



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.1563 of 2020

Jamuna Rani

...Appellant/Respondent

Versus

Subramaniam

...Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal has been filed under Section 19 of Family Court Act, to allow the above Civil Miscellaneous Appeal, by setting aside the fair and decretal order, dated 27.07.2020 passed in H.M.O.P.No.7 of 2020 on the file of the Family Court, Tirupur.

For Appellant : M/s.Dhanwanthi
for Mr.K.Govi Ganesan

For Respondent : Mr.S.Thiruvengadam

JUDGMENT

This Civil Miscellaneous Appeal is filed by the Wife, Jamuna Rani, aggrieved by the Judgment and Decree of the Family Court, Tiruppur in H.M.O.P. No. 7 of 2020, thereby allowing the petition for divorce filed by the respondent/husband Mr. Subramaniam, on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955.

2. The case of the respondent/husband is that the marriage between the parties was solemnized on 13.03.2013 and that they lived together only for a period of about two months. During this period, the respondent behaved abnormally and that she was mentally disturbed and would stand all alone speak loudly, laugh and go out of the house and act as if she was speaking to somebody. When the husband approached her for physical relationship she refused by saying that her parents would beat her if he touches her. The marriage was never



consummated and upon confrontation, the wife's parents took her away from the matrimonial home and thereafter since she did not return inspite of attempts by the husband, the husband finally issued legal notice, dated 25.05.2013 and thereafter filed the petition for divorce.

3. The respondent wife, was initially set exparte and with a delay of two years she filed a petition for setting aside the exparte decree which was allowed and thereafter she filed a counter denying that she was psychologically disturbed and submitted that even before the marriage the husband had purchased her a cellphone and both were talking continuously which would go to show that things were normal between them. Though she behaved like every other dutiful wife, she was sent back to her parents house and that she was always willing to live with the petitioner and no grounds exist to dissolve the marriage between them.

4. Since the efforts of counseling the parties and resolving the matrimonial conflict did not yield any positive result, the Family Court had no other option than to proceed with the trial. The husband examined himself as PW-1 and one Chinanasamy was examined as PW-2 and Exs-P1 - P5 were marked on his side. The wife examined herself as DW-1 and no documents were marked on her side.

5. The Family Court, after considering the pleadings of the parties and the evidence on record, held that non-consummation of marriage even during the initial period of two months of living together by the parties amounted to cruelty on the husband. The trial court found that the respondent wife's conduct in taking contradictory stand in respect of receipt of legal notice and issue of reply notice making the evidence of the husband reliable. Further her conduct in admitting that he was in a depressed state and leaving the matter exparte and filing the setting aside application after two years and seeing the husband only in the Court after 5 years all cumulatively were taken into consideration to hold that her conduct amounted to cruelty on the husband and the prayer of the respondent/husband for divorce was granted. Aggrieved by the same, the present appeal is filed before this Court.

6. Heard Ms. Dhanwanthi, the learned counsel for the appellant and Mr. S. Thiruvengadam, the Learned Counsel for the respondent. The Learned Counsel for the appellant would submit that the respondent husband has miserably failed to prove that the appellant wife had any mental disorder. The wife got into



the box and was cross examined in detail. She was talking to the husband over phone even before marriage. She had studied upto Diploma in Teacher Education and there is nothing on record to suggest that she was suffering from any mental disorder. She was sent back within 60 days and there is absolutely no ground whatsoever to dissolve the marriage between the parties who are young and reunion is very much possible and the Family Court ought not to have granted the divorce.

7. The Learned Counsel for the respondent/husband would submit that only because all was not well with her, even after the case she was feeling shy to appear before the Court. Further, she was never willing for reunion and already the husband is greatly prejudiced by her conduct by keep him at bay from 2013 till now. He would submit that in the facts and circumstances of this case, no fault can be found in the Judgment and Decree of the Family Court.

8. We have given our consideration to the submissions made on behalf of either side and the pleadings of the parties and the evidence on record. Firstly, the appellant and the respondent, after the marriage was solemnized on 13.03.2013 at Sukkrieswarar Temple, Sarkar Periyapalayam, Tiruppur, as per the Hindu rites and customs lived together only for two months. During this two months period, it is the specific case of the appellant husband that the marriage was not consummated. The pleading of the appellant/wife is evasive in this regard and she did not deny the fact. Therefore, even though there is no clinching evidence which was let in on behalf of the husband regarding her psychological condition, this petition is filed only on the cruelty and non-consummation of marriage even at the start of the marital life by one party would certainly amount to grave mental cruelty on the other spouse. The appellant wife was completely evasive in her pleadings on this crucial issue, amounting to indirect admission and there is not even any pleading that it was due to the fault of the husband. Therefore, the Family Court was right in holding that the appellants conduct amounted to cruelty.

9. Further, when the respondent-husband herein finding that the appellant had left the matrimonial home and failed to come back, sent a legal notice dated 25.05.2013, the same was not even responded. When it is the evidence of P.W.1 respondent that as the acknowledgment card was not received and therefore, when he lodged a complaint before the postal department regarding the same, he came to know that the legal notice sent by him to the respondent/appellant herein was received by her on



27.05.2013 by the letter received from the Postal Department dated 14.06.2013. The appellant coming to the witness box before the Family Court as R.W.1 has taken a stand that she has issued a reply notice. This contradiction is rightly taken into consideration by the Family Court for believing the oral evidence of the respondent/husband.

10. Thirdly, when the appellant/wife pleaded that she was driven away from the matrimonial home after two months from the date of marriage, nowhere she substantiated on what reason or basis she was driven away. Therefore, the learned trial court has come to the conclusion that she on her own left the matrimonial home. The Learned Counsel for the respondent-husband also soliciting our notice to the findings recorded by the trial court in para 9 submitted that it is the self-made evidence of the appellant as R.W.1 that she was in a depressed state of mind. The learned trial court on perusal of the given statement came to the conclusion that R.W.1 was in a depressed state of mind.

11. Lastly, the evidence part brought to our notice recorded by the trial court in the cross-examination of the appellant also shows that after setting the appellant ex-parte for two years, she did not even take any steps to contact her counsel. She also admitted that for the first time, she saw the respondent-husband in the court after a period of 5 years. In the meanwhile she has not taken any steps for reunion. Therefore, looking at the case at any angle, we do not disagree with the case of the appellant-wife, because in our view the Family Court has rightly decreed the Original Petition filed by the respondent husband for divorce.

12. Therefore, this Civil Miscellaneous Appeal fails and is accordingly dismissed. However, there will be no order as to costs. Consequently, C.M.P.No.11550 of 2020 is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

grs



To

The Judge
The Family Court, Tirupur.

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Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.S.Thiruvengadam, Advocate sr 716

+1 CC to Mr.K. Govi Ganesan, Advocate sr 894.

C.M.A.No.1563 of 2020

SSI (CO)
SP(17/02/2022)