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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.1198 of 2020

Venugopal Raghavan
Rep by Mr.M.Ramanandan

..Appellant/Petitioner

Versus

Vani Venugopal

..Respondent/Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act, 1984, against the order and decree dated 11.02.2020 passed in H.M.O.P.No.1714 of 2014 by the I Additional Family Court, Chennai.

For Appellant : **(*)Mr.R.Mohandoss for Mrs.T.Hemalatha**

For Respondent: Mr.Abrar Mohamed
for Mr.V.Velusamy

JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

Mr.Venugopal Raghavan/appellant herein, husband of the respondent/Mrs.Vani Venugopal, has filed the present appeal challenging the impugned judgment and decree passed by the I Additional Family Court, Chennai, in H.M.O.P.No.1714 of 2014, dated 11.02.2020, dismissing his prayer for divorce.

2. Mr.R.Mohandoss, learned counsel for the appellant/husband, submitted that the marriage between the appellant/husband and the respondent/wife was solemnized on 06.10.1997 at Kabadi Shankarsa Gangubai Kalyana Mandapam, Bangalore. Out of the said wedlock, the respondent did not beget any biological child even after 9 years and therefore, the appellant agreed for adoption of child and accordingly, they had adopted a 5 month old child by name Navneeth Krishna Venugopal from the Adoption Centre at Bangalore on 05.08.2006. It is further submitted that the respondent/wife suppressing her



ailments relating to gynecological issue, she contracted the marriage and this apart, she was very cruel and adamant, and she spends his income lavishly. Although he advised her constantly to change her approach, she put him to disgrace and untold misery. Therefore, left with no other choice, he was pushed to take extreme step of filing divorce petition on the grounds of cruelty and desertion invoking Section 13(1)(ia) and (ib) of the Hindu Marriage Act. The said divorce petition was dismissed by the learned I Additional Family Court, Chennai, through the impugned judgment and decree dated 11.02.2020 passed in H.M.O.P.No.1714 of 2014. Aggrieved by the same, the appellant/husband has filed the present appeal.

3. Assailing the impugned judgment and decree, learned counsel for the appellant/husband submitted that the intention of the respondent/wife is to grab his money. She lived with him from 1997 to 2012 at Riyadh-Saudi Arabia for 14 years. Even after adopting the child, the respondent/wife on her own wantonly underwent In-Vitro Fertilization (IVF) procedure for the Procreation of a child and he has spent huge expenses for such medical treatment. Besides, she went to the several countries for tour, along with her sister and mother, for which, entire expenses were borne by the appellant/husband and as could be seen from Ex.P10, she used to buy expensive gifts for her relatives like Visa stampings showing international vacations; Photos of footwear, etc. By stating so, he further argued that to pester the other spouse to live beyond means so as to enable the matrimonial life to continue and not desisting from extravagances can very well amount to cruelty. Ex.P8--E-mail communication of the wife to one Astrologer Sankar establishes that she is keen on the assets and wealth of her husband by grabbing his hard earned properties and therefore, it reflects her mala fide intention and she does not have required love and affection towards his husband. However, learned Family Court, without taking note of the arrogant and adamant attitude of the wife in miserably failing to perform her marital obligations, has wrongly refused to grant the divorce. Besides, she did not file a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and therefore failure on her part to file such petition shows that she is very happy to lead a solitary life without restituting her matrimonial right.

4. Continuing further, learned counsel for the husband argued that the appellant/husband was forced by the respondent/wife to pay a sum of Rs.43,20,000/- i.e. Rs.21,60,000/- to her mother/Mrs.Girija Srinivasan and a sum of Rs.21,60,000/- to her sister/Mrs.Jyothi Sampathy, towards purchase of 3 plots in the wife name. But, the learned Family court failed to note that though the funds were transferred from his bank account, she did not buy the plots, but, on the other



hand, she falsely accused her husband that he did it for the purpose of evading income tax which is absolutely false since he being an NRI is not required to pay Income Tax. Subsequently, he filed a case against his wife and her mother under Section 420 read with Section 34 of IPC in PCR.No.55293/2019 and thereafter, a charge sheet was filed against them confirming the claim of the husband and it was converted as Criminal case under C.C.No.50063/2021 and the same is still pending before the X Metropolitan Magistrate, Bangalore. But, he pleaded, all these facts have been deliberately suppressed and lied under oath by the wife, hence, the impugned judgment and decree passed by the learned Family Court cannot be sustained.

5. Continuing further, learned counsel for the husband submitted that after the solemnization of marriage on 06.10.1997, the respondent/wife left the matrimonial home on 03.02.2012 and since then, the parties have been living separately for about 10 long years. Therefore, since there has been long period of separation, the matrimonial bond between the parties is beyond repair and the marriage becomes a fiction though supported by a legal tie. In support of his submissions, learned counsel has relied on a judgment of Hon'ble Apex Court in the case of Kanchan Devi Vs. Pramod Kumar Mittal reported in AIR 1996 SC 3192 and Naveen Kohli vS. Neelu Kohli reported in AIR 2006 SC 1675, to contend that if the parties are living separately for long years, then there cannot be any doubt that the marriage between the parties has irretrievably broken down. Therefore, in the case on hand, since the parties have been living separately for more than 10 years, the impugned judgment and decree passed by the learned Family Court directing the parties to live under one roof does not sound good. On this basis, learned counsel prayed for allowing the appeal.

6. Mr.Abrar Mohamed Abdullah, learned counsel, for Mr.Veluchamy, learned counsel for the respondent/wife, submitted that the allegation that the respondent/suppressed her ailment called "Poly Cystic Ovarian Disease"(PCOD) is utterly false, for, even prior to the marriage, the said issue was disclosed to him and moreover, it is nothing to do with pregnancy related issues. Therefore, the question of cheating her husband does not arise. It is further submitted that only the appellant/husband gave his supplementary credit card for purchase of clothes, footwear and other necessary household items, and therefore, the allegation that she spent her husband money lavishly is not correct. It is further submitted that for the purpose of begetting a child, both the husband and wife underwent medical tests and thereby entire expenses for infertility were paid by him, hence, it is not correct on the part of the husband to allege that she spent money lavishly. In fact, by taking such a tall treatment, her health condition got



worsened. Finally, having lost hope for a natural conception due to medical complication of both of them, they have adopted a child after executing necessary adoption documents. The respondent/wife is struggling lot after 2013 as he did not even bother meet their reasonable expenses, yet, the respondent/wife wanted to lead a peaceful family life with her husband and therefore, on this score, he has prayed for not to dissolve the marriage by confirming the impugned judgment and decree passed by the Family Court.

7. Having heard the parties, this Court frames the following issue:-

Whether the appellant is entitled to get the decree for divorce?

8. It is not in dispute that after the solemnization of their marriage on 06.10.1997, since the respondent/wife did not beget any biological child, they have adopted a 5 months old child by name Navaneeth Krishna on 05.08.2006. RW1-respondent/wife, during cross-examination, has admitted that she did not cooperate with her husband for physical relationship. It is settled law that unilateral decision of refusal to have intercourse without therebeing any physical incapacity or any other valid reason would amount to mental cruelty. It is also seen that they have lived together for about 14 years i.e. from 1997 to 2012 in Riyadh-Saudi Arabia. During their stay period, she sent a mail to one Astrologer/Sankar seeking advice on the property of her husband and the said email communication is marked as Ex.P8. Besides, Ex.P10 shows that the respondent/wife was using his supplementary credit card to buy unwanted expensive clothes and it further shows that she was flying frequently to India in a Business Class by deserting her husband alone in Riyadh unmindful of difficulties faced by him.

9. This apart, on one occasion, the appellant/husband has transferred a sum of Rs.21,60,000/- each to his wife's mother/Girija Srinivasan and sister/Jyothi Sampath for transfer of their family properties in favour of his wife. To substantiate the same, he has also produced a copy of emails forwarded to the Bank by way of Additional Typed Set-II. Receipt of such sum is also admitted by his wife. But, unfortunately, the respondent/wife falsely accused her husband stating that he has transferred the said sum only to evade from paying Income Tax. Therefore, he filed a police complaint against his wife and mother-in-law and thereby a charge sheet was also filed confirming the claim of the husband. Now, a criminal case in C.C.No.50063/2021 is pending before the X Metropolitan Magistrate, Bangalore. Although the respondent/wife was aware of the fact that for transfer of family property, the above said sum was transferred to the bank



accounts of her mother and sister, the respondent/wife suppressing the said factum deposed before the Family Court that the said transaction was only to save the tax. In our considered view, inducing the other spouse to live beyond means and invite indebtedness would amount to cruelty and this can be termed as lack of feelings for the welfare, happiness and security of other spouse. Thus, the aforesaid acts of the respondent/wife would depict that she is more interested/keen on the assets and wealth of her husband than showing love and affection to her husband, hence, such callous attitude of the wife, in our consider view, would amount to cruelty.

10. Another contention of the learned counsel for the appellant/husband is that the parties have been living separately for several years and therefore, it is a fit case for grant of divorce on the ground of desertion under Section 13(1) (ib) of the Hindu Marriage Act. It is seen that after the solemnization of the marriage on 06.10.1997, she left the matrimonial home on 03.02.2012 by deserting her husband. Since then, the parties have been living separately for about 10 long years. The Hon'ble Apex Court in Kanchan Devi Vs. Pramod Kumar Mittal reported in AIR 1996 SC 3192 ruled that if the parties are living separately for more than 10 years, there is no possibility of reconciliation and as such, the Court can grant a decree for dissolution of marriage. Similarly, in yet another decision in Naveen Kohli vS. Neelu Kohli reported in AIR 2006 SC 1675, the Hon'ble Apex Court held that since the parties are living separately for more than three years, there cannot be any doubt that the marriage between the parties has irretrievably broken down. In the case on hand, as the parties have been living separately for more than a decade, a good part of the lives of both parties has been consumed in the litigation and that the allegations made against each other by the parties in the petition and the counter affidavit will go to show that living together is out of question, hence, in our considered view, directing them to live under one roof is not in the realm of possibility.

11. Learned counsel for the appellant/husband submitted that as per the order passed by the I Additional Family Court, Chennai, in I.A.No.2 of 2019 in O.P.No.1714 of 2014, dated 16.09.2019, the appellant/husband has paid a sum of Rs.2,50,000/- towards one time interim maintenance. The said submission is recorded.

12. In fine, for the reasons stated above, answering the issue in favour of the appellant, the divorce is granted on the grounds of cruelty and desertion under Sections 13(ia)(ib) of the Hindu Marriage Act. Consequently, the impugned and decree passed by the I Additional Family Court in H.M.O.P.No.1714 of



2014, dated 11.02.2020, is set aside, and the Civil Miscellaneous Appeal stands allowed. No Costs.

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Sd/-
Assistant Registrar(CS-I)
(22/03/2022)

***Corrected as per Letter
Dated 28.03.2022**

//True Copy//

Sub Assistant Registrar

rkm

To

1.The I Additional Family Court,
Chennai.

2.The Section Officer,
VR Section, High Court,
Madras.

+2cc to Mr.T.Hemalatha, Advocate SR.No.4126

**To be substituted
the order already
despatched on
24.03.2022**

C.M.A.No.1198 of 2020

NRL (CO)
GN(23/03/2022)

RGA(08/04/2022)