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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.12.2021

Judgment Pronounced on : 28.01.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.956 of 2018

K.Latika

.. Appellant/Respondent

Versus

P.R.Ganesh

.. Respondent/Petitioner

Prayer :

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Court Act, 1984, to set aside the order and decretal order passed in O.P.No.3651 of 2014 dated 24.10.2017, on the file of the learned Principal Family Court, Chennai.

For Appellant : Mr.V.Raghavachari
for M/s.K.Subbu Ranga Bharathi

For Respondent : Mrs.Chitra Sampath, Senior Counsel
for Mr.T.S.Baskaran

JUDGMENT

(Judgment of this Court made by Mr.Justice D.Bharatha
Chakaravarthi)

A. The Appeal :

This is an appeal filed under Section 19 of the Family Court Act, 1984, by the appellant/wife, aggrieved by the judgment and decree dated 24.10.2017 in O.P.No.3651 of 2014 on the file of the Principal Family Court, Chennai, whereby, the Principal Family Court allowed the petition for divorce filed by the respondent/husband under Section 13(1)(i-a)&(i-b) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion.

B. The Admitted Facts :

2. The facts that the marriage between the appellant and the



respondent was solemnized on 07.03.2011; they lived together during March, 2011- April, 2011; that the appellant went to her mother's house in the month of May, 2011, when her college was in vacation and joined matrimonial home in June, 2011 and went back to her parents' house in July, 2011 for Aadi; thereafter, she came only on 10.09.2011 and went back to her mother's house on 11.09.2011, are all admitted. From 11.09.2011 to till date, both parties are living separately is admitted, except of 4 days in December, 2013 which is in dispute. There are no children born out of the marital wedlock is admitted.

C. The Petition & Pleadings before the Trial Court :

3. Under these circumstances on 18.09.2014, the respondent/husband filed the above Original Petition seeking for divorce on the ground of cruelty and desertion. The specific acts of cruelty pleaded are that the appellant/wife was never interested in conjugal life and even during the short span of time of around 95 to 98 days, she avoided cohabitation by saying that she will not bear a child for a minimum of three years, as she wanted to study the nature of the respondent/husband and the financial circumstances. Further, with a view to avoid conjugal relationship, whenever the respondent/husband entered the room, she will be continuously speaking on the phone and avoiding the respondent/husband. If the respondent/husband persists or makes overtures, she would make some hostile conversation and pick up quarrel and then avoid conjugal relationship stating that in view of the conversation, she has no mood to have physical relationship. Therefore, the same leads to cruelty on a newly wedded husband.

4. The other incidents of cruelty pleaded are that the appellant/wife was not behaving like any other normal wife as she was very cruel towards the respondent's family members and did not show any respect to the respondent's parents and was not involved in regular domestic chorus. The next ground for seeking divorce is that the petitioner lastly left the matrimonial home on 11.09.2011 and thereafter, until the filing of the petition for more than two years, she has deserted the respondent/husband and therefore, the respondent is entitled to divorce.

5. The above petition is resisted by the appellant/wife by filing a detailed counter statement by pleading series of allegations against the respondent/husband and his family members. It is alleged by the appellant/wife that even during the engagement, the respondent's mother picked up fight with the appellant's sister. During their honeymoon, the respondent/husband quizzed her and about her salary and other details of her property. The respondent/husband and his family members pressurized her by making unjust demands to her mother including a family holiday in Singapore. The respondent/husband



and his family members refused to register the marriage. The respondent at the instigation of his parents and sister demanded the sum of Rs.10,00,000/- for setting up of dental clinic. The respondent's mother used to abuse her in filthy language in front of the male Office Assistant. The respondent's did not have the basic courtesy offering Ethir Virundhu, which is part of their custom. The respondent's/husband's sister was practically staying in the respondent's house all the time, while projecting to the society as if she is staying elsewhere. When the appellant/wife was in her home, the respondent's father would walk across the room several times, noticing the appellant all the time and intruding into her privacy. The respondent's father humiliated the appellant by asking her to inform about the menstrual cycle. The respondent/husband never provided basic things to the appellant nor accompanied her to buy things. The appellant was treated as untouchable in the matrimonial home and she was not eligible to touch anything. The respondent/husband would carry all the tales to his parents and sister and the appellant/wife would be made to stand in the middle of the hall and answer the enquiry of the family and thereby, humiliating the appellant/wife for no fault of her. The respondent/husband is money minded. The respondent/husband has undergone surgery and is unhealthy and suffers frequent fever. The respondent/husband is a social drinker. The respondent/husband is addicted to watch pornography. The appellant/wife, when she had gone to her mother's house for Aadi, the parents of the respondent/husband would come to her home and insist that only if the appellant gives money for setting up a dental clinic, she could come back to the matrimonial home and the respondent and his family never invited her back to the matrimonial home, after the Aadi.

6. The appellant would further plead that on 09.09.2011, the appellant visited the respondent's mother at the hospital and she stayed up to 8.00 A.M to 2.00 P.M, as the day was respondent/husband's birthday, but the respondent/husband asked the appellant to leave. After discharge of the mother, on the next day i.e., on 10.09.2011, the appellant/wife went to the matrimonial house to see her mother in law, on the next day itself the respondent/husband picked up quarrel and sent her to her mother's house with the condition that she can return if the monetary demands are made. The respondent/husband and his sister always pick up quarrel with her. The respondent/husband had maintained an advertisement in the matrimony website namely Bharath Matrimony, looking for fresh alliance, as if he was bachelor. Even in the respondent's own blog, he described himself as a single person. The respondent/husband never treated her mother with love and affection. The repeated attempts made by the appellant/wife including one on 12.12.2011 to discuss about the reunion was turned down. During November,



2013, the father of the respondent/husband came to the appellant's house and requested either they should rejoin or end the marriage, pursuant to which, the appellant went to respondent's house. To her shock, she noticed that her valuable gold jewelry and diamond ring and silver utensils were missing and therefore, on 16.12.2013, since there was hostile attitude, she returned back to her mother's house. The respondent/husband put seven cracker boxes underneath her bed, threatening to kill her. The appellant/wife was thrown out of the matrimonial home by making dowry demand. In any event, the period of separation is only from 16.12.2013 and therefore, there is no two years of separation. The appellant/wife was forced to go to Gynecologist. As far as her refusal conjugal relationship is concerned, she will expose the true colour of the respondent/husband, at the appropriate time, if necessity arises and therefore, since it is only the respondent/husband, who treated her with cruelty in above manner, she prayed for dismissal of the divorce petition.

D. The Trial :

7. Since the attempts of counseling having failed, the Family Court had no other option than to proceed with the trial. The respondent/husband examined himself as P.W.1 and the marriage invitation was marked as Ex.P1. The marriage photo was marked as Ex.P2 and copy of voter identity card as Ex.P3. The appellant/wife examined herself as R.W.1 and photo of the college function was marked as Ex.R1 and the internet downloaded copy of the blog of the respondent/husband was marked as Ex.R2 and the internet downloaded copy of the Bharat Matrimony advertisement of the respondent/husband is marked as Ex.R3.

E. The findings of the Trial Court :

8. The Family Court after considering the evidence on record, disbelieved the contention of the wife that she lived with the respondent/husband during December, 2003 based on her own case that on 12th December, 2011 and January, 2012 she visited the respondent/husband and his family; she again visited along with her sister and during April, 2012 and tried to work out reunion. However the attempts did not materialize and therefore, her averments that she stayed with respondent/husband in the matrimonial home for four days during December, 2013 was disbelieved and the Trial Court found that the last day of the joint living was only on 11.09.2011. The Trial Court took notice of the fact that in the entire counter affidavit or in her chief-examination, the appellant/wife did not mention that she is inclined to live with the respondent/husband. The Trial Court further found that allegations that the respondent/husband is a social drinker and is addicted to pornography etc were made without any proof whatsoever.



9. In respect of the appellant/wife's contention that by making demand of money she was not invited to the matrimonial home after Aadi and the trial court considered her case at the time of the alleged demand she was not at home and she was away to Sulurpet temple and concluded that she ought to have proved the same either by examining her mother or the sister and therefore, the Trial Court disbelieved the said allegations and thus held that the husband is entitled for divorce on the ground of cruelty and desertion. As far as Exs.R2 and R3 are concerned, the Trial Court considered the explanation given by the respondent/husband that he did not give any advertisement and the personal blog was also written long back. Considering the fact that the appellant/wife did not examine anybody from Bharat Matrimony to prove the allegation, the Trial Court disbelieved that the husband would pose himself as a bachelor for a second marriage even when the marriage between the appellant/wife and the respondent/husband is subsisting and rejected the said contention. The Trial Court also considered the fact that no attempt whatsoever has been made by the appellant/wife for reunion and hence allowed the petition for divorce.

F. The Submissions in this Appeal :

10 .Heard Mr.V.Raghavachari, learned Counsel for the appellant and Mrs.Chitra Sampath, learned Senior Counsel on behalf of the respondent.

11. Mr.V.Raghavachari, learned Counsel for the appellant would submit that there was absolutely no serious act worth the name of cruelty was even alleged against the appellant/wife and even before the marriage could start working the parties unfortunately got separated and the Family Court, therefore, ought not to have granted a decree of divorce, as there is a scope for the parties rejoining and living together.

12. It is the second contention that even in the cross-examination of the husband, he had admitted that he had conjugal relationship with the wife for about two to three times and therefore, considering short the period of the parties were lived together, it cannot be hold that the wife did not co-operate for conjugal relationship and therefore, the said ground of cruelty is unfounded and falls on his own evidence in the cross-examination. As far as desertion is concerned, the appellant/wife has given a proper justification that she was sent out of the matrimonial home demanding dowry and therefore, there was no desertion as she was always ready and willing to join the matrimonial home and inspite of her attempts for reunion, she was not taken back. Finally, it is his submission that there is no proper explanation from the respondent/husband regarding Exs.R2 and R3. Therefore, the respondent/husband is at fault. Therefore, by virtue of Section 23 of Hindu Marriage



Act, when he is at fault, he is disentitled to get the relief of divorce. In support of his contention, the learned Counsel relied upon the judgment of the Hon'ble Supreme Court of India in Dr.N.G.Dastane Vs. Mrs.S.Dastane¹, by relying upon paragraph No.47 of the judgment.

13. Per contra, Mrs.Chitra Sampath, learned Senior Counsel appearing for the respondent/husband would submit that the respondent/husband has clearly pleaded specific acts of cruelty. Regarding the first allegation that the appellant/wife was not interested and avoided conjugal relationship is concerned, it is clear from the husband's evidence that except for two or three times, she never consented or indulged in conjugal relationship. The same amounts to grave cruelty for any newly-wed husband. The vague pleading of the appellant/wife would itself expose her conduct and therefore, she would plead that the respondent/husband is entitled for the relief. This apart, according to the learned Senior Counsel several unscrupulous, unsubstantiated allegations including the husband is a drunkard, he is addicted to pornography etc., were all made and making such unscrupulous allegations against the respondent/husband also also several such allegations against his father, mother and sister in the pleadings itself would amount to cruelty.

14. In support of her submissions, the learned Senior Counsel relied upon the judgment in Vijaykumar Ramchandra Bhate Vs. neela Vijaykumar Bhate², for the proposition that if one of the spouse indulges in character assassination of the other, the same would amount to cruelty.

15. The learned Senior Counsel also relied upon the judgment in K.Srinivas Rao Vs. D.A.Deepa³, for the proposition that making false acquisitions in the pleadings by itself would amount to mental cruelty and therefore, the Appellate Court had rightly considered the issue and decreed the original petition for divorce.

G. The Discussion & Findings :

16. We have considered the rival pleadings of the parties, material evidence on record and the submissions made by the learned Counsel on either side. On a consideration of the pleading of the husband regarding the non-cooperation of the wife for conjugal relationship, the corresponding pleading of the respondent/wife, which is evasive in nature and the deposition of the husband that after the marriage only one or two times alone, they had conjugal relationship and that the appellant/wife would pick up quarrel during night time only to avoid conjugal relationship and the evidence of the

1 (1975) 2 SCC 326

2 (2003) 6 SCC 334

3 (2013) 5 SCC 226



appellant/wife, wherein it is not specifically mentioned that they were having normal relationship, except for bald denial in the detailed cross-examination, we agree with the finding of the Trial Court that the respondent/wife was not interested in conjugal relationship and refusal of conjugal relationship at the very inception of the marriage when the parties are young and newly wedded, would amount to mental cruelty and accordingly, we hold that the respondent/husband has successfully established the charge of cruelty.

17. This apart, as narrated supra in this judgment it may be seen that the parties had lived together only for a period of about 90 days or thereabouts. But the appellant/wife had made volley of allegations and several of it remained unproved, including those about the character of the respondent/husband. The allegations include that he is a drunkard, addicted to pornography, he attempted to kill her by stacking cracker boxes, committed theft of her jewelry etc., and therefore, we are in agreement with the arguments of the learned Senior Counsel appearing for the respondent/husband that the appellant/wife had committed cruelty by making unscrupulous and unsubstantiated allegations harming his reputation and mental health and therefore committed cruelty on this score also.

18. The Family Court had rightly found that the contention of the appellant/wife that she stayed for four days in the month of December, 2013 as not proved. Without any justifiable reason, without issuing any communication or taking any steps to join together, the appellant/wife simply deserted the respondent/husband and continued living in her mother's house, which shows that there was no attraction/subsistence of marital bond between herself and the husband and the conduct of abandonment of marital life writ large in this case and therefore, we hold that the husband is entitled for the relief of divorce on the ground of desertion also.

19. As far as Exs.R2 and R3 is concerned, first, the judgment of the Hon'ble Supreme Court of India referred by the learned Counsel for the appellant in Dr.N.G.Dastane Vs. Mrs.S.Dastane, is based on Section 23 of the Hindu Marriage Act, which makes it clear that if it appears that if the relief is prayed for taking advantage of one's own wrong, then the same will be refused by the Court. In this case, even assuming that Exs.R2 and R3 have been put up by the husband, in the facts of the case he is taking advantage of that erroneous behaviour. Second, the veracity of Exs.R2 and R3 is also questioned. It is seen that the documents are electronic documents downloaded from the internet and are marked without any certificate as per Section 65(B) of Indian Evidence Act. The plausible explanation of the learned Senior Counsel for the respondent/husband that matrimony advertisement was given before the marriage and it was not taken off by the website as the same was for a particular



period and similarly the writing on the blog was also continued in the website, is accepted.

20. Mr.V.Raghavachari, learned Counsel for the appellant would contradict this explanation by stating that as a matter of fact, a new photograph of the respondent/husband with the shirt which was brought by the appellant/wife is posted in the matrimonial website. As concluded by the Trial Court, unless and otherwise the matter was taken up to the level of proof by summoning the executive of the Bharat Matrimony website, no conclusion can be reached based on the allegation. Therefore, the arguments are without any merits.

H. The Result :

21. Thus, we find no merits in this appeal and consequently, C.M.A.No.956 of 2018 is dismissed. The judgment and decree of the learned Principal Family Court, Chennai in O.P.No.3651 of 2014 is confirmed. Consequently, C.M.P.No.7801 of 2018 is closed. However, in the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

grs

To

The Principal Family Judge,
The Principal Family Court, Chennai.

Copy to

The Section Officer, V.R. Section, High Court, Madras-104.

+2cc to M/s.K.Subbu Ranga Bharathi, Advocate, S.R.No.5298

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.5327

C.M.A.No.956 of 2018

GSM(CO)

CT 22/03/2022