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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.S.A. No.37 of 2022

K.Vijay Kumar

...Appellant/Appellant/Petitioner

Vs

Smt. B.K. Malliga

...Respondent/Respondent/Respondent

PRAYER: Petition filed under Section 100 of CPC read with Section 9 of the Hindu Marriage Act, to against the Judgment and decree rendered in CMA No.11 of 2017 dated 15.02.2022, on the file of the District Court, the Nilgiri District, confirming the Judgment and decree of the Sub Court, Udhagamandalam, the Nilgiri District, rendered in HMOP No.8 of 2016 dated 20.04.2017.

For Appellant : Mr.R.Saseetharan

JUDGEMENT

This Civil Miscellaneous Second Appeal is filed by the unsuccessful petitioner/husband. The facts in brief necessary to dispose of the above appeal are as follows:-

2. The appellant herein had filed an application for restitution of conjugal rights under Section 9 of the Hindi Marriage Act on the file of the Sub Judge Udhagamandalam against his wife, the respondent herein. It was his case, in the petition filed in support of the restitution of conjugal rights, that he had married the respondent on 30.11.1987 as per the Hindu rites and Customs. Out of this wedlock a daughter named Archana was born on 20.12.1988. The petitioner at the time of his marriage was working as a teacher in the Government Higher Secondary School at Anikorai Village, Ooty Taluk. The appellant and the respondent live happily at his marital home for about two and a half years. However, the respondent had refused to join the appellant at Anikorai (his place of work) as the same



was a rural village. In the month of June 1990 his father in law passed away and after the funeral rites the respondent refused to rejoin him. The attempts to mediate had also failed since the respondent insisted that the appellant should permanently shift with her at Manjoor in her mother's house.

3. Thereafter, in August 1990, the appellant brought back his elder daughter Archana from the custody of the respondent in the fond hope that the respondent would rejoin him. Meanwhile, the 2nd daughter Asitha was also born on 12.10.1990 and she remained with the respondent. It is the case of the appellant that the respondent had lodged a police complaint against the appellant stating that the appellant had forcefully taken away the daughter Archana. However, before the police authority the child Archana refused to join the mother. The respondent was advised to file necessary petitions for custody which she did not do. The respondent thereafter, refused access to the appellant to his 2nd daughter Asitha. The respondent also took out a petition for maintenance. The appellant would submit that he has been paying the maintenance as directed by the Court without a default.

4. The appellant would submit that he had brought up his daughter Archana in a congenial atmosphere, educated her and married her into a good family. On the other hand, his 2nd daughter Asitha who was in the custody of the respondent however did not have these facilities and ultimately she had eloped and married a man out of her community. The respondent was only interested in getting enhanced maintenance and not at all interested in discharging her conjugal duties and maternal obligation towards the petitioner and his daughters. However, in order to ensure the reputation of his daughters in their respective matrimonial homes, there was a necessity for the respondent and the appellant to reunite. Therefore, the appellant had come forward with the petition for restitution of conjugal rights.

5. The respondent had filed a counter inter alia denying that the allegation contained in the petitions filed under Section 9 of the Hindu Marriage Act. It is the respondent's case that the appellant had behaved in an inhuman manner with her as he wanted more dowry both in the form of articles as well as land. She would submit that after deserting the respondent/wife herein after the birth of the 2nd daughter in the year 1990 the petition for restitution of conjugal rights has been filed only in the year 2016 which is nearly 26 years after the birth of the 2nd daughter. She would submit that they have been living separately for over 30 years and the present petition is highly belated and therefore, deserves to be dismissed.



6. The Sub Judge, Udhagamandalam before whom the above petition in HMOP No. 8 of 2016 was filed, by order dated 20.04.2017 was pleased to dismiss the same. The said order was taken up on appeal by the appellant herein in CMA No.11 of 2017 before the District Court, Udhagamandalam. The learned Judge also concurred with the view taken by the Sub Court-Judge, Udhagamandalam. Both the Courts have held that just as much as the wife has not shown proof for her continued absence from the matrimonial home the appellant/ husband has also not been able to explain the enormous delay in taking out a petition for restitution of conjugal rights. It is challenging the concurrent Judgment and Decree that the appellant is before this Court.

7. Heard Mr.Saseetharan, learned counsel for the appellant.

8. The learned counsel for the appellant would submit that the finding of the Courts below that the respondent/wife has deserted the appellant/ husband would work adversely against the respondent after the appellant's demise as she would not be able to get the terminal benefits of the appellant. This argument cannot be countenanced since by dismissing the appeal there is no change of status as wife for the respondent. The present petition is instituted for restitution of conjugal rights and not for a divorce. Both the Courts below have rightly held that the petition for restitution of conjugal rights has been filed nearly two decades and six years after the parties have been living apart. The Courts below have not set at naught the matrimonial bond between the appellant and the respondent and the respondent continues to enjoy the status as wife of the appellant.

9. I do not see any substantial question arising in the above appeal and consequently, the Civil Miscellaneous Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Judge,
The District Court,
Udhagamandalam.
Nilgiri District.

2.The Subordinate Judge,
The Sub Court,
Udhagamandalam.

+1cc to Mr.R.Saseetharan, Advocate SR. No. 33198

C.M.S.A. No.37 of 2022

EV (CO)
PR (29/06/2022)