



C.M.S.A.No.55 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 25.02.2022

C O R A M :

The Hon'ble Mrs. Justice J.NISHA BANU

C.M.S.A.No.55 of 2013
and M.P.No.1 of 2013

V.Boopathy

..Appellant/appellant/petitioner

Vs.

Varalakshmi

....Respondent/respondent/respondent.

PRAYER: CMSA filed under Section 100 read with Section 19 of H.M.Act., against the judgment and decree passed by the Principal District Judge, at Tiruvallur in C.M.A.No.16 of 2011 dated 17.07.2013 in confirming the judgment and decree passed by the Sub Court, Ponneri in H.M.O.P.No.33 of 2003 dated 23.12.2010.

For appellant :: Mr.N.Kalaiselvan

For respondent :: No appearance.



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JUDGMENT

This civil miscellaneous second appeal is filed by the appellant/husband aggrieved against the judgment passed in C.M.A.No.16 of 2011 whereby, the learned First Appellate Court confirmed the dismissal order passed by the learned Judge, Family court, and declined his prayer in the petition for divorce filed by him in H.M.O.P.No.33 of 2003.

2. The appellant is the petitioner in HMOP and filed petition for divorce on the grounds of cruelty caused by the respondent/wife and that the wife was suffering from health problems and not doing household work. Respondent/wife resisted the petition and denied the allegations of mental agony and cruelty and also stated that the wife is not suffering from any health issues. Before the trial court, evidence was let in. The learned Judge, after analysing the evidence, held that the petitioner-husband has not made out any case for granting divorce and rejected the reasons of health ground and that she is not attending the household work.



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The unsuccessful husband filed CMA before the first appellate court.

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3. The first appellate court also reappreciated the evidence and found that only due to her pregnancy, respondent wife was not able to do her household work and no evidence is produced as regards the heart ailment and medical check up of the wife. Further, the learned first appellate court taken the view that the appellant/husband evidence was to the effect that he has not taken any steps to rejoin his wife at any time. The intention of the appellant/husband is to divorce the respondent on some false pretext or other and he admitted in his evidence that he never cared to look after the child and he has not given anything to his daughter even on festival days. The learned first appellate court on a finding that the conclusion arrived at by the learned Judge, Family Court, is perfectly right, confirmed the dismissal order passed in HMOP.No.33 of 2003.

4. As against the concurrent findings of the courts below, this CMSA is filed. This court admitted the above civil miscellaneous second appeal on 02.01.2014 and framed two substantial questions of law and



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granted an interim order.

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5. A perusal of records of this appeal would transpire that the matter has been referred to mediation. The report of the mediation centre would disclose that only the appellant and his counsel were present before the mediation centre. But the respondent/wife and his counsel has not appeared and therefore, the matter has been sent back to the court.

6. Further, the docket order passed by this court on the earlier hearings would show that the respondent has refused to receive the notice sent by this court and even though her name is printed in the cause list, there is no appearance on behalf of the respondent/wife.

7. On 11.02.2022, this court directed the counsel for the appellant to take private notice to the respondent as well as her counsel and also the counsel who appeared on behalf of the respondent/wife before the lower court and directed the registry to post the matter today.



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8. Even after service of private notice on this appeal, the respondent/wife has not preferred to appear before this court either in person or through counsel.

9. The learned counsel for the appellant by filing this appeal prayed before this court that since there is no matrimonial bond between the parties and that there has been a long period of continuous separation, a decree of divorce may be granted since the breakdown is irreparable in the case on hand.

10. I have carefully perused the entire records and the arguments advanced by the learned counsel for the appellant.

11. Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact and it would be harmful to the interests of the parties. It may be stated that when the matrimonial bond is beyond repair, the marriage becomes a fiction, though supported by a legal tie. I do not see any ray of hope after passage of 21



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years that the parties have any intention to rejoin. It stands established that the marriage between the parties stands broken irretrievably.

12. In view of the above reasonings, a decree of divorce is passed dissolving the marriage of the appellant with the respondent with immediate effect. The CMSA is allowed on the terms indicated above. No costs. Interim stay stands vacated.

25.02.2022

nvsri/sts

To

- 1.The Principal District Judge, at Tiruvallur
- 2.The Subordinate Judge, Sub Court, Ponneri.



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J.NISHA BANU, J.

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