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CMSA.No.33 and 34 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2022

PRONOUNCED ON : **10.06.2022**

C O R A M :

The Hon'ble Mrs. Justice **J.NISHA BANU**

C.M.S.A.Nos.33 and 34 of 2012

N.Sadhasivam

..Appellant/Appellant

/Respondent in both appeals

Vs

S.Thenmozhi

..Respondent/Respondent

/Petitioner in both appeals

PRAYER : CMSA filed against the order and decree dated 18.01.2012 made in CMA.Nos.3 and 4 of 2011 on the file of District Judge, Nagapattinam,

For Appellant : Mrs.R.T.Sundari

For Respondent : Mr.P.Seshabalan Raja

JUDGMENT

The above CMSAs are filed by the appellant/husband against the order passed by the District Judge, Nagapattinam, dated 18.01.2012 passed in



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CMA.Nos.3 and 4 of 2011, confirming the order passed by the trial court in allowing the petition filed by the wife for restitution of conjugal rights and also confirming the dismissal order passed in the petition filed by the husband for divorce.

2. The appellant/husband filed H.M.O.P.59 of 2009 for divorce under Section 13 (I) (ia) and (ib) of the Hindu Marriage Act, 1955 and respondent/wife filed H.M.O.P.No.78 of 2007 seeking restitution of conjugal rights. By separate judgments, the learned trial Judge dismissed the HMOP.59 of 2007 filed by the husband for divorce and has allowed the HMOP.78 of 2007 filed for restitution of conjugal rights.

3. The husband, claimed to be aggrieved by the said judgments, preferred appeals in CMA.Nos.3 and 4 of 2011 before the District Judge, Nagapattinam viz., the First Appellate Court.

4. The First Appellate Court, having considered the matter, dismissed appeals filed by the husband. The husband therefore, filed the present CMSAs under Section 100 of CPC.



5. The undisputed position is that the marriage between the appellant/husband and respondent/wife was solemnized on 24.6.2001 and out of wedlock, a female child Logeshwari was born on 05.07.2002.

6. The husband raised allegations against the wife that she tortured him both mentally and physically and threatened that she would lodge a police complaint under dowry harassment and put him behind the bars and she would defame and spoil his image. Further, during the time of matrimonial life, he was put to much tension, turmoil, mental agony and right from the beginning, she behaved in indifferent manner and he cannot reasonably be expected to live with her. Hence sought for divorce.

7. Denying the allegations, the respondent/wife submitted that the appellant was unemployed and he was consuming alcohol and smoking, demanded dowry, ill-treated her along with his family members. At one stage, appellant questioned the paternity of child. Appellant's parents not allowed her for joint living with her husband. Appellant left India in the year 2004 without intimating her and he has been working in a foreign country. Even though the appellant came to Chennai for visiting his parents, they suppressed his visit and shifted to new address and even though she requested them to give the address,



appellant's parents by citing astrology, insisted to live separately for some time.

Thereafter, the respondent wife stayed in the appellant's house on 04.05.2007 and from that time, the appellant and their family members given trouble and at the intervention of police, she stayed in their house. According to the wife, she is prepared to condone all the acts of the appellant/husband and is willing to continue the marital life with him.

8. The trial court, after framing appropriate issues, found that the petition for divorce is not at all maintainable and the facts of case show that there was no intention on the part of the wife to desert her husband, but she was forced to leave the matrimonial home due to avoidance shown by the husband. Further trial court held that wife is very much interested to preserve the marriage.

9. The First Appellate Court, on the appreciation of facts found that even though the allegations are similar in affidavit and proof affidavit of the husband, no specific instances were stated by the appellant/husband. On 15.02.2002, wife gone to the marital home and on 23.02.2003 left the marital home and the said fact was not disputed, therefore, the contention of the husband that from the day of marriage, wife was treating him with cruelty



cannot be countenanced at all. From the cross examination of the husband, the

First Appellate court pointed out that admittedly till the delivery of the child there was no dispute between the husband and wife except small petty quarrels. Such petty quarrels and small dispute between husband and wife cannot constitute a cruelty so as to leading to divorce. Even the allegation of the husband that the wife used to threaten to commit suicide was also not established. It was further pointed out that the entire evidence of P.W.1/husband does not show the specific instance of cruelty.

10. The First Appellate court clearly dealt with the allegations of husband on the one hand and the evidence in chief and cross examination of P.W.1 and pointed out that the wife was sent out from the matrimonial home and husband did not even go to the matrimonial home and his whereabouts also could not be known by his wife. The evidence clearly probablised that after the wife left for matrimonial home in the year 2003, her in-laws advised to come after some time, she was waiting in the matrimonial home with fond hope of joining her husband, but her husband abruptly left the country and taken job in foreign country in the year 2004 without informing the wife. That apart, they also not given the address of her husband, also concealed his phone number. Therefore, she was prevented from meeting or contacting her husband from the



year 2004. Thereafter, husband filed divorce application and he left India in 2007 and even in the year 2007, when wife went to marital home, husband was not there, and family members did not provide the contact number of her husband. So, the learned Appellate court found that only husband was avoiding his wife from the beginning and the cruelty alleged in the petition filed by the husband was not at all established to grant divorce.

11. It was clearly pointed out by the First appellate court that husband was not at all evinced any interest to take back his wife and so wife living in parent's house is reasonable. Failure to contact wife or even to give phone number and refusal to give address and frequently shifting the matrimonial home to various places by husband family clearly indicates that they have only allowed the respondent to live in the parent's house. Even when she visited the matrimonial home and stayed in the year 2007 at the time, husband's family vacated the house itself. The conduct shows that husband and his parents committed mischief in avoiding the respondent/wife. On the other hand, the conduct of the wife staying in the matrimonial home even after in-laws vacated the house clearly shows her intention to preserve the marital tie intact. Husband did not even take any steps to call back his wife and to bring back his wife. As dutiful husband he not even made an attempt to bring back



his wife and no efforts whatever taken by him for conciliation. But he left India itself. This shows that he deserted his wife .

12. Taking the view that matrimonial obligation has not been carried out by the husband, the First Appellate Court, dismissed the appeals filed by the husband and confirmed the order of the trial court for restitution of conjugal rights.

13. The learned counsel for the appellant has raised following substantial questions of law for consideration:-

“(I) Whether the respondent / wife had withdrawn from the society of the appellant/husband without any reasonable excuse?

(ii) Whether the court below failed to consider the respondent/wife has filed this petition for restitution of conjugal rights without the intention of joining the appellant/husband as required by law.

(iii) Whether the court below failed to consider legally that lodging a criminal case against the appellant/husband and his family members exhibits her intention of non-joining her husband?

(Iv) Whether the courts below have not appreciated the respondent/wife had filed the petition for restitution of



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conjugal rights without any valid grounds as per law but only to harass the husband ?

(v) Whether the courts below are right in dismissing the application without assigning any valid reason for the same ? (Order passed without assigning reason is non-est in the eyes of law).”

14. Heard both sides and perused the materials available on record including the legal propositions cited by both sides in support of their contention.

15. The point that arises for consideration is whether the Courts below were right in dismissing the cases or not? The grievance of the husband seeking divorce against the wife is that she caused mental cruelty, threatened him by saying she will put him behind bars and file complaint for dowry harassment and has caused mental agony, which constitutes mental cruelty to the husband.

16. It is settled proposition of law that mere trivial irritations, quarrels, normal wear and tear of married life which happens in day-today life in all families would not be enough for granting divorce on the ground of cruelty and desertion. Only sustained unjustified and reprehensible conduct



affecting physical and mental health of the other spouse may lead to mental cruelty.

17. The findings of the Trial Court as well as First Appellate court is that the husband has not been able to prove that the wife has caused mental cruelty or deserted him and that the husband had made any possible attempts to get her back. In the absence of any valid evidence, this Court finds that the citation referred to by the husband is not in any way helpful to him. This Court finds that the grounds made out by the husband with regard to desertion by the wife does not merit acceptance.

18. In the light of the above position, this Court is of the clear view that the husband has not proved cruelty as required by [Section 28\(1\)](#) of the Hindu marriage Act and hence this Court does not find any illegality, infirmity in the findings arrived at by the learned trial court which was confirmed by the First Appellate Court and, therefore, the same does not call for any interference by this Court.

19. In the result, there is no merit in the present appeals and the same are hereby dismissed, the substantial questions of law raised by the appellant



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are answered against the appellant. Consequently, connected miscellaneous petition is closed. No costs.

10.06.2022

Index :Yes/No

Internet :Yes/No

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To

1. The District Judge, Nagapattinam,
2. The Subordinate Judge, Nagapattinam.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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