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CMSA.No.34 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

CMSA.No.34 of 2016

Veeramani

... Appellant/Petitioner/Petitioner

Vs.

Ezhilkani

... Respondent /Respondent/ Respondent

PRAYER : Appeal filed under Section 28 of Hindu Marriage Act, 1955 read with Section 100 of the CPC to set aside the order passed in CMA No.8 of 2015 on the file of the Principal District Judge, Perambalur dated 04.06.2016 by confirming the order in HMOP No.61 of 2009 on the file of the Subordinate Judge, Perambalur.

For Petitioner : M/s.J.Sudharakaran

For Respondent : Mr.G.Shankar



JUDGEMENT

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The husband who has lost in both the Courts below is the appellant before this Court. The facts in brief which has culminated in the filing of the above CMSA is herein below narrated.

2. The appellant had filed HMOP.No.61 of 2019 on the file of the Sub Court, Perambalur seeking divorce on the ground of cruelty. In his petition filed in support of the divorce petition the appellant would contend that the marriage between him and the respondent was solemnized on 23.12.2001 and the marriage was a love marriage. After the marriage, the petitioner and respondent live happily for about 7 years and out of this wedlock they have been blessed with a son Sudarshan. The appellant is a teacher by profession and has worked at several places he would stay in the places to which he was posted. It is his case that his wife, the respondent herein suspected his character and would pick up quarrel with the appellant on trivial matters. The appellant put up with these pin pricks only taking into account the well being of his son. The respondent used to quarrel with the petitioner and leave her the matrimonial home in respect of which, several panchayats were held. In one such panchayat, the respondent and



her family members had abused the appellant and his family members using un-parliamentary words. On 22.10.2008, the respondent had quarreled with the appellant stating that the petitioner was in an illicit intimacy with several women. She had beaten up the petitioner with a wooden log on his head and attempted to commit suicide. Thereafter, on 12.02.2009, at about 6 p.m. once again the respondent and her father had intimidated the appellant and unable to bear the ill treatment and harassment, caused by them, the petitioner had attempted to commit suicide on two occasions. Therefore, it is not possible for the appellant to continue co-habitation with the respondent and consequently he sought for divorce on the ground of cruelty.

3. The respondent on entering appearance had filed a counter denying each and every allegations contained in the petition. It is her case that the appellant had demanded a sum of Rs.50,000/- and 5 Sovereigns of Gold as dowry on the instigation of his parents and since that had not been given they had started harassing her. The appellant was living in the house of one Dharmalingam and had totally ignored his family. He was also in a relationship with the daughter of the said Dharmalingam and he had borrowed a sum of Rs.3,50,000/- from the State Bank of India without the



respondent's knowledge and given this amount to Dharmalingam. When the respondent had questioned the same, he had started ill-treating her and had demanded dowry.

4. The respondent would submit that when she had approached her in-laws to inform about this illicit intimacy of her husband with the daughter of Dharamalingam, her in-laws informed her that they were keen on solemnizing the 2nd marriage for their son and they started harassing the respondent. On 23.04.2009, at about 10.pm one Devarasu came to the respondent's parents house where she was staying. He thereafter, started abusing the petitioner with filthy language and outraged her modesty by pulling her saree and he had also threatened to kill the respondent. All of these had been done only on the instructions of the appellant. The appellant and his parents were harassing the respondent to give her consent for his 2nd marriage. The appellant thereafter stopped taking care of his son as well as the respondent. Thereafter, the respondent was advised to file a maintenance case against the respondent and accordingly she had filed MC.No.21 of 2009 on the file of the Chief Judicial Magistrate, Perambalur seeking a monthly maintenance. The appellant is a teacher by profession earning a



sum of Rs.18,500/- per month and was also a money lender earning not less than Rs.20,000/- per month through the said business. She therefore, sought for a dismissal of the petition on the ground that the appellant had not made out any case of cruelty against her.

5. During the trial, the appellant had examined himself as P.W.1 and no document was marked on his side. On the side of the respondent she had examined herself as R.W.1 and marked Ex.R.1 to Ex.R.3.

6. The Tribunal on considering the evidence on record both oral as well as documentary and after hearing the arguments of the counsel of the either side held that the appellant had not made out a case for divorce particularly when he has not been able to prove the allegations made by him. Challenging the judgement, the appellant had filed CMA No.8 of 2015 on the file of the Principal District Perambalur. The learned Judge by her judgment dated 04.06.2016 was pleased to confirm the judgment passed by the learned Sub Judge. The learned Judge had also concurred with the finding that the appellant who had come forward for seeking divorce on the ground of cruelty has not proved the same. Challenging the same the



appellant is before this Court.

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7. Heard the counsel on either side.

8. The allegations of cruelty are :-

A. That the appellant was suspicious.

B. She and her family members had used abusing language against the appellant and his family members.

C. She had attempted suicide.

D. On account of her ill-treatment the petitioner had tried to commit suicide twice.

9. A perusal of the petition as well as the evidence would clearly show that none of these allegations have been proved. As regards the 1st ground of cruelty it is a categorical case of the respondent that it is the appellant who is in a relationship with another women and this fact has not been denied by the appellant/husband by filing a reply statement. Therefore, the appellant cannot contend that even if there was a quarrel between the husband and wife it was without any basis. It is but natural that any wife



would be upset if her husband is in relationship with another women.

Therefore, this does not amount to cruelty. With reference to the other two grounds namely the use of abusive language and the physical threat by the respondent and her family members, the same has not been proved by the appellant by letting in any independent evidence. Therefore, the Courts below have rightly held that the appellant has not proved the ground of cruelty.

10. The learned counsel for the appellant has made submissions that the appellant and the respondent have been living apart from 13 years and there is no possibility for them to reunite. He would also rely upon the judgment of the Hon'ble Supreme Court reported in (2013) 5 SCC 226 - *K.Srinivas Rao Vs. D.A.Deepa*. Unfortunately, irretrievable breakdown of marriage is not yet made a ground for divorce in the statute book. Even in the judgment relied upon by the learned counsel, the learned Judges have observed as follows:-

" 31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu



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Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree"

11. The learned Judges had also relied upon the judgement reported in 2005 (4) SCC page 558.- *Navin Kohli Vs. Neelu Kholi* where the Hon'ble Supreme Court had recommended to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. Since the irretrievable breakdown of marriage is not a ground for divorce, this Court is unable to



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accept the submissions made by the learned counsel for the appellant.

Consequently, I see no reason to interfere with the concurrent judgment of the Courts below and accordingly the Civil Miscellaneous Second Appeal is dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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To

1. The Principal District Judge, Perambalur
2. The Subordinate Judge, Perambalur.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T. ASHA, J,

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