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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.S.A.No.20 of 2022

Thiru. P.Duraisamy

... Appellant/Appellant/Petitioner

Vs

Tmt.S.Kalaivani

... Respondent/Respondent/Respondent

PRAYER : This Civil Miscellaneous Second Appeal is filed under Section 28(1) of Hindu Marriage Act, R/w. Section 100 of Civil Procedure Code, against the fair and decretal order dated 14.09.2021 made in C.M.A.No.08 of 2020 on the file of the learned Third Additional District and Sessions Judge, Erode at Gobichettipalayam confirming the fair and decretal order dated 07.10.2020 made in H.M.O.P.No.22 of 2017 on the file of the learned Subordinate Judge, Gobichettipalayam.

For Appellant

: Mr.V.Anandhamoorthy

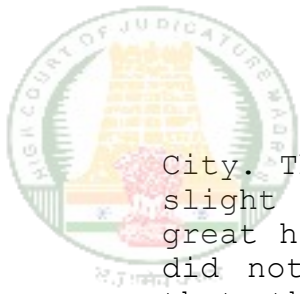
O R D E R

The unsuccessful husband before both the Courts below is the appellant before this Court.

2. The brief facts are as follows:

The appellant and the respondent were married on 26.08.2015 at Perunthurai. The parties, after marriage had settled at the matrimonial home along with the appellant's parents. The respondent stayed for 16 days in her matrimonial home and after that for 13 days she was at her parents house. Thereafter, the respondent had adopted a routine of suddenly leaving the house and going to her parents house without informing the appellant and returning to the matrimonial home at her will. For three months, this practice is continued. However, on 02.11.2015, she had left for her parental home after which she had not returned to her matrimonial home.

3. The appellant would submit that the respondent while she was at her matrimonial home would repeatedly say that she has been forced to live in a village though she was brought up in a



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City. Therefore, she preferred her parental home. She would also slight the appellant/petitioner. All of which, had caused a great hardship and mental agony to the appellant. The respondent did not mingle freely with her in-laws. He would also state that the respondent had in one of her conversation told the appellant that if she had lived with some other person, she will be leading a happy life. She also lamented that the appellant was brought up by his mother to be a nice boy. He would further state that when she had conceived, she has asked the appellant to get her some medicines to abort the baby. She had in fact stated that abortion is very common now in the I.T. Industry. Every time, the respondent had gone to her parents house, it was the appellant who used to bring her back. On 02.11.2015, when she had left the matrimonial home, the appellant did not attempt to bring her back because he feared that if she was brought back she may attempt some drastic action. These acts of the respondent had caused hardship to the appellant. Therefore, he had filed the H.M.O.P.No.22 of 2017 on the file of the Sub-Court, Gobichettipalayam for divorce on the ground of cruelty.

4. The respondent had filed a counter denying all the allegations contained in the petition. In her counter, the respondent had stated that the petition for divorce had been filed on account of the fact that the respondent had delivered a girl child. The respondent had categorically stated that she did not hate the appellant/petitioner as contended in the petition.

5. The learned counsel for the respondent submitted that the petition is totally bereft of any details regarding the dates and in whose presence the respondent had treated the appellant with cruelty. In fact, the appellant/petitioner is silent about whether the cruelty is physical or mental which itself would clearly show that the reasons stated in the petition is a concocted one and made with a false intent. She therefore sought for dismissal of the appeal on the ground that no cause of action had been made out by the appellant.

6. The appellant had examined himself as PW1 and one T.P.Senthilkumar as PW2. The invitation for the marriage reception was marked as Ex.P1. The respondent had examined herself as RW1 and no documents were marked on her side.

7. The learned Subordinate Judge, Gobichettipalayam, on considering the evidence on both sides dismissed the petition on the ground that the appellant has not been able to establish the factum of cruelty pleaded by him and that he has not been able to establish any of the allegations made by him in the petition. Challenging the said order, the appellant has filed C.M.A.No.8 of 2020 on the file of the III Additional District and Sessions Judge, Erode, Gobichettipalayam. The appellate Court also



confirmed the order passed by the learned Subordinate Judge, Gobichettipalayam. The learned District and Sessions Judge had observed that both the appellant and the respondent were highly qualified and were very young. The appellant who had filed the petition also on the ground of desertion has not pleaded so, but, had pleaded cruelty. However, in his cross-examination, he has deposed that he had wanted divorce only on the ground of cruelty and it was on the ground of cruelty that he had filed the petition. The learned Judge had been anguished by the statement in cross-examination of the appellant that he did not want to see his daughter who had been born after the petition for divorce had been filed.

8. The learned Judge has opined as follows:

'On a careful perusal of the contents of the deposition of petitioner in his cross examination, it is very painful with regard to the attitude of the petitioner. Being a Postgraduate, working in a College as Assistant Professor, the petitioner ought to have a role model for the Students, Society, family and so on.'

9. Finally, the learned District and Sessions Judge, had held that the appellant had not made out a ground for seeking divorce. Challenging this concurrent orders, the appellant has filed this Civil Miscellaneous Second Appeal.

10. Heard the learned counsel for the appellant and the learned counsel for the respondent.

11. As stated by the Courts below, the petition has been titled as one on the ground of desertion, however, the narration contained in the petition does not contain any pleadings on desertion but would contain pleadings on cruelty. However, a reading of the same does not make out a ground for granting divorce on the ground of cruelty.

12. The appellant would state that on 02.11.2015, the respondent had voluntarily left the matrimonial home and did not return. However, in her cross-examination, the respondent has clearly stated that it was the appellant who had left her in her parents house, and this statement has not been rebutted. Therefore, by no stretch of imagination can it be contended that the respondent has deserted the appellant. The marriage had taken place on 27.08.2015, and it is the case of the appellant that the respondent had deserted him on 02.11.2015. The petition for divorce had been filed on 21.03.2016 within a period of 4 months of the alleged desertion. Section 13(1)(i-b) of the Hindu Marriage Act, would reads as follows:

'(i-b) has deserted the petitioner for a



continuous period of not less than two years immediately preceding the presentation of the petition''.

13. The above provision would clearly stipulate that in order to accuse a spouse of desertion, there must be a separation for a minimum of two years, which is not the case here.

14. On perusal of the dates, it is very clear that the very filing of the petition for divorce on the ground of desertion is not maintainable as it has been filed within a few months of the marriage itself. The appellant has not made out any substantial question of law warranting the consideration of this Court.

15. Accordingly, this Civil Miscellaneous Second Appeal is dismissed and the fair and decretal order dated 14.09.2021 made in C.M.A.No.08 of 2020 on the file of the learned Third Additional District and Sessions Judge, Erode at Gobichettipalayam confirming the fair and decretal order dated 07.10.2020 made in H.M.O.P.No.22 of 2017 on the file of the learned Subordinate Judge, Gobichettipalayam are hereby confirmed. No costs.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.

2. The Subordinate Judge,
Gobichettipalayam.

+1cc to Mr.V.Anandhmurthy, Advocate, S.R.No.20922

C.M.S.A.No.20 of 2022

GMR(CO)
SB(18/05/2022)