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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.12.2021	DELIVERED ON: 20.01.2022
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.S.A.NOS.5 & 6 OF 2015

S.Uma

.. Appellant/Respondent/Petitioner
in both appeals

Vs.

M.Sathiyarayanan

.. Respondent/Appellant/Respondent
in both appeals

Common Prayer: These Civil Miscellaneous Second Appeals are filed under Section 9 of the Hindu Marriage Act, r/w Order XLIII Rule 1 of the Code of Civil Procedure r/w Section 100 of C.P.C., against the judgment and decree of the Principal District Judge, Cuddalore, dated 12.06.2014 made in C.M.A.Nos.33 & 34 of 2012, reversing the fair and decreetal order of the Learned Principal Subordinate Judge, Cuddalore in H.M.O.P.Nos.69 & 73 of 2008 dated 31.01.2012.

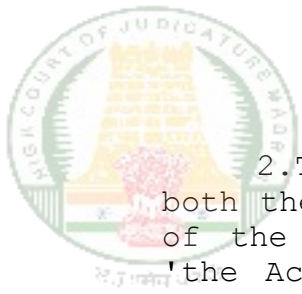
For Appellant : Mr.N.Ramesh
in Both Appeals

For Respondent : Mr.V.Ayyadurai
in Both Appeals (Senior Counsel)
for M/s.P.Muthukumarasamy

COMMON JUDGMENT

(The matter is heard through "Video Conferencing")

These Civil Miscellaneous Second Appeals are filed against the common judgment and decree dated 12.06.2014 made in C.M.A.Nos.33 & 34 of 2012, reversing the fair and decreetal common order of the Learned Principal Subordinate Judge, Cuddalore in H.M.O.P.Nos.69 & 73 of 2008 dated 31.01.2012.



2.The appellant is wife and respondent is the husband in both the appeals. The appellant filed a petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'the Act') for restitution of conjugal rights in H.M.O.P.No.69 of 2008, while the respondent/Husband filed H.M.O.P.No.73 of 2008 under Section 13 (1) (1b) of the Act for dissolution of marriage between the respondent and appellant, which took place on 20.10.2002, by a decree of divorce and for a direction to the appellant to send back the minor child for custody under the respondent. Both the H.M.O.Ps. were taken together, common evidence was let in and common order was passed on 31.01.2012 by the Principal Subordinate Judge, Cuddalore, dismissing the H.M.O.P.No.73 of 2008 filed by the respondent and granting relief of restitution of conjugal rights in H.M.O.P.No.69 of 2008, filed by the appellant.

3.Against the said common order, the respondent filed two appeals in C.M.A.Nos.33 and 34 of 2012. The learned I Appellate Judge, by common judgment dated 12.06.2014, allowed both the appeals and allowed H.M.O.P.No.73 of 2008, dissolving the marriage that took place between the appellant and respondent, by setting aside the order passed in H.M.O.P.No.69 of 2008.

4.Against the common judgments dated 12.06.2014 made in C.M.A.Nos.33 & 34 of 2012, the appellant has come out with the present Civil Miscellaneous Second Appeals.

The case of the appellant is as follows:

5.The appellant and respondent got married on 20.10.2002 at Padmavathi Tirumana Mantapam, Koliyanoor Koot Road, Villupuram District, as per Hindu Rights and Customs. The respondent is working in EID Parry Nellikuppam, Cuddalore. The appellant and respondent are relatives even before marriage. The appellant knew that she has to live along with the respondent and his family members as a joint family. After marriage, the appellant took care of the respondent and his family members and both the appellant and respondent lived happily with other members of the family, but respondent was always under the influence of his parents and was afraid to show his affection to the appellant. For the reasons best known to the parents of the respondent, they did not like the appellant and found fault in each and every one of the activities of the appellant. The parents of the respondent used to abuse her. The respondent, instead of questioning his parents, always treated the appellant cruelly and caused mental torture and demanded more dowry. The respondent did not have any courage to take care of appellant and did not show love to the appellant. On 20.01.2004 mid night, the respondent took up quarrel with the appellant, pushed her



out of the house and assaulted the appellant along with his parents. The appellant lodged complaint to the all Women Police Station, Panruti, on 21.01.2004. Later, she was treated in the Government Hospital, Villupuram. After enquiry, the Police at Panruti Police Station advised the respondent to put up a separate house at Nellikuppam. The respondent put up a separate house at Nellikuppam, but he rarely visited the appellant and most of the time, he was living with his parents. The appellant became pregnant and went to her parents' house. The respondent or his parents did not visit the appellant even for 5th or 7th month function. A male child was born on 21.12.2004. The respondent and his parents did not visit the appellant or the child. The respondent visited the appellant after one week and promised to put up a new house at Nellikuppam, since the earlier house has been vacated. But, the respondent has not fixed any new house. The appellant came with the child and stayed at Melpattambakkam with respondent's parents. The respondent and his parents continued to torture the appellant by demanding more dowry. Again, on 02.02.2006, at about 10.00 p.m., the respondent picked up a quarrel with the appellant and forcibly pushed her down, due to which the appellant was injured. The appellant's father took her to all Women Police Station, Panruti. The Police enquired the matter. The respondent promised to put up a separate house. The appellant took up a job and joined in Rajaram Associates, Cuddalore and the family was set up at Nagasamy Street, Nellikuppam. The respondent used to visit her occasionally without the knowledge of his parents. From 02.02.2006, the appellant did not turn up. While so, the respondent issued notice dated 28.04.2008, containing false allegations. The appellant sent a reply dated 19.05.2008 through her Advocate. The appellant's intention is to live with the respondent as a dutiful wife. Therefore, she filed H.M.O.P. for restitution of conjugal rights. In the counter statement filed in H.M.O.P.No.73 of 2008 also, she stated that she has no intention of deserting the respondent and she is ready to live with the respondent, provided respondent's parents change their attitude and allow the respondent who is timid in nature to live with the appellant.

The case of the respondent is as follows:

6.The respondent contended that even before marriage, the appellant was aware that she has to live with the respondent and his family members, but immediately after marriage, the appellant was insisting the respondent to set up a separate house, leaving the aged parents. After the respondent left for work, the appellant ill-treated the respondent's parents and brother and scolded them in filthy language. The appellant did not prepare food and did not take care of the parents of the



respondent. The appellant often quarreled with the respondent for no reason, but with sole intention of living separately away from the respondent's family members. She often left the matrimonial home to her parent's house. This made the respondent restless and caused mental agony to the respondent. The respondent's parents themselves asked the respondent to set up a separate house, as they could not tolerate seeing the respondent getting restless with mental agony caused due to the act of the appellant. While so, on 20.01.2004, about 12.00 in the mid night, the appellant picked up quarrel with the respondent and all of a sudden, she left respondent's house and went to her parent's house. On 22.01.2004, the appellant, along with her family members and some of her relatives, lodged a complaint in the All Women Police Station, Panruti, alleging that the respondent along with his family members tortured the appellant and demanded dowry from her. As per the advise of Police, on 10.03.2004, the respondent arranged for a separate house at Nellikuppam, away from respondent's family. The appellant stayed with the respondent only for few days and stating that she was pregnant, left to her parents house. The appellant did not communicate with the respondent after leaving him. She did not inform the Valaikappu function and did not inform the birth of male child born on 21.12.2004. On coming to know the birth of the child, the respondent and his parents voluntarily went to parent's house. The respondent consoled the appellant to come and live with him. The appellant, along with the male child, came to respondent's house on 22.02.2005 and lived there for few days. Once again, she started harassing the respondent to live separately, deserting the respondent's parents. The respondent advised the appellant to stay along with her parents to take care of new born child. The appellant did not agree for the same and was quarreling with the respondent, whenever he comes from his work which caused mental agony to the respondent and created a fed up life to the respondent.

6(a).On 02.02.2006, without knowledge of the respondent, the appellant left the respondent's house along with the child and lodged a complaint in All Women Police Station, Panruti on 03.02.2006. The appellant forced the respondent to live in a separate house which was not liked by the respondent. While so, without knowledge of the respondent, the appellant rented a separate house at Nagasamy Street, Chavadi at Nellikuppam and her mother was living with her to take care of the child. The appellant also took a job in Chartered Accountant Office viz., Rajaram Associates, Cuddalore. From 02.02.2006, the appellant deserted the respondent, pushed the respondent to the extreme condition to seek divorce and respondent issued notice dated 28.04.2008. The appellant sent a reply dated 22.05.2008, containing false allegations. In view of the same, the



respondent filed H.M.O.P.No.73 of 2008 on 09.07.2008, for dissolution of marriage. The appellant has filed H.M.O.P.No.69 of 2008 on 07.07.2008, as counter blast for the notice issued by the respondent, anticipating the H.M.O.P. to be filed by the respondent for divorce. H.M.O.P.No.69 of 2008 filed by the appellant for restitution of conjugal rights is vexatious, when the intention of the appellant is only to permanently stop cohabitation. In order to create multiplicity of proceedings and waste time of the Court, the appellant filed vexatious, frivolous petition, seeking restitution of conjugal rights after deserting the respondent for two years from 02.02.2006, which clearly shows that the appellant has ceased cohabitation and the factum of separation and intention of the appellant is only to bring the cohabitation permanently to an end.

7.Before the learned Judge, the appellant examined herself as P.W.1, one Devaraj, neighbor as P.W.2 and marked 8 documents as Exs.P1 to P8. The respondent examined himself as R.W.1, his co-employee as R.W.2 and marked two documents as Exs.R1 and R2.

8.The learned Judge considering the pleadings, oral and documentary evidence, allowed H.M.O.P.No.69 of 2008, filed by the appellant and dismissed H.M.O.P.No.73 of 2008, filed by the respondent.

9.Against the said common order dated 31.01.2012 made in H.M.O.P.Nos.69 & 73 of 2008, the respondent filed C.M.A.Nos.33 and 34 of 2012.

10.The learned I Appellate Judge framed point for consideration. The learned I Appellate Judge, considering the pleadings, oral and documentary evidence, order of the learned Judge and point for consideration, allowed both the appeals, dismissing H.M.O.P.No.69 of 2008 filed by the appellant and allowed H.M.O.P.No.73 of 2008, dissolving the marriage dated 20.10.2002 between the appellant and respondent.

11.Against the said common judgment dated 12.06.2014 made in C.M.A.Nos.33 & 34 of 2012, the appellant has come out with the present two Civil Miscellaneous Second Appeals.

12.At the time of admission, the following substantial questions of law are framed:

“(1) Whether an appellate court can grant divorce on the ground of cruelty when the divorce sought for was on the ground of desertion without any pleading?

(2) Whether the appellate court can decide the appeal in the absence of the respondent or her counsel?



(3) Whether the appellate court can substitute its finding without any evidence, while appreciating evidence?"

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13. The learned counsel appearing for the appellant contended that the learned I Appellate Judge erred in reversing the well considered order of the learned Judge passed in H.M.O.Ps, without properly appreciating the materials placed before it. The respondent has sought for divorce on the ground of desertion, while the I Appellate Judge granted divorce on the ground of cruelty. The appellant and respondent are relatives even before marriage and appellant knew that she has to live with the respondent and his family members. After marriage, the appellant was looking after the respondent and his parents as a dutiful wife. The Trial Court, after appreciation of facts and evidences, allowed the H.M.O.P. filed for restitution of conjugal rights and dismissed the H.M.O.P. filed for divorce, holding that desertion was not proved. The Appellate Court has set aside the order of the Trial Court, without properly appreciating the evidence let in by the appellant. The I Appellate Judge, in paragraph no.19 of the judgment, made observation without there being any evidence. The respondent, before the panchayat and Police, admitted that he had assaulted the appellant on 02.02.2006 and he is ready and willing to live with the appellant. The respondent gave that assurance in writing, which is marked as Ex.P8. It is not a confession before the Police and it is admissible in evidence. The Trial Court appreciated the evidence of appellant in proper perspective and accepted Ex.P8. The I Appellate Court erroneously rejected Ex.P8. The I Appellate Court held that the appellant refused to join with the respondent without there being any evidence. Further, the I Appellate Court erroneously held that if the appellant really wanted to live with the respondent, after receipt of notice, she would have come to matrimonial house. This observation of the I Appellate Court is perverse. All along, it is the case of the appellant that she was assaulted and thrown away from the matrimonial house and respondent did not turn up to set up a separate house. The I Appellate Judge erred in holding that the petition filed by the appellant for restitution of conjugal right is only to avoid facing the divorce petition filed by the respondent. But the fact remains that the appellant filed H.M.O.P.No.69 of 2008 for restitution of conjugal rights first on 07.07.2008 and then only, the respondent filed H.M.O.P.No.73 of 2008 on 09.07.2008, seeking divorce. The I Appellate Judge failed to note that both the appellant and respondent were leading a very happy married life from the date of marriage itself, but only due to petty quarrels, the respondent had thrown away the appellant. The



findings of the I Appellate Judge are perverse and without proper appreciation of facts and evidence and hence, liable to be set aside and the fair and decreetal order of the Trial Court has to be restored. The learned I Appellate Judge, having found that the appellant did not appear or represented through counsel, ought to have issued notice to the appellant to ascertain the reasons for her non-appearance before shutting the doors and prayed for allowing both the C.M.S.As.

14. The learned Senior Counsel appearing for the respondent referred to the stand taken by the respondent before the learned Judge in H.M.O.P. as well as in the appeal before the First Appellate Judge. The learned Senior Counsel contended that the appellant, by her abusive language and attitude towards respondent and his parents, had caused mental cruelty as well as mental tension to the respondent and his family members. Even though the appellant knew and agreed to live with the respondent and his aged parents after marriage, she was insisting on the respondent to set up a separate house, leaving his aged parents. The appellant was quarrelsome and picked up quarrel without any reason. On two occasions, i.e., on 20.01.2004 and on 02.02.2006, the appellant picked up quarrel with the respondent and left the house at midnight. She gave false complaint in the All Women Police Station, Panruti. On the advice of the Police, the respondent took a separate house at Nellikuppam. The appellant stayed there only for few days and left to her parents' house, stating that she is pregnant. The appellant did not inform the respondent and his family members about the 5th & 7th month function and birth of child. The respondent and his mother went to appellant's house, convinced the appellant to come and live with him. On 22.08.2005, the appellant came to respondent's house along with her child and again she started quarrelling with the respondent and his parents and caused mental tension and cruelty to the respondent. As and when the respondent returns from his work, the appellant used to torture and created fed-up life with the respondent. On 02.02.2006, without knowledge of the respondent, the appellant left the matrimonial house along with the child. On 03.02.2006, she gave a false complaint to the All Women Police Station, Panruti and the Police forced the respondent to give a statement that he has assaulted the appellant and is ready and willing to live with the appellant. The said letter is not written voluntarily. The respondent was made to write Ex.P8 forcibly. The Police forced the respondent to set up a separate house. The appellant on her own, set up a house at Nagasamy Street, Nellikuppam, along with her Mother and joined at Chartered Accountant office, which is being run in the name of Rajaram Associates, Cuddalore, without the knowledge of the respondent. Subsequently, the appellant, without informing the respondent, left the matrimonial home on



02.02.2006 and from that date, the appellant had deserted the respondent. The respondent had issued notice dated 28.04.2008 to the appellant, informing her that he will file a petition for divorce as she deserted the respondent without any reason. The appellant sent a reply dated 19.05.2008, containing false allegations and filed H.M.O.P.No.69 of 2008 for restitution of conjugal rights on false allegations. The respondent has made sufficient averments in the H.M.O.P.No.73 of 2008 filed by him with regard to mental torture and cruelty caused by the appellant. The appellant was aware of the said averments. The Trial was conducted based on the averments made by the respondent. The First Appellate Judge had rightly considered the pleadings, oral and documentary evidence and granted divorce on the ground of cruelty and dismissed the H.M.O.P.No.69 of 2008 filed by the appellant. The appellant, having received notice and entered appearance through Advocate in C.M.A.Nos.33 & 34 of 2012, deliberately did not appear and contest the appeal filed by the respondent. The contention of the learned counsel appearing for the appellant that the First Appellate Judge ought to have issued notice to the appellant to ascertain the reason for non-appearance is not acceptable and the same is without merits. No substantial question of law has arisen in the appeals and relied on the following two judgments and prayed for dismissal of both the appeals:

(i) Judgment of the Hon'ble Apex Court reported in 2021 (1) MWN (Civil) 589 [Joydeep Majumdar Vs. Bharti Jaiswal Majumdar], wherein the Full Bench of the Hon'ble Apex Court, at paragraph Nos.10 & 14, has held as follows:

“ ...10.For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party. In Samar Ghosh Vs. Jaya Ghosh, 2007 (3) CTC 464 (SC) : 2007 (4) SCC 511, this Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.

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14.The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not in our view, justify the persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation."

(ii) Judgment of this Court reported in 2021 (3) MWN (Civil) 629 [Narayane @ Krithika Vs. S.Karthik], wherein the Division Bench of this Court, at paragraph Nos.13 & 14, has held as follows:

"...13.In the present case also, in our opinion, when the appellant/wife has deliberately and wilfully boycotted the proceedings before the Court below for 12 long years, for the reason that she was not having any evidence to produce, she cannot come to this Court with this appeal, as the same is not maintainable.

14.Secondly, one of the crucial allegations made by the respondent/husband in para-31 of the petition for divorce is that the appellant/wife assaulted the respondent/husband on the vital part of his body. But this serious allegation has not even been denied by the appellant/wife in the counter affidavit. In that view of the matter also, as the crucial allegation made by the respondent/husband that the appellant/wife attacked him on his vital part, has not even been denied in her counter statement, it goes without saying that she has not only caused mental cruelty but also physical cruelty upon the respondent/husband. Besides, when the parties are all fighting for more than 14 long years, they cannot be made to live together."

15.Heard the learned counsel appearing for the appellant as well as the learned Senior Counsel appearing for the respondent and perused the entire materials on record.

16.From the materials on record, it is seen that H.M.O.P.Nos.69 & 73 of 2008 filed by the appellant and respondent are based on same averments made by them. But, they have given different versions. According to the appellant, after marriage, she was staying with respondent along with his parents and was performing her duty as dutiful wife. She was looking after the parents of the respondent, but they, for some reason or other, did not like the appellant and were finding fault with



her. They demanded more dowry and respondent tortured her. On 20.01.2004, at midnight, the respondent picked up a quarrel with the appellant, assaulted her and threw her out of the house. She went along with her father and gave a complaint on 21.01.2004 at All Women Police Station, Panruti and took treatment at Government Hospital, Villupuram.

16 (a). On the other hand, it is the case of the respondent that the appellant ill-treated the respondent and his parents and picked up quarrel for no reason at all. Whenever the respondent came from his work, the appellant used to quarrel with him. This has caused mental agony and appellant treated the respondent with mental cruelty. On 02.02.2006, it is only the appellant who picked up the quarrel with respondent and left the matrimonial home voluntarily. According to respondent, the appellant gave a false complaint against the respondent at All Women Police Station, Panruti.

16 (b). Further, it is the case of the respondent as well as appellant that they are relatives even before marriage and appellant knew that the respondent is living with his parents and brother and appellant, after marriage, has to live with respondent in the said house along with respondent's parents and brother. Both have stated that knowing this fact fully well, the appellant married the respondent.

17. From the materials on record, it is seen that inspite of such understanding and agreement, the appellant was insisting that respondent must establish a separate house for appellant and respondent to live separately, leaving the aged parents of the respondent. When the Police enquired the complaint given by the appellant on 21.01.2004, it is seen that the Police had advised the respondent to set up a separate house for them to live. It is not in dispute that the respondent took a house on rent at Nellikuppam and both the appellant and respondent resided there only for few days, when the appellant left to her parents' house on the ground that she was pregnant. This is not disputed by the appellant.

17 (a). Further, it is the case of the respondent that the appellant did not inform the respondent and his family members about the 5th & 7th month functions. This contention is denied by the appellant and appellant contended that inspite of inviting the respondent and his family members for the said function, they did not attend the same. It is the further case of the respondent that appellant and her parents did not inform the respondent about the birth of male child. Only after coming to know about the birth of child through relatives, the respondent and his parents went to appellant's parents' house and saw the



child. The respondent consoled the appellant and requested to come to matrimonial house and live there as husband and wife. From the materials on record, it is seen that child was born on 21.12.2004, but the appellant came to respondent's house along with her parents on 22.08.2005. The appellant has not given any reason for such a long delay to come to matrimonial house. It is the case of the respondent that even after coming to the respondent's house, the appellant did not change her attitude and used to quarrel with his parents using filthy language. This caused mental cruelty and torture to the respondent and created fed-up life of the respondent. According to the respondent, on 02.02.2006, without informing him and without any reason, the appellant left the matrimonial home along with child and lodged a complaint at the All Women Police Station, Panruti on 03.02.2006.

17 (b). On the other hand, it is the case of the appellant that on 02.02.2006, at about 10.00 P.M., the respondent only took up quarrel with her and forcibly pushed her down. The same was intimated to her father and they lodged a complaint to All Women Police Station, Panruti. According to the appellant, the respondent agreed to set up a house and appellant agreed to live together. It is the case of the respondent that Police forced him to write such a letter and it is not written voluntarily. The appellant has not examined her father to prove her case that respondent's parents demanded more dowry and threatened her. She has examined one Devaraj as P.W.2, who is neighbour and relative of the appellant. P.W.2 spoke about the incident that happened on 20.01.2004. He also deposed that he knew about the problem between the appellant and respondent, but he deposed that he is not aware of the complaint given by the appellant. In spite of being a relative, P.W.2 has not taken any steps to resolve the issues between the appellant and respondent. These allegations and counter allegations has to be considered with the fact that after 02.02.2006, the appellant did not come to matrimonial house or has not taken any steps to solve the problem either through her parents or through her relatives of parties. On the other hand, she has taken a house at Nagasamy Street, Nellikuppam and started living along with her mother to look after her child and took up a job in Chartered Accountant office. The appellant has not taken any steps for restitution of conjugal rights personally, either in the matrimonial home through her parents or through her elders. The appellant has filed H.M.O.P.No.69 of 2008 on 07.07.2008 for restitution of conjugal rights. The appellant has filed the H.M.O.P.No.69 of 2008 only after receipt of notice dated 28.04.2008, issued by the respondent and after sending a reply dated 19.05.2008 to the notice issued by the appellant. These facts clearly reveal that intention of the appellant is not to resume the matrimonial life



with the respondent, but she has filed the H.M.O.P. only to avoid the H.M.O.P. for divorce to be filed by the respondent. The averments in the H.M.O.P.No.69 of 2008 filed by the appellant shows that it is the denial of allegations made by the respondent in the notice dated 28.04.2008, issued through his advocate to the appellant. The appellant has not given any reason for not returning to matrimonial home, taking steps to settle the issue between the appellant and respondent through her parents and elders and not filing the H.M.O.P. earlier. Considering the above materials, the version of respondent is acceptable rather than version of appellant.

18.From the averments in H.M.O.P.No.73 of 2008 filed by the respondent, it is seen that he has specifically made averments that appellant has caused mental cruelty and torture to him and caused mental agony and it is not possible to have a cordial matrimonial life. The appellant also filed counter statement with regard to said allegations. Trial was conducted based on the said averments also. The appellant also knew that respondent is alleging cruelty. In view of the same, even though the respondent has not mentioned provisions of the Hindu Marriage Act for cruelty, the same is not fatal to the claim of the respondent. Trial was conducted, evidence was recorded based on said pleadings of parties making allegations and counter allegations. The learned Trial Judge failed to consider the averments of cruelty alleged against the appellant and has not properly appreciated the oral and documentary evidence let in before him and erroneously allowed H.M.O.P.No.69 of 2008, filed by the appellant and dismissed H.M.O.P.No.73 of 2008, filed by the respondent. The learned First Appellate Judge has considered the pleadings, oral and documentary evidence and order of the learned Judge and points for consideration in proper perspective and has rightly held that respondent is entitled to divorce on the ground of cruelty. The reasoning in the judgment of the learned First Appellant Judge are valid and legal, in view of the sufficient pleadings and evidence let in by the respondent with regard to mental cruelty met out by the appellant and appellant was aware of said allegations and evidence let in by the respondent. When necessary averments are made in the petition with regard to cruelty met out by appellant, evidence was let in by both parties with regard to cruelty, also non-mentioning of the provision of law with regard to cruelty will not be a ground for rejecting the claim of respondent.

19.It is to be noted that appellant, having come to the place of matrimonial home, did not join the respondent in the matrimonial home. Instead of that, she has taken a house in the same town at Nagasamy Street, Nellikuppam and lived there along with her mother. The appellant has not taken any steps to resume



the conjugal relationship either personally or through her parents, elders and relatives and also has not initiated any legal proceedings for restitution of conjugal rights till she received the notice from respondent informing her that he will be filing petition for divorce. This shows that intention of the appellant is not to join respondent to resume the matrimonial life and her intention is only to counter blast the steps the respondent was about to take for divorce. It is further to be taken note of the fact that appellant has given two complaints before the All Women Police Station, Panruti, but has not taken any steps for restitution of conjugal rights through elders or parents. A reading of the judgment of the First Appellate Court shows that all the materials were properly appreciated and by giving valid reason, the learned First Appellate Judge has allowed both C.M.A.Nos.33 & 34 of 2012, by dismissing H.M.O.P.No.69 of 2008 filed by the appellant and dissolving the marriage on the ground of cruelty, by allowing H.M.O.P.No.73 of 2008 filed by the respondent. There is no reason or circumstances warranting interference in the judgment of the learned First Appellate Judge.

20.In the judgment reported in 2021 (3) MWN (Civil) 629, relied on by the learned Senior Counsel appearing for the respondent, the Hon'ble Apex Court has held in para 13 that "when the appellant/wife has deliberately and wilfully boycotted the proceedings before the Court below for 12 long years, for the reason that she was not having any evidence to produce, she cannot come to this Court with this appeal, as the same is not maintainable." In the present case, the appellant has engaged a Counsel to appear on her behalf in the appeal, but her Advocate and appellant did not appear before the First Appellate Court to put forth her case. The appellant has not given any reason for not appearing before the Court either personally or through Counsel. The contention of the learned counsel appearing for the appellant that when the appellant did not appear or contest the appeal before the First Appellate Court, the Court ought to have issued notice to ascertain the reason is without merits and not acceptable. Once appellant received notice in the appeal and entered appearance through Advocate, it is for the appellant to vigilantly prosecute her case. It is not for the Court to find out the reason for non appearance of the parties by issuing notice once again.

21.The learned First Appellate Judge has rightly considered the appeals on merits, based on the materials available on record, pleadings, oral and documentary evidence. Non-appearance of the appellant and failure to vigilantly prosecute the case shows that she is not interested in restitution of conjugal rights, but her intention is only to harass the respondent. The



two judgments relied on by the learned Senior Counsel appearing for the respondent are squarely applicable to the facts of the present case. In view of the same, all the three substantial questions of law are answered against the appellant.

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In the result, both the appeals are dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gsa/krk

To

1. The Principal Subordinate Judge,
Cuddalore.
2. The Principal District Judge,
Cuddalore.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+2ccs to M/s.V.Balamurugane, Advocate, S.R.No.3810, 3811

+1cc to Mr.N.Ramesh, Advocate, S.R.No.3523

C.M.S.A.Nos.5 & 6 of 2015

CNR(CO)
RLP(08/04/2022)