



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

C.M.A. (MD) No.273 of 2017

G.Kannan ... Appellant/Petitioner
-vs-

R.Anitha ... Respondent/Respondent

Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, 1984, praying to set aside the fair and decreetal order dated 28.04.2016, made in H.M.O.P.No.696 of 2014, on the file of the Family Court, Madurai.

For Appellant : Mr.Sulthan Basha
for M/S.Ajmal Associates

For Respondent : Mr.K.Balasundharam

J U D G M E N T

S.VAIDYANATHAN, J.

and

DR.G.JAYACHANDRAN, J.

This civil miscellaneous appeal is preferred by the husband being aggrieved by the dismissal of his petition for divorce.

2. For the sake of convenience, the husband and wife are referred to as "the appellant" and "the respondent" respectively.

3. The facts of the case are that:

3.1. On 01.06.2005, the appellant married the respondent, who is none other than his sister's daughter. It is the case of the appellant that after the marriage, they both lived together and begotten one female and one male child. However, due to the conduct of the respondent, there was disharmony among them. The respondent left the matrimonial home along with the jewels and documents kept in his house. It is

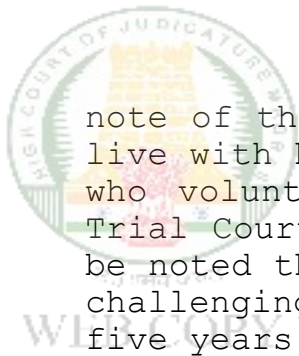


specifically alleged by the appellant that the respondent used to talk with her friends, particularly male friends, over phone and used to harass him mentally and physically. The appellant being a Police Constable, complaints were given against him by the respondent to the higher officials alleging ill-treatment, harassment and dowry demand, which put him in peril at his work place. In spite of the Panchayat held in the presence of the elders, the drift between the spouse got widened and therefore, they both decided to dissolve the marriage by consent and filed H.M.O.P.No.220 of 2014. It is alleged by the appellant that the respondent, on receiving Rs.5,00,000/- as permanent alimony for herself and two children, signed the consent petition. But, for the reasons best known, she withdrew her consent leading to dismissal of the mutual divorce petition. Therefore, the petition for divorce was filed alleging that the respondent failed to discharge her duties as a wife and voluntarily deserted him for more than three years and by her conduct caused cruelty. The petition was filed under Section 13(1)(i-a) & (i-b) of the Hindu Marriage Act, 1955 praying for dissolution of the marriage on the ground of cruelty and desertion.

3.2. The said divorce petition was vehemently opposed by the respondent by filing a counter, wherein a specific allegation was made against the appellant that he had developed illicit intimacy, when it was objected to by her, she was put to torture and ill-treatment alleging that there are other women ready to marry him with dowry. The appellant forced the respondent to leave the matrimonial home with her children, which forced her to file a maintenance petition before the Mahila Court.

4. Before the Trial Court, the appellant was examined as P.W.1 and his mother was examined as P.W.2 and 18 documents were marked on his support. On behalf of the respondent, she was examined as R.W.1 and her mother was examined as R.W.2 and 12 documents were marked on her support.

5. Before advertng to the merits of the evidence adduced by the parties, it is to be noted that the respondent is the sister's daughter of the appellant. Thus, P.W.2 is the maternal grandmother of the respondent. R.W.2 is the sister of the appellant. In the light of the close relationship between the witnesses and the other documentary evidence, the Family Court concluded that the appellant failed to establish that the respondent harassed him by giving false complaints and caused cruelty. He also failed to prove the payment of Rs.5,00,000/- as permanent alimony. Regarding desertion, taking



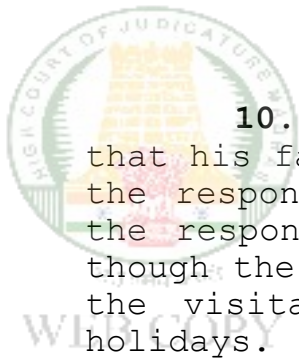
note of the plea raised by the respondent that she always wanted to live with her husband along with the children, it was the appellant, who voluntarily neglected her throwing frivolous allegations, the Trial Court dismissed the divorce petition on 28.04.2016. It is to be noted that this civil miscellaneous appeal filed by the appellant challenging the dismissal of the divorce petition is pending for five years since then.

6. After hearing the submissions made by the learned counsel on either side, this Court, in order to ascertain as to whether really there is any possibility for reunion, requested the parties to appear before this Court in person. Accordingly, the parties have appeared before this Court in person. While we interacting with them, they made allegations and counter allegations against each other. For every documents filed in the proceedings, the other side has some explanation / reasons for execution of the same. But, the fact remains that in spite of several attempts made to compromise, the respondent is not inclined to withdraw her proceedings whatever she has initiated against the appellant, but she wants to live with the appellant. The appellant is ready to forego everything, but not willing to join the respondent.

7. It is pertinent to note that the appellant is working in the Uniformed Services and any complaint made against him to the higher officials, it will have a serious impact in his service. It is the contention of the appellant that right from the beginning, at least 50 complaints were given against him by the respondent with frivolous allegations and due to which, he was put to mental agony not only in the home, but also in the work place. Though the allegations were denied, the copy of the complaints dated 30.10.2014, 02.05.2018 and 10.05.2018 addressed to the Chief Minister; Commissioner, National Commission for Women; Commissioner, Human Rights Commission; Commissioner, State Women Commission; District Collector, Madurai; Superintendent of Police, Madurai and Inspector of Police, Alanganallur Police Station, all would clearly show that the respondent is more interested in making complaints against the appellant even during the period of separation as well as when this appeal is pending.

8. Being a matrimonial dispute, the Court has to see the subsequent conduct of the respondent. For the past five years, after the dismissal of divorce petition, there is no improvement in their relationship.

9. In such circumstances, after interacting with the parties, this Court is of the view that the marriage has reached the point of irretrievable brake down due to the prolonged separation and mutual mistrust. In the interest of the children as well as the spouse, the marital bond has to be severed so that they can choose their own life as per their wish.



10. When we enquired the parties, the appellant submitted that his father bequeathed his self-acquired property in the name of the respondent. He further submitted that children shall be with the respondent and he will meet out the expenses for them. Even though the custody being with the mother, as a father, he must have the visitation right and to take the children with him during holidays.

11. Though the visitation right have to be decided by the appropriate forum, in order to prevent the mental agony that may be caused to the children, as a temporary measure, till the guardianship original petition is filed, the children be with the mother and during weekends, excluding examination time, it is open to the appellant to visit the children and the respondent should not prevent the appellant visiting the children.

12. At this juncture, the learned counsel for the respondent submitted that the Court ordered Rs.12,000/- per month as maintenance to the respondent, whereas the appellant is paying only Rs.8,000/- per month. If there is any grievance regarding payment of maintenance, it is always open to the respondent to approach the appropriate forum and recover the maintenance arrears from the appellant.

13. The respondent shall furnish her savings bank account number to the appellant and the appellant shall transfer the maintenance amount to her bank account.

14. In the maintenance petition, a sum of Rs.12,000/- was directed to be paid by the appellant to the respondent. Since the said amount has not been paid, attachment was ordered and a sum of Rs.8,000/- has been debited from his account every month and remitted to the respondent. The appellant would submit that he will remit Rs.12,000/- every month on his own to the account of the respondent without fail. The arrears of Rs.4,000/- payable for the period of 24 months will be paid within a period of three months from the date of receipt of a copy of this Judgment.

15. It is needless to mention that the amount agreed to be paid by the appellant to the respondent is not a final one and it is open to the parties to seek for modification before the appropriate forum, if so advised.

16. Accordingly,

- the civil miscellaneous appeal is allowed;
- the fair and decreetal orders dated 28.04.2016, made in H.M.O.P.No.696 of 2014, on the file of the Family Court, Madurai, are set aside;
- the marriage held between the appellant and the respondent is hereby dissolved;



➤ as interim measure, regarding maintenance and visitation rights, the parties shall comply with the above directions till any modification or alteration by the competent Court;

➤ No costs.

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Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note :

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

To:

1.The Judge,
Family Court,
Madurai.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-37961[F] dated 09/12/2021)

C.M.A. (MD) No.273 of 2017

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