divorce.

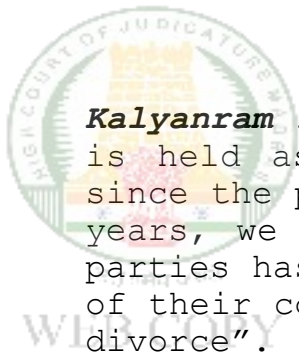
4. Brief substance of the counter filed by the respondent therein is as follows:

The petitioner and respondent are leading a happy wedded life. The petitioner was only a diploma holder working in the Mechanical Department in the Indian Engineering College at Vadakkankulam. The dispute started, when they started living at Ramanputhoor along with his mother. On the instigation of the mother and sister, the petitioner ill-treated the respondent. The respondent spent more than 2 ½ lakhs for the treatment of the petitioner. The respondent never made an attempt to adopt a child. The petitioner did not provide anything for the respondent and refused to take food from the respondent. Several attempts were made by Advocate Mr.R.P.Rajaiah and pastor Mr.Gnanamoni for re-union but their efforts were not fruitful.

5. On the side of the petitioner therein, one witness was examined and 19 documents were marked. On the side of the respondent therein, one witness was examined and 10 documents were marked. After considering both sides, the trial Court dismissed the petition. Against which, the appellant herein has filed this Civil Miscellaneous Appeal.

6. On the side of the appellant, it is stated that the trial Court failed to note that the respondent was pestering the appellant to disown his widowed mother and sister. P.W.2 confirm the allegation of harassment. A compromise memo was filed by both the parties wherein it is clearly stated that "both the parties withdraw all the allegations made against each other in all the proceedings pending before various Courts unconditionally including the averments made in the petition for divorce filed by the respondent/husband in I.D.O.P.No.235 of 2010 on the file of the learned District Judge, Family Court".

7. The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in the case of **Sandhya Rani v.**



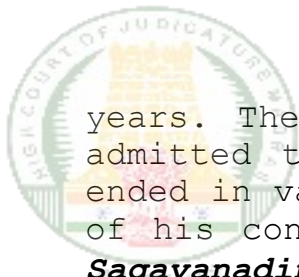
Kalyanram Narayanan reported in **(1994) Supp. 2 SCC 588**, wherein it is held as follows: "this Court reiterated and took a view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce".

8.The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in the case of **Chandrakala Menon v. Vipin Menon** reported in **(1993) 2 SCC 6**, wherein it is held that "the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because according, to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce".

9.The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in the case of **Kanchan Devi v. Promod Kumar Mittal** reported in **(1996) 8 SCC 90**, wherein it is held that "the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce".

10.The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court in the case of **V.Bhagat v. D.Bhagat** reported in **(1994) 1 SCC 337**, wherein it is held that "while allowing the marriage to dissolve on ground of mental cruelty and in view of the irretrievably breakdown of marriage and the peculiar circumstances of the case, held that the allegations of adultery against the wife were not proved thereby vindicating her honour and character. This Court while exploring the other alternative observed that the divorce petition has been pending for more than 8 years and a good part of the lives of both the parties has been consumed in this litigation and yet, the end is not in sight and that the allegations made against each other in the petition and the counter by the parties will go to show that living together is out of question and reapproachment is not in the realm of possibility and prayed the order of divorce has to be granted".

11.On the side of the appellant, it is further stated that when the parties have been living separately for many years, there is no chance of re-union. The respondent asked for separate residence. Even when a separate residence is arranged, the respondent was not happy and she continued to use abusive words and nagging the appellant. All the efforts taken for peaceful settlement were failed and the parties are living separately for the past 13



years. There is no possibility of re-union. Both the parties have admitted that the father of the church tried for re-union, which ended in vain. The marriage is irretrievably broken down. In support of his contention, a judgment of this Court in the case of **Martin Sagayanadin v. Antoinette** in **C.M.A.No.1813 of 2013** is cited.

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12.The learned counsel for the appellant would rely upon a judgment of the Hon'ble Supreme Court in the case of **Munish Kakkar v. Nidhi Kakkar** in **Civil Appeal No.9318 of 2014**.

13.On the side of the respondent, it is stated that the respondent was not having a child, even after one year of marriage. No medical document was filed on the side of the appellant to show that the respondent was medically unfit to bear a child. Ex.P10, Lab report is insufficient to prove that the respondent could not bear a child. Ex.R2, Ex.R3 and Ex.R7 prove that the respondent is fit enough to deliver a child. The respondent is ready to undergo any medical test. The parties are living under the same roof till today.

14.On the side of the appellant, it is stated that the wife is residing in a portion of the house of the mother-in-law. The house belongs to the mother-in-law. The mother-in-law succeeded in all the three Courts. The wife is still refusing to vacate the house of the mother-in-law and that the parties are not living together.

15.It is seen that both the parties are alleging each other regarding their medical fitness. The alleged medical fitness is not a ground for divorce. The ground raised by the appellant is mental cruelty. It is seen from the records that so many efforts were taken by the well wishers including an advocate and a church pastor ended in vain. Admittedly both the parties were living separately for the past 13 years. There is no chance of re-union. In the above circumstances, it is decided that the marriage is irretrievably broken and the order of the trial Court is to be set aside. The marriage between revision petitioner and the respondent is to be dissolved.

16.In the result, this Civil Miscellaneous Appeal is allowed. The order passed in I.D.O.P.No.20 of 2018 dated 11.05.2018, on the file of the learned District Judge, Family Court, Kanyakumari Division at Nagercoil is set aside. No Costs.

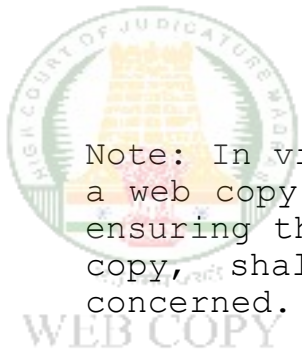
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Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)



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 District Judge, Family Court,
Kanyakumari District at Nagercoil.

Copy to:

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

+1 CC to Mr.N.Ga.Natraj, Advocate (SR-28806)

C.M.A. (MD) No. 996 of 2018

09.09.2021

RS (01.10.2021) 5P 5C