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C.M.A.No.2028 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2022
Pronounced on : 17.11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2028 of 2016
and C.M.P.No.15989 of 2022

R.Kathiravan

...Appellant

Vs.

A.Bhuvaneshwari

...Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984 against the fair and decretal order dated 30.03.2016 in H.M.O.P.No.413 of 2011 on the file of the Principal Family Judge, Coimbatore.

For Appellant :	Mr.Sai Krishnan for Sai Bharath and Ilan
For Respondent :	Mr.M.Swathish Kumar for M/s.Sarvabhuman & Associates



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JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN.J.)

The Appeal is filed by the husband challenging the order passed by learned Principal Family Judge, Coimbatore in H.M.O.P.No.413 of 2011 dismissing his petition for divorce filed on the ground of cruelty.

2. The appellant filed the petition for divorce on the ground of cruelty. His case before the family Court was that he got married to the respondent on 27.05.2001 at Coimbatore. The appellant is the only son of his parents. He had to take care of his aged parents and also had to look after the family business. After the marriage, the appellant and the respondent started their matrimonial life at Sulur at Coimbatore in the house of the appellant. Since the respondent was working as a lecturer in Avinashilingam College, the appellant and the respondent shifted their residence to a rented house near the college, where they lived from June 2003 till June 2005. Subsequently, the respondent secured admission as a Research Scholar in the University of New Brunswick in Canada. In order to get a Doctorate Degree, the Appellant and



the Respondent left for Canada on 27.01.2005 on the understanding that the respondent would complete the Ph.D course within a period of three years. In May 2006, the appellant and the respondent came back to India to look after the business of the appellant's father after the appellant's father fell sick at that time. During December 2006, the respondent left for Canada to pursue Ph.D course. After about one year September 2007, the appellant also left for Canada and joined the respondent. The appellant joined a private company there. In the month of February 2009 the appellant's father became sick again and therefore, the appellant had to return to India. The respondent did not accompany the appellant but returned to India in July 2009. The respondent thereafter without the consent of appellant and without informing him left for Canada in September 2009. Till 29th May 2010, the respondent did not give any information about her date of return from Canada. The appellant was under the impression that the respondent would live with him in Coimbatore and perform her marital obligations. The respondent had frustrated the matrimonial life and created a deep scare by not informing him and leaving for Canada. She had not performed her marital obligations. Only in August 2010, the appellant came to know that the respondent had returned from Canada and staying with her parents. Even thereafter, she had not cared to



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inform the appellant about her presence in India. This act of respondent established that her intention not to live with the appellant. The appellant had been patient till then. Since the respondent, by her conduct indicated in almost uncertain terms that she was not willing to live with the appellant, the appellant had suffered mental cruelty. The marriage has broken down irretrievably, and the conduct of the respondent has made it impossible for a peaceful living with her. Therefore, the appellant sent a notice on 8/9/2010 to the respondent. The respondent sent a reply on 29/01/2010 making false allegations. Thereafter, the appellant felt that no useful purpose would be served in keeping the marriage alive. Therefore, he had filed the petition for divorce.

3. The respondent denied all the averments as false, frivolous and vexatious. The respondent admitted that she went to Canada after obtaining a student's loan for doing MBA. They were living happily in Canada. In the month of February 2009, the appellant rushed back to India to attend to his aged father. In July 2009, she returned to India to attend to the appellant's sick parents and she was in India till the 3rd week of September 2009, Since she had to complete Ph.D degree, she returned to Canada in the the 3rd week



of September. In fact, it was the Appellant who arranged for the tickets.

Therefore, the appellant's allegations that she left for Canada without his consent or information is false. During the stay in Canada, their relationship was alright and later, on the ill advice of his family members, his attitude changed. The respondent made several attempts to contact the appellant and the appellant refused to talk to her. The respondent's mother, her father and brother had visited the appellant's house to convince them, but they refused to talk to them. The respondent cannot be accused of desertion. Before, her return to India, the respondent informed the appellant about her return and the appellant did not care to receive her at the airport. Even after return to India when she went to the appellant's house they did not let her into the house. During the entire matrimonial life, when they were living together they had good understanding and she was dutiful wife who gave conjugal happiness to the appellant. The conduct of the appellant changed after September 2009. The respondent is always willing to resume the matrimonial life as she is prepared to digest everything. She is now only interested in the matrimonial life with the appellant. The appellant's family members have shown unreasonable attitude and they had prevented any reasonable talks for reconciliation and for a reunion. The appellant is in the clutches of his family



members. The family members are petty minded and preventing any effective steps for resumption of matrimonial life. The appellant is retaining gold jewels to the extent of 51 sovereigns, silver lamp, silver vessels etc and retaining silver coins obtained in Canada. Hence, the appellant's averments that the respondent is guilty of desertion is false. His conduct is influenced by his parents and he had not supported the respondent financially. He is now planning to have a second marriage. It is the appellant who has inflicted cruelty on the respondent. Hence she prayed for dismissal of the divorce petition.

4. Before the Family Court, the appellant examined himself as P.W.1 and marked six documents Ex.P.I to Ex.P.6. The respondent examined herself as R.W.I her brother as R.W.2 and one Selvanayagai as R.W.3. She marked seven Exhibits as Ex.R.I to Ex.R.7.

5. The learned Judge on consideration of the pleadings and documents on record found that the appellant had not established cruelty and therefore, he is not entitled for divorce as prayed for by him.



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6. Aggrieved against the fair and decreetal order dated 30.03.2016 made in H.M.O.P.No.413 of 2016, the appellant has filed the present appeal.

7. The learned counsel for the appellant would submit that the respondent had not fulfilled her conjugal obligations and there was a difference of opinion continuously even when they were in Canada. She was aggrieved by the fact that the appellant had left for India to take care of his aged parents. She refused to have conjugal relationship without any physical incapacity or valid reasons for a considerable period of time. The respondent refused to accompany him when he left from Canada to India to take care of his father. The respondent returned to India only in July 2009. Even thereafter, she did not care to visit the appellant or his family members. The appellant was always waiting patiently so that the respondent would mend her ways. Her version that she came to India only to take care of his appellant's parents is false. To top it all, the respondent left Canada in September 2009 without even informing the appellant. The averment that it was the appellant who arranged for the tickets is false. The respondent had not even informed her visit to Canada. This has caused adverse effect on his mind and has



caused mental cruelty. This was the last incident which put an end to otherwise strained marital life. The very fact of her leaving for Canada and not informing the appellant is a grave conduct. It is not the number of incidents that are relevant to prove mental cruelty. The conduct of the respondent in making preparation for travel and obtaining documents cannot be taken as an impulsive conduct. She had planned her travel and ensured that the appellant was not informed. This kind of a planned action of the respondent is bound to create prolonged effect on the mind of the appellant. Therefore, the act of leaving for Canada without informing cannot be treated as an impulsive conduct which can be condoned. After leaving for Canada, she never informed about the exact date of her arrival from Canada to India. The respondent did not take any steps to reconcile and live with the appellant even after return from India. In view of the continuous separation, it can be fairly concluded that the matrimonial bond is beyond repair and there is no possibility of reunion and having a peaceful life henceforth. The learned Counsel relied upon the Judgment of the Hon'ble Apex Court in ***A.Jayachandra vs. Aneel Kaur*** reported in ***(2005) 2 SCC 22*** wherein it has been held as follows.

"11. The expression "cruelty" has been used in relation



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to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105: 1988 SCC (Cri) 60: AIR 1988 SC 121].)

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological



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changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

8. Per contra, the learned counsel for the respondent would submit that the mental cruelty has to be established and mere normal wear and tear of family life cannot be treated as mental cruelty. The appellant had not established mental cruelty. He had cited one single incident of the respondent not informing him before leaving for Canada. The respondent had taken several steps to reconcile and talk to the appellant. The appellant's conduct



changed only after 2009 till which time the matrimonial life was happy and peaceful. The appellant is only acting on the instructions and influence of his parents. He is not willing to reconcile and he is refusing to talk to the respondent. On the other hand, it is the appellant's conduct which is causing cruelty to the respondent. The fact that the appellant and the respondent have been living separately for 12 years may not be a ground for grant of divorce. The appellant cannot seek divorce on mere filing of petition only on the basis of this solitary incident. In order to establish cruelty, the appellant ought to have shown that there is a continuous conduct of the respondent which had caused the cruelty. No such instances have been shown by the appellant. The learned counsel relied upon the following judgments:

a) ***Savitri Pandey v. Prem Chandra Pandey*** reported in (2002) 2 SCC 73.

"10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question



of desertion is a matter of inference to be drawn from the facts and circumstances of each case."

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b) *Gurbux Singh v. Harminder Kaur* reported in(2010)14 SCC 301

"13. A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified therein. We have already pointed out that in the petition for dissolution of marriage, the appellant has merely mentioned Section 13 of the Act and in the body of the petition he highlighted certain instances amounting to cruelty by the respondent wife."

c) *Neelam Kumar v. Dayarani* reported in(2010) 13 SCC 298

"9. The High Court then took up the other allegation that the respondent did not come to attend and take care of the appellant when he was undergoing medical treatment in a hospital for the injuries caused in an accident. The High Court found that this allegation was not part of the appellant's pleadings and the matter was introduced in the course of evidence. The Court observed that not being stated in the pleadings, the allegation could not be taken into consideration. Even otherwise, apart from the oral statement made before the trial court, there was no material to support the allegation. The appellant did not examine any doctor or produce the medical records in connection with his treatment. In any event, one single instance, in isolation, was hardly sufficient for the



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dissolution of marriage on the ground that the respondent treated the appellant with cruelty."

d) Parveen Mehta v. Inderjit Mehta reported in **(2002) 5 SCC 706**

"21. Cruelty for the purpose of Section 13(1)(-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence



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on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

9.We have heard the learned counsel on either side, perused the evidence and documents on record.

10.The point that arises for consideration in this appeal is - (i) whether the appellant has established cruelty and is entitled to the decree of divorce on that ground.

11. Admittedly, both the appellant and respondent left for Canada after living in Coimbatore briefly. In Coimbatore they initially lived in the house of the appellant and thereafter they set up a separate home near the college where the respondent worked as a lecturer. After 2005, when the respondent got admission into the college in Canada to do her Ph.D degree, both of them left for Canada.

12.It is the appellant's case they could not settle down in Canada since he had to take care of his parents. The respondent could not complete the



degree according to the appellant within three years. Initially they returned in 2006 to visit the father of the appellant as he became sick. Thereafter, they left for Canada again together. In February 2009, the appellant returned alone to take care of his father. Only in July 2009, the respondent returned to India. According to the appellant the respondent did not return to India to take care of his parents, She came to India to visit her parents. This has been admitted by the respondent in her evidence. Between July 2009 and September 2009 there is no evidence as to where the respondent lived. But from the evidence, we can infer that the relationship was strained even then. The respondent had sent an e-mail in March 2011 which was marked as Ex.P.5. The respondent had not denied the contents of the said e-mail. This e-mail was sent by the respondent after the exchange of notices by the appellant and the respondent in September 2010. In the e-mail the respondent had admitted that she had left for Canada without informing him. This admission would clearly establish that her earlier version that it was the appellant who arranged for her tickets and he was aware of leaving for Canada is false. The respondent had made a false averment with regard to the knowledge of the appellant as regards her leaving for Canada. The respondent obviously was aware of the fact that this conduct would have caused cruelty and hence has made a false



statement. We can also see from the evidence that even before September 2009, the relationship was strained between the appellant and the respondent.

The respondent returned to India in July 2009 and has admitted that she came to India only to meet her parents. This conduct also has to be taken note of in the light of the allegations of the appellant husband that the respondent had not performed her conjugal obligations.

13. From a perusal of the Judgment of the Hon'ble Supreme Court and this Court, we can see that it is settled law that mental cruelty cannot be assessed in a straight jacket formula. It has to be assessed in the facts and circumstances of the case. It is well settled, that while assessing as to whether a particular conduct of one party to the marriage has caused cruelty to the other party to the marriage one has to see the overall circumstances and also see the status of the parties. What may amount to cruelty in one family may not amount to cruelty in another family. In order to constitute mental cruelty, it is not necessary that the conduct has to be persistent, continuous and numerous. A single incident can cause mental cruelty. The Learned counsel for the respondent relied upon the Judgment of the Hon'ble Apex Court in ***Neelam Kumar v. Dayarani*** reported in (2010) 13 SCC 298 which have been extracted above to impress upon us, that a single incident is insufficient to



hold that one party to a marriage has treated the other with cruelty. In that case the single incident alleged was the Respondent/Wife did not take care when the Appellant/Husband was undergoing medical treatment. In that context the Hon'ble Apex Court held that the appellant/husband had not established that he had taken treatment and that solitary incident was not enough to establish cruelty. The said decision is not be applicable to facts of the instant case, as here the appellant/husband had conclusively established the incident which is grave in nature. The learned counsel for the respondent relied upon the Judgment of Hon'ble Apex Court in ***Gurbux Singh vs Harminder Kaur*** reported in ***(2010)14 SCC 301*** in support of his submission that the petition was filed on the ground of cruelty. The appellant/husband has alleged only desertion and it cannot be a ground for Judgment of granting divorce. The learned counsel also relied upon Judgment of ***Savitri Pandey v. Prem Chandra Pandey*** reported in ***(2002) 2 SCC 73*** to submit that mere separate living will not amount to desertion. Both these Judgments are not applicable to the facts of the present case. It is a definite case of the appellant/husband, that in an already strained case of relationship, the conduct of the respondent/wife, leaving for Canada constituted mental by cruelty. The other Judgment relied upon by the learned counsel for the



respondent/wife in *Parveen Mehta v. Inderjit Mehta* reported in (2002) 5 SCC 706 is that minor differences cannot be the basis for holding that there was cruelty. There is no dispute with regard to the above proposition of law.

14.The Judgment relied upon by the learned counsel for appellant/ husband in *A.Jayachandra vs. Aneel Kaur* reported in (2005) 2 SCC 22 shows that if it is single incident and it is grave it will amount to cruelty.

15. The Hon'ble Apex Court in *Samar Gosh Vs Jaya Gosh* reported in (2007) 4 SCC 511 held that where the husband or the wife unilaterally without the knowledge of other person undergoes vasectomy abortion or sterilization etc., that can cause mental cruelty. It is the gravity of the conduct that matters and not the number of incidents to determine whether there was mental cruelty.

16.In the light of the above principles of law, we have to that examine the facts. It is the case of the appellant that the respondent has denied conjugal relationship without any valid reasons. The question is whether the allegations in the instant case constituted mental cruelty even if it stems out



of a single incident. From the evidence and pleadings on record we find that even after return from Canada in July 2006, we find that there the respondent is no evidence to show that the respondent went and met the appellant or his parents between July 2006 to September 2006 when she was in India. Though she has stated in her pleadings that she came back to take care of the appellant's parents, in the evidence she would admit she came to see her parents only. From this conduct, we could see that the Marital relationship was strained even then. Thereafter, the respondent had left for Canada in September 2009 without informing the appellant. The process for travel to Canada is not simple. It involves an elaborate process of applying for Visa etc., and for making other arrangements. All these arrangements has been secretly made by the respondent and she had left for Canada without the appellant even informing the appellant. This conduct is bound to create a prolonged psychological effect. It was not an impulsive act of the respondent. Unlike the cases cited by the learned counsel for the respondent involving a solitary incident which were not grave enough to constitute cruelty, this is the very conduct which would show that the respondent was not interested in the matrimonial life. This conduct, in our view coupled with the fact that the appellant's allegation that respondent did not cooperate in the conjugal



relationship is likely to cause mental cruelty and prevent any peaceful matrimonial life after reunion. Further, we find that the respondent has deliberately made false statements realising that if she admits the truth, cruelty would be established. This is also another conduct which we have to take into consideration while considering the question of grant of divorce. The respondent has shown scant regard for the emotions of the appellant. In our view, facts established in this case even assuming it stems out of a single incident constitutes cruelty. There are other circumstances as well as stated above to show that there is no chance of a peaceful life.

17. That apart, we find that the appellant and the respondent have been living separately since 2009 and there is a long period of continuous separation. From the facts narrated above we are convinced that the matrimonial bond is beyond repair. The Hon'ble Apex Court in ***Samar Gosh Vs Jaya Gosh*** reported in ***(2007) 4 SCC 511*** had held that the court may consider long period of continuous separation for grant of divorce.

The relevant portions of the Judgment of the Hon'ble Apex Court is extracted hereunder:

"100. Apart from this, the concept of mental cruelty



cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration."

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty" The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive: (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot



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reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.



(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent



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or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

1. In view of the above we find, that the appellant has established that there has been a long period of continuous separation and the marriage is a mere fiction. We are convinced that there are no chances of leading



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a peaceful matrimonial life in the facts and circumstances of the case.

Therefore we set aside the Judgment of the Family court refusing granting divorce and hold that the appellant is entitled to decree of divorce on the ground of cruelty.

2.

19. Hence, the Civil Miscellaneous appeal is allowed setting aside the decree and Judgment dated 30.03.2016 made in H.M.O.P.No.413 of 2011 and allowing the H.M.O.P. Consequently, connected miscellaneous petition is closed. No Cost.

(V.M.V.,J) (S.M.,J)

17.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
dk/vsn

To
1.The Principal Family Judge,
Coimbatore.

2.The Section Officer

25/27



VR Section
High Court of Madras
Chennai – 600 104.

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**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

dk/vsn

Pre-delivery Judgment in

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