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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.11.2021

Judgment Pronounced on : 29.04.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.Nos.2655 and 2535 of 2019

In C.M.A.No.2655 of 2019:

B.Gautham

Versus

.. Appellant

S.R.Sathya

.. Respondent

In C.M.A.No.2535 of 2019:

S.R.Sathya

Versus

.. Appellant

B.Gautham

.. Respondent

Prayer in C.M.A.No.2655 of 2019 :

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, to set aside the decree and judgment in the divorce petition in O.P.No.2137 of 2005, dated 26.04.2019 passed by the Principal Family Court, Chennai and allow the Civil Miscellaneous Appeal.

Prayer in C.M.A.No.2535 of 2019 :

Civil Miscellaneous Appeal has been filed under Section 19 of the Family Courts Act, 1984, to set aside the decree and judgment in the divorce petition in O.P.No.2629 of 2009, dated 26.04.2019 passed by the Principal Family Court, Chennai and dismiss the divorce petition by allowing the Civil Miscellaneous Appeal.

In C.M.A.No.2655 of 2019

For Appellant : M/s.V.K.Sathiamurthy



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For Respondent : M/s.T.C.S.Raja Chockalingam

In C.M.A.No.2535 of 2019

For Appellant : M/s.T.C.S.Raja Chockalingam

For Respondent : M/s.V.K.Sathiamurthy

COMMON JUDGMENT

D.BHARATHA CHAKRAVARHY, J.

The Appeals:

By a common judgment, dated 26.04.2019, the Principal Family Court, Chennai disposed off two Original Petitions filed by the husband, namely B.Gautham against his wife, namely S.R.Sathya. The learned Family Court dismissed O.P.No.2137 of 2005 filed by the husband under Section 12(1)(a) of the Hindu Marriage Act, 1955, praying for annulment of the marriage solemnized between them on 27.12.1992 on the ground that the respondent/wife did not consummate the marriage. The said petition was dismissed stating that there was no proof that the respondent/wife was impotent or that she did not consummate the marriage. As against the same, the aggrieved husband has filed C.M.A.No.2655 of 2019.

2. By the same judgment, O.P.No.2629 of 2009 filed by the husband under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for divorce on the ground of mental cruelty was allowed on certain alleged acts of mental cruelty and on the ground that wife alleged non-consummation of marriage by the husband and failed to prove the same. Aggrieved by the same, the wife has filed C.M.A.No.2535 of 2019.

3. As such, both the appeals are taken up and disposed off together by this common judgment. For the sake of convenience, the parties are referred as the husband and wife in this judgment.

The Parties:

4. The husband, namely B.Gautham, is presently aged 66 years. He is a B.Tech graduate from I.I.T, Madras and did his M.B.A in the United States of America. Initially, he was living in the United States of America and returned to India in the year 1992 and thereafter, tried to take up employment, but, however, he was working in the Family Furniture Shop and was continuously living with his wife and parents as a joint family.



5. The wife, namely S.R.Sathya, an Engineering graduate, was employed with Neyveli Lignite Corporation and thereafter, took up employment with Power Grid Corporation at Trichy and thereafter she took up employment at Hyderabad and left her employment in the year 1998 so as to be in the matrimonial home at Chennai.

6. The parties have been living together for 29 years and 4 months as of now and are living under one roof for most part of their lives. But, it is an admitted fact that the marriage has so far not been consummated.

The submissions before the Court:

7. Heard Mr.V.K.Sathiamurthy, learned Counsel appearing for the appellant in C.M.A.No.2655 of 2019 and the respondent in C.M.A.No.2535 of 2019 and Mr.T.C.S.Raja Chockalingam, learned Counsel appearing for the petitioner in C.M.A.No.2535 of 2019 and for the respondent in C.M.A.No.2655 of 2019.

8. The learned Counsel appearing on behalf of the husband, supporting the findings of the Family Court, would submit that in view of the efflux of the time, the Family Court rightly found that the Evaluation Report in Ex.C-1 cannot be taken into account. As far as the question of divorce is concerned, the learned Counsel would submit that the wife was behaving harsh manner. She was always mocking and nagging the husband. She always made facial gestures. Even if these allegations are found to be trivial on the first impression, if the nature and the conduct of the husband are looked into, the amount of impact of said actions would have had on him can be understood. By pointing out certain portions of evidence of the wife, wherein she admits that her husband routinely gets up in the morning, takes bath, taking food and goes out and comes in the night and again taking food and goes to sleep; and was also member of I.I.T Chambers, Andhra Club etc., and he would always be sober and sticking to his work, would urge this Court to accept the findings of the Family Court. Even the mother of the husband, who was examined as R.W.2, has vouched for the behaviour of the husband that he will not in any manner cause cruelty to the wife either mentally or physically and he was living as a responsible and good human being.

9. Further, relying on the findings of the Family Court regarding the non-consummation of marriage, pointing out to the evidence of the husband and the wife that she, in her cross-examination, has not come out with any serious effort made by her to make the marriage consummated and again her statements that the marriage was never consummated and they never had physical intimacy would all show that there was non-consummation



of marriage and from the evidence of the husband, it would be clear that it was the behaviour of the wife which shut him down from advancing further and therefore, both on account of leveling unsubstantiated allegation and non-consummating of the marriage, it is the respondent/wife who has caused mental cruelty to her husband.

10. In support of his contention, the learned Counsel would firstly rely upon the judgment in Ravi Kumar Vs. Julmidevi¹, the passages of which is extracted in the Trial Court judgment to press home that there cannot be any exact definition of cruelty and it has to be taken into account considering the circumstances of the case. Again relying upon the judgment in K.Srinivas Rao Vs. D.A.Deepa², he would submit that the marriage is irretrievably broken down and marriage involves human sentiments and emotions and if they are dried up, there is hardly any chance of springing back to their life. Further reliance was placed on Samar Ghosh Vs. Jaya Ghosh³, whereunder, detailed illustrations were given by the Hon'ble Supreme Court of India regarding approach of the Court in determining mental cruelty and human behaviour. He would submit that mental cruelty is the state of mind and if the party feels deep anguish, disappointment and frustration and such behaviour is humiliating, then it would amount to mental cruelty irrespective of the fact that the act complained may look normal for other persons.

11. Relying upon the judgment in Indra Vs. B.G.Giri⁴, the learned Counsel submitted that the impact of the cruel behaviour has to be taken. To press the point that particular circumstance at home, the temperaments and emotions of both parties, their status, their way of life etc., to be taken into account while determining the mental cruelty, the learned Counsel would rely upon the paragraph No.13 of the judgment of the Hon'ble Supreme Court of India in V.Bhagat Vs. D.Bhagat (Mrs)⁵. The learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in Romesh Chander Vs. Savitri⁶ to press home that the allegations of cruelty can be made even if it had happened before long period of time.

12. The learned Counsel relied upon the judgment in Durga Prasanna Vs. Arundhati Tripathy⁷, by relying paragraph Nos.21 and 28, to press home the point that the long number of years of

1 (2010) 4 SCC 476

2 (2013) 5 SCC 226

3 (2007) 4 SCC 511

4 CDJ 2015 MHC 7988

5 CDJ 1993 SC 306

6 CDJ 1995 SC 466

7 CDJ 2004 SC 1206



dispute would make the continuance of marriage impractical. Placing reliance upon paragraphs 33 and 51 of the Judgment in Sangeeta Vs. Hitesh Kumar⁸, the learned Counsel would submit that the totality of evidence on record, if proves a deliberate course of conduct on the part of the wife, the husband is entitled for divorce. Relying upon the judgment of the Bombay High Court in Suman Ramchandra Shetye (Smt.) Vs. Ramachandra Sakharam Shetye⁹, the learned Counsel would submit that mere fact as to the instances of the wife that she still wants to live with the husband is of no consequence, if otherwise, the matrimonial relation is already broken.

13. The learned Counsel further relied upon the judgment in Sukhendu Das Vs. Rita Mukherjee¹⁰, by relying upon paragraph Nos.7 and 8, whereby, in exercise of powers under Article 142 of the Constitution of India, divorce was granted by the Hon'ble Supreme Court of India. In Satish Sitole Vs. Mrs.Ganga¹¹ in paragraph No.11, it was held that since the parties therein were living separately for 14 years, any attempt to further reconciliation would be futile and therefore, it would be in the interest of parties to grant divorce. The learned Counsel relied upon A.Jayachandra Vs. Aneel Kaur¹², morefully relying upon paragraph Nos.15, 16 and 17 of the judgment and submitted that in extreme cases, the irretrievable breaking down of marriage can be taken into account. Relying upon the judgment of this Court in Salome & Another Vs. Dr.Prince D. Immanuel & Another¹³, more specifically to paragraph Nos.20 and 24, he would submit that insistence of continuance of marital tie, inspite of knowing the possibilities, by itself would amount to mental cruelty.

14. The learned Counsel further pressed into service the judgment of the Hon'ble Supreme Court of India in Rishikesh Sharma Vs. Saroj Sharma¹⁴, by relying upon paragraph No.5, whereby, it was held that passing of a decree for divorce will be correct course, if the parties will not be able to live together. The learned Counsel further submitted the judgment in Smt.Sneh Prabha Vs. Ravinder Kumar¹⁵, and by relying upon paragraph No.3, argued that the grant of divorce is the right course if there is no chance of parties living together. Therefore, the learned Counsel would submit that the Family Court has rightly granted the relief of divorce and prayed that

8 CDJ 2013 DHC 172

9 CDJ 1989 BHC 168

10 CDJ 2017 SC 1134

11 CDJ 2008 SC 1188

12 CDJ 2005 SC 070

13 CDJ 2017 MHC 2905

14 CDJ 2006 SC 921

15 CDJ 1995 SC 133



the order of divorce be sustained.

15. Mr.T.C.S.Raja Chockalingam, learned Counsel appearing on behalf of the wife submitted that this is a case where the husband is suffering from a personality disorder, namely Schizoid Personality Disorder and would further submit that it is common for those persons, who suffer from Schizoid Personality Disorder, to have aversion towards sexual activities and they will express emotional coldness, detachments and will be loners. The learned Counsel, producing medical literature on the subject, produced an article downloaded from a website¹⁶ to press home the difference between the personality trait and personality disorder. The learned Counsel further producing an article titled Introduction to Personality Disorders by Kristalyn Salters-Pedneault, P downloaded from a website¹⁷, would take this Court to the definition of Schizoid Personality Disorder. By producing an article, namely 'Schizoid Personality Disorder - Diagnostic Criteria and Diagnostic Features (2013 - 5th Edition)', would demonstrate that the persons with Schizoid Personality Disorder lack a desire for intimacy and will have only little interest in having sexual experiences with another person. Then quoting from another downloaded article 'Schizoid Personality Disorder, Symptoms and Treatment' would submit that these persons would find difficulty even to have working relationship with therapists. By relying upon another article by John M.Grohol, Psy.D. titled Symptoms and Treatments of Mental Disorders, the learned Counsel would submit that Schizoid Personality Disorder is a personality disorder and personality disorders become an integral part of a person, difficult to treat and cure.

16. After taking this Court through Ex.C-1, the Psychological Evaluation Report, the learned Counsel would rely upon the judgment in Sharda Vs. Dharmpal¹⁸ to contend that the object of the Court is always to find out the truth and the Courts, in matrimonial cases, can refer the parties to medical examination. He would rely upon the judgment in Lalith Kishore Vs. Meeru Sharma and Another¹⁹, more specifically relying upon paragraph Nos.4 and 5, would submit that the medical examination of the experts can only lead to the truth. By relying upon the judgment of the Hon'ble Supreme Court of India in T.Srinivasan Vs. T.Varalakshmi (Mrs)²⁰, he would submit that if the fault is on the part of the husband, then, by virtue of Section 23(i)(a) of the Hindu Marriage Act, 1955, he is not entitled to relief. For the same proposition, the learned Counsel also relied upon

¹⁶ <https://www.harleytherapy.co.uk/counselling/personality-disorder-vs-personality-trait.htm>

¹⁷ <https://www.verywellmind.com/personality-disorders-a2-425427>

¹⁸ (2003) 4 SCC 493

¹⁹ (2009) 9 SCC 433

²⁰ (1998) 3 SCC 112



the judgment in Hirachand Srinivas Managaonkar Vs. Sunanda²¹ more specifically upon paragraph Nos.12 and 13. The learned Counsel also relied upon the judgment of the Hon'ble Supreme Court of India in Savitri Pandey Vs. Prem Chandra Pandey²², more specifically paragraph No.13 to contend that the approach of the Court should be to preserve the matrimonial relationship and should be reluctant to dissolve the marriage on the asking of one of the parties. The learned Counsel would also rely upon the judgment of High Court of Delhi in Amar Lal Arora Vs. Shashi Bala²³, more specifically paragraph No.19 to contend that the husband has blameworthy conduct, cannot thereafter make allegations on the wife. The learned Counsel would also further relied upon the judgment in Rosaline Rajan Vs. S.M. Joseph Xavier Lourdarajan²⁴ regarding the fact even if a person does not have physical impotence, the refusal to consummate can be at a psychological level. For the same proposition, he would also rely upon the judgment in Debashis Chakraborty Vs. Mausumi Bhattacharjee²⁵. Therefore, the Trial Court completely erred in brushing aside the Psychological Evaluation Report, whereby, the respondent/wife has categorically proved that the non-consummation of marriage is because of the personality disorder on the part of the husband and therefore, having the fault on his side, the husband is not entitled for both reliefs of nullity and divorce. Therefore, he would pray to allow the Civil Miscellaneous Application filed by the wife and dismiss the Civil Miscellaneous Application filed by the husband.

The practical approach:

17. Matrimonial issues call for practical and pragmatic approach considering the overall emotional wellbeing and future of the parties, besides Section 23 of the Hindu Marriage Act, 1955 also mandates a conciliatory approach. Considering the peculiar facts of this case, where the parties are living under one roof for the past almost 30 years albeit without consummation of marriage, apart from the conciliatory measures taken up by the Family Court pending Trial including counselling and mediation, the parties were required to appear before this Court and they appeared before our predecessor bench, which tried their level best to bring about amicable settlement in the issue, but, however, could not. Subsequently, considering the nature of allegations we once again requested the parties to appear before us. During the interaction, the husband put a cross his position that inspite of the age factor and even though there was no necessity to move on and inspite of the fact that they were living under the same roof, it is extremely

21 (2001) 4 SCC 125

22 (2002) 2 SCC 73

23 MANU/DE/2596/2011

24 AIR 1983 Mad 164

25 (2008) 1 Gau LR 843



essential for him to put an end to the marital relationship which has not worked otherwise. In reply the wife stated that even though the marriage has not worked physically, from her cultural background and personal values, she had for all practical purposes left her parental home and is absorbed in the family of her in-laws, taking care of them, being part of the in-laws' family, their functions etc. Except for the physical relationship, for a major part of the life the husband has been eating the food cooked by her, has been drinking the Coffee/Tea made by her, besides, they have been going out to marriage functions etc., and even though there is no personal bonding, still the marriage and its subsistence thereof means a lot to her and she specifically conveyed that it is certainly not any monetary thing which drives her but from her perspective the maintenance of the marital bond is essential.

18. To a specific query put across by the bench, she has infact persuasively submitted that physical relationship is not everything in one's life and she was able to lead a life of 30 years with saintly adherence to family values and therefore, does not want the divorce to be granted for no fault of her. Thus, our attempt to practically resolve the matter did not fructify, but, on the other hand, the answers given by the parties, during the interaction, in the matter of leading a life without physical intimacy, only made us to deliberate the issue for a longer time than normal even after reserving orders. Therefore, we proceed to decide the issue on merits by taking into account the evidence on record and the findings of the Family Court.

The petition for nullity:

19. After 13 years of marriage, in the year 2005, the husband had filed a petition under Section 12(1)(a) of the Hindu Marriage Act, 1955, to declare the marriage between them as a nullity. The brief averments, which form the basis of the said petition, are contained in paragraph Nos.4 and 5 of the petition, which is extracted hereunder:

"4. The petitioner states that at the time of marriage the respondent was employed in Power Grid Corporation, Tiruchy. Three days after the marriage she went back to Tiruchy to rejoin her employment. During these three days when the petitioner and respondent were together, there was only general conversation and there has been no consummation. Any approach made by the petitioner was resented by the respondent who categorically told the petitioner that she was not interested in any sexual



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relationship, and in fact she had an aversion towards sex. She also stated that she did not mean any disrespect to the petitioner, and insisted that the petitioner should not make any such moves thereafter. The respondent having an aversion towards sex, is impotent as far as the petitioner is concerned.

5. The petitioner states that the marriage could not be consummated due to the impotency of the respondent."

20. The wife filed counter affidavit denying the said allegations and the version of the wife is contained in paragraph Nos.3 and 4 of the counter statement, which is extracted as follows:-

"3. The Respondent emphatically denies the allegations in para 4 of the petition. After the marriage petitioner and the respondent went to Mahabalipuram for 3 days. During the stay there, the petitioner told the respondent that they can start their family life after his Green Card is processed, since he had applied for it. Once he gets the green card they can go to USA and get settled. The respondent is really shocked at the averments made by the petitioner. It is nothing but atrocity and the petitioner has the audacity to allege that the respondent resented when he approached her and told him that she was not interested in sexual relationship and she has an aversion towards it. It was the petitioner who was awaiting his green card and had already planned certain things. The respondent had believed in his words in full faith.

4. The respondent states that the allegation in para 5 of the petition is baseless, unwarranted and motivated. The marriage was not consummated because of the petitioner. The petitioner never approached the respondent and the respondent never refused. The petitioner did not approach the respondent for any sexual intercourse. Even subtle approaches made by the respondent was not responded by the petitioner."



21. The parties were sent for psychological evaluation and the detailed report given by one Dr.N.Shalini, Consultant Psychiatrist along with the psychological assessment report of Ms.Divya Mercline, Clinical Psychologist and Dr.S.Bhasi, Consultant Psychologist is taken on record as Ex.C-1. The Diagnosis and Multiaxial Assessment reveals the following and is extracted hereunder:-

"DIAGNOSIS & MULTIAXIAL ASSESSMENT

GAUTHAM:

- Axis I: Sexual Aversion Disorder,
(lifelong type, generalized type, due to combined factors)
Unconsummated marriage of 20 years
- Axis II: Schizoid/anankastic personality disorders.
- Axis III: nil
- Axis IV: Chronic unemployment despite superior educational qualifications, Reclusive tendencies Marital Discord
- Axis V: Major impairment in several areas such as work, family relations, judgment and thinking. (current)

SATHYA:

- Axis I: Unconsummated marriage of 20 years
- Axis II: nil
- Axis III: nil
- Axis IV: Spousal neglect
- Axis V: 95, superior functioning in a wide range of activities.

REMARKS: On detailed evaluation of the couple, it is clear that the husband Mr Gautham is suffering from a Schizoid personality disorder with Anankastic traits. Individuals with Schizoid personality have a lack a desire for intimacy, that reflects in his indifference towards sex in general and the lack of empathy towards his wife in particular. In his orders, the



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honourable judge has suggested that Mr Gautham may be taken up for treatment of his problems if any. However the client is not willing for treatment and the prognosis of Schizoid Personality Disorder is guarded."

(Emphasis supplied)

22. The husband was examined himself as P.W.1 and two exhibits, namely copy of marriage invitation and copy of marriage register were marked as Exs.P-1 and P-2. The wife was also examined herself as R.W.1 and her mother-in-law, that is the mother of the husband, namely Mano Bakthavatsalam was examined as R.W.2. On the wife's side, a copy of the letter, dated 16.02.1993, written by the husband was marked as Ex.R-1 and earlier copy of Neuro Psychological Report of the husband, dated 04.02.2013 was marked as Ex.R-2 and two letters written by the petitioner's mother, namely R.W.2, to Court were marked as Exs.R-3 and R-4.

23. After considering the evidence of the parties, by framing the question as point No.1 as to whether the marriage can be annulled as null and void on the grounds of non-consummation of marriage owing to impotency of wife, by a short answer, the Trial Court found that the Psychological Evaluation Report cannot be relied upon and the husband has not proved medically that the respondent/wife is an impotent and therefore dismissed the petition. The relevant finds are extracted hereunder:-

" The petitioner contends that the respondent is an impotent and that's why the marriage was not consummated. However there are no medical records to show that the respondent is impotent. The document in Ex. C1 is the sole reliance for the petitioner. The document in Ex. C1, which is the psychological evaluation of both the petitioner and the respondent has been made in the year 2012. This is almost after 20 years of marriage. By this time both the parties have gone too rigid in their mindset. Admittedly, the values would differ from that of the psychological evaluation done as per Ex. C1 during 2012 with that of the psychological evaluation, had it been done as early as in the year 1995 when the conflict between the two erupted and



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when such conflict was about to escalate. Hence this Court is not inclined to consider the Psychological evaluation report as per Ex. C1 and the cross-examination done on each other based on Ex.C1 doesn't hold good for both the spouses.

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Admittedly the marriage was not consummated. The parties blame each other for non-consummation of the marriage.

The petition averments, the evidence of parties and the available records would make it clear that the respondent is not an impotent and that the petitioner has not proved medically that the respondent is an impotent and hence the relief sought for by the petitioner to declare the marriage a nullity could not be sustained and the same cannot be granted and this point is answered accordingly."

24. Thus, while no exception can be taken for the decision to dismiss the petition for nullity, the finding of the Family Court to reject the detailed Psychological Evaluation Report by stating that it is almost twenty years after the marriage and therefore, the parties have gone too rigid in their mind set and the values would differ from that of the Psychological Evaluation done during the years 2012 and 1995 are all absolutely perverse on the face of it. The evaluation of the experts is that the husband clearly had a personality disorder, which lead to sexual aversion and therefore, the above findings regarding the evaluation report and that the parties blaming each other for non-consummation of marriage are all absolutely unsustainable. In this regard in *Sharda Vs. Dharmpal*²⁶, in paragraph No.34, the Hon'ble Supreme Court of India observed that__

"In certain cases medical examination by the experts in the field may not only found to be leading to truth of the matter but may also lead to removal of misunderstanding between the parties. It may bring the parties to

26 (2003) 4 SCC 493



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terms."

25. In paragraph No.20, the judgment in B.R.B. Vs. J.B.²⁷ is quoted, which is extracted hereunder:-

"A Judge of the High Court has power to order a blood test whenever it is in the best interest of the child. The Judges can be trusted to exercise this discretion wisely. No limit-condition or bound is set up to the way in which Judges exercise their discretion. The object of the court always is to find out the truth. When scientific advances give fresh means of ascertaining it, there should not be any hesitations to use those means whenever the occasion requires."

(emphasis supplied)

26. Finally, the Hon'ble Supreme Court of India in paragraph No.81 summed up by the legal position as follows:-

"81. To sum up, our conclusions are:

1. A matrimonial court has the power to order a person to undergo medical test.
2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.
3. However, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

Therefore, when the parties were referred by the Court and there is categorical medical evidence on record and when nothing has been done on the side of the husband to any manner discredit the findings of the expert, it is completely erroneous on the part of the Family Court to discredit the scientific evidence and therefore, we hold that apart from the husband failing to prove that the wife was impotent, it is turned out on record that it is he who suffers from psychological disorder. Therefore, apart from the fact that the husband failing to prove any omission on the part of the wife to consummate the marriage, by virtue of Section 23 of the Hindu Marriage Act, 1955, since the husband is praying for nullity, by taking advantage his own

27 (1968) 2 All ER 1023 (CA)



wrong and disability, he is not entitled to the relief. Accordingly, with the aforesaid additional findings and conclusions, the decision of the Family Court in disposing O.P.No.2137 of 2005 is confirmed and resultantly, C.M.A.No.2655 of 2019 filed by the husband is dismissed.

The petition for divorce:-

27. The petition for divorce was filed by the husband in the year 2009 specifically alleging mental cruelty and the behaviour of the wife which constitutes cruelty were specifically mentioned in paragraph Nos.9(a) to 9(i) of the petition. The wife resisted the application by filing counter affidavit, denying those allegations, in paragraph Nos.8(a) to 8(i) of the counter affidavit. The allegations of the husband and the stand of the wife in the respective paragraphs are tabulated hereunder for any reference:-

Husband's Allegations	Wife's Reply
One unit of electricity - The day after the marriage, the petitioner did not switch off the fan. The respondent gave a big lecture as to what it takes to produce one unit of electricity and found fault with the petitioner about wasting electricity.	The respondent states that requesting the petitioner to switch off the fan when not required is only for Energy Conservation. It is a social obligation of each individual and will not constitute cruelty to the petitioner.
Uncles and Aunts - One day after the marriage the petitioner told the respondent the basic details about his immediate relatives (uncles and aunts) and expected the respondent to do the same, but she did so with great reluctance only.	The respondent states that she is having very good relationship with the uncles and aunts of the petitioner. The fact is that his relatives are more in touch with the respondent than with the petitioner. The respondent's reluctance in furnishing the details about her relatives will not constitute cruelty to the petitioner.
Visiting relatives' houses - while visiting the houses of relatives and friends, her behavior left a lot to be desired, especially in the manner in which she ate the snacks they served.	The respondent states that when she visited the petitioner's relatives house along with him, they served them food. The respondent requesting them to remove some of the food items, instead of wasting them cannot be construed as cruelty to the petitioner.



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Bed room behavior - Instead of making congenial atmosphere for consummation of marriage, the respondent only irritated the petitioner by repeatedly tapping on the mattress, day after day after day. On one occasion at the outstation hotel, the petitioner's bed sheet happened to fall into the respondent's bed due to which she raised an objection. What followed was a very, very nasty and unpleasant quarrel and fight, that too after the lights have been switched off.	The respondent states that they had been to outstation for a marriage when she was alone in the hotel room, the petitioner returned at 11.30p.m. and knocked the door. When she responded to who was at the door, the petitioner refused to answer, the respondent kept on asking finally the petitioner banged the door and shouted at her. When the respondent opened the door he yelled at her and was abusive. The petitioner threw the respondent's sari which was on his bed. The respondent did not object when the petitioner's bed-sheet fell on her bed. It was the petitioner who was very nasty and picked up a quarrel after the lights had been switched off. The respondent states that the petitioner should be ashamed to state about the bedroom behaviour. The petitioner who is incapable of consummating the marriage should not speak about the conjugal atmosphere for consummation of marriage because he cannot understand subtle approaches made by the respondent.
Hair cut and aftershave lotion - Respondent would mock at the petitioner every time he had a hair cut or used after-shave lotion. There has never been an exception to this sort of behavior.	The respondent states that the petitioner has misrepresented the facts relating to hair-cut and that of after shave lotion. The respondent had told the petitioner that she liked the fragrance of the after shave lotion and as his hair-cut was very short, as a wife jocularly remarked that it was like a "military cut". These remarks are being termed as cruelty by the petitioner. This only reflects the rigidity of the petitioner.



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Failed conversation - On the few occasions when there was conversation between the petitioner and respondent, which occurred during the first few months after the marriage, it would result in unpleasantness in just a few minutes due to the manner of the responses of the respondent so much so that the petitioner became frightened to talk to the respondent. The petitioner feared that he would only get insulted by engaging in conversation with the respondent, so much so, conversations between the petitioner and respondent came to a complete stop.	The respondent states that the petitioner would cut short any attempt by her to communicate, he would turn violent and go to the extent of spitting at her which amounted to cruelty on the respondent. The failed conversations are totally due to the petitioner's introversion and high levels of defensiveness.
Gestures - The respondent irritated the petitioner thousands of times over the years by way of facial gestures, mocking and making undesirable sounds and undecipherable comments.	The respondent denies the allegation regarding gestures. The petitioner had withdrawn and was a recluse due to the refusal of his green card to U.S.A. Since 1999 the petitioner is living in a separate room and the respondent is prohibited from entering his room. Whereas the allegation that the respondent insulted the petitioner by way of facial gesture, mocking and making undesirable sounds and undecipherable comments is absolutely false and it is only a figment of his imagination. It is obvious that the petitioner is suffering from a mental block.



Separate bedrooms - The petitioner lives in a rented house and the family has shifted twice since the marriage. In the first house, due to limited number of rooms, the petitioner and respondent shared a bedroom, with the irritable behavior of the respondent. In the second house presently, the petitioner has his own room; the respondent has her own room.	The respondent states that it is the petitioner who moved into a separate room on his own accord for no fault of the respondent. This is indicative of the avoidance on the part of the petitioner to start the family life. This has been indicated by one of the counselors that the petitioner in order to conceal his impotency and inadequacies would have resorted to move to a separate room.
Not on talking terms - The petitioner and respondent are not on talking terms since the first year of marriage itself.	The respondent states that during the first year of their marriage they have been cordially corresponding with each other. The petitioner was shocked beyond words when he came to know that his green card to U.S.A was refused in August 1993. He had totally withdrawn himself from everybody and everything. Any effort by the respondent to communicate with the petitioner will be met with violent behaviour. The petitioner has been avoiding communication to conceal his inadequacies in though processes.

28. After refuting allegation, it is the specific case of the respondent/wife that those complaints are an outcome of the husband's own psychiatric disorder. It is the further case of the husband that he has specifically mentioned those acts of cruelty even while counselling to the counsellor in the first Original Petition filed by him. On the above pleadings, the husband examined himself as P.W.1 and copy of the marriage invitation was marked as Ex.P-1 and copy of the marriage register was marked as Ex.P-2. The respondent/wife examined herself as R.W.1 and the mother of the husband, namely Mano Bakthavatsalam as R.W.2. On behalf of the wife, letter of referral by Dr.Vasanthi, requesting evaluation of the husband on account of non-consummation of marriage was marked as Ex.R-1 and three letters written by the husband on 08.03.1993, 27.04.1993 and 04.03.1994 were marked as Exs.R-2 to R-4.



29. On the basis of the evidence, after framing two questions, as point Nos.2 and 3 and as to whether the petitioner/husband has proved the averments of cruelty or not and whether the petitioner/husband is entitled for the relief of divorce on the ground of cruelty or not, the Family Court answered both the points together. Primarily, it found that the wife had made allegation that the marriage was not consummated on account of the defect of the husband and making such allegation, she failed to medically prove that the husband suffers from any disability and therefore, adverse inference is drawn against her. Further, by citing certain answers in the cross-examination, the Family Court further held that the wife has not shown any interest in the consummation of marriage.

30. It is necessary to extract all relevant findings of the Family Court:-

" Thus it could be understood that the respondent has blamed the petitioner for the non consummation of the marriage. She states that the petitioner has a mental block. If so she could have very well attempted to prove it medically. But she has withdrawn the petition for medical examination. Having leveled an allegation and leaving it unproved amounts to mental cruelty and the withdrawal of the petition for medical examination leads to an adverse inference against the respondent.

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There is absolutely no proof to show that the petitioner has a mental block or that he suffered psychiatric disorder or disease. In the absence of any such proof from the respondent, again an adverse inference has to be drawn against the respondent.

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Thus from the above evidence, the respondent has stated certain aspects which are out of her pleadings. However the above extracted additional versions of the respondent would go in favour of the petitioner. It is apparently clear



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that the respondent has not shown any interest in consummation of marriage and rather she blames the petitioner.

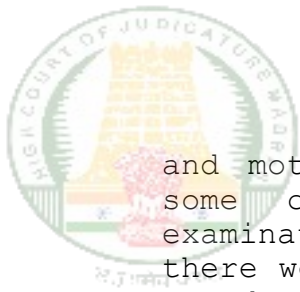
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The ratio laid down in the above decision squarely applies to the case in hand. The respondent having leveled the allegation has not proved it. Hence the adverse inference drawn such that the respondent is the cause for non-consummation of the marriage."

Thus, it may be seen from the above that the findings of the Family Court are incorrect on the face of it.

31. The medical condition of the petitioner is very much on record as Ex.C-1 marked in the connected petition and both the petitions are disposed off together by a common order. This apart, Ex.R-1 referral letter for psychological evaluation is also marked. Ignoring all these, the Family Court gives the first finding as if the respondent made an allegation and failed to prove and therefore, adverse inference of cruelty has to be drawn against her. When material evidence is on record that there was nothing wrong about the respondent/wife and it is the husband who suffers from psychological disorder, the above findings are certainly perverse. Further, on a reading of the evidence, which is extracted by the Family Court in page No.11 of the judgment, it would be clear that a suggestion is made that both the husband and wife had no physical intimacy, while admitting the same, she deposed that she was not the reason for the same and it is only the husband, who by mentioning one reason or the other, did not accept for the same. She had denied the further suggestion that even though the husband has been telling those reasons, she also did not take any steps to shower love and affection and initiate a life. Therefore, to read the said evidence as if it is apparently clear that the respondent has not shown any interest in consummation of marriage is again absolutely perverse. Therefore, we have no hesitation whatsoever in reversing the finding.

32. As far as the husband is concerned, he had not pleaded non-consummation as a ground of cruelty in the petition. However, the same has been taken as a ground as if an unsubstantiated allegation is made in the counter affidavit and thus amounting to cruelty. While the fact remains that, there is ample evidence on record to prove that the disability/unwilling was on the part of the husband. In this regard, the evidence of R.W.2, namely the mother of the husband



and mother-in-law of the wife is important. Though there is some contradiction in her evidence in chief and cross examination, a complete reading of her evidence would show that there were no erroneous behaviour on the part of her son as well as the daughter-in-law that she wanted the marriage to work. Had the daughter-in-law been responsible for the non-consummation of marriage, even after so much of passage of time, any mother-in-law of the wife/mother of the husband would have categorically taken a stand in favour of her son so that he can move on and have a family life. Therefore, the finding of the Family Court, in this regard, is perverse and requires interference.

33. Now coming to the other allegations of mental cruelty, the allegation and the explanation of the wife as such are extracted supra in the tabular column. A perusal of both sides evidence clearly reveals both parties sticking to their above stand in their evidence. In this regard, the findings of the Family Court, after extracting the passages from the cross-examination of the wife that the above allegations cannot be construed as ordinary wear and tear of the Family but is dominance of wife and petitioner suffered cruelty.

34. The further findings are that the petitioner being soft natured person, these facts amounted to cruelty on him. The findings are extracted hereunder:-

"As regard to the allegations leveled by the petitioner, the respondent has rendered certain explanations during cross examination of PW1. She admits her acts but claims that they do not amount to cruelty.

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The above extracted evidence would explicitly make it clear that the acts and behavior of the respondent cannot be construed as ordinary wear and tear in a family and rather it is nothing but the dominance of the respondent which made the petitioner to suffer cruelty at the hands of the respondent.

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The ratio laid down in the above decisions applies to the case in



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hand very well. What is cruelty to one may not be cruelty to the other. Thus the petitioner having established that he is a soft natured man, would obviously suffer from the acts of the respondent as those acts are causing cruelty.

More particularly, the parties are separated for more than two decades. As laid down in Samar Ghosh Vs Jaya Ghosh, the long separation has resulted in scant response to each other in respect of emotions and feeling towards each other. The cumulative reading of the pleadings and evidence of both sides would give a clear case of proof that the husband was subjected to cruelty. Hence on all probabilities, this Court is on the firm view, that the husband has established the allegations of cruelty."

Therefore, it may be seen that the Family Court without going into the allegations and the explanation given thereunder, in a casual approach, considered these actions to be dominant actions and further held that the husband being a soft natured person, amounts to cruelty on him.

35. A reading of the entire evidence in this regard would clearly demonstrate that these allegations which happened immediately after a year of marriage, firstly, were not even mentioned in the petition for nullity, which was filed 13 years after the marriage and secondly, it would be clear that these allegations are all afterthought and made just for the purpose of making out a case for cruelty while the allegations are not in the nature of any calculated torture, discomfort or to create deep anguish, disappointment or frustration on the other spouse. On the other hand, these would be usual happenings and these trivial quarrels cannot be considered as mental cruelty. From a careful reading of the evidence of the husband and the wife, it can be seen that the alleged instances being usual wear and tear will not amount to mental cruelty. It is clear from the judgment of Samar Ghosh Vs. Jaya Ghosh²⁸, which is extracted by the Trial Court itself in the judgment that these normal or common behaviours cannot be complained as acts of cruelty, that too, after 16-17 years of the alleged occurrences. Therefore, we hold that the husband has not proved and established the allegations of cruelty as against the wife entitled for a decree of divorce.

36. This apart, as stated by us supra, once again the provision of Section 23(i)(a) of the Hindu Marriage Act, 1955

28 (2007) 4 SCC 511



also bars relief to be granted to the husband. Though what amounts to cruelty differs from person to person taking into account the background and nature of the parties, the above acts of the wife are taken to be serious instances of cruelty only because of his own default of non-consummation of marriage and as rightly pleaded on behalf of the wife, it is the personality disorder which makes the husband to feel these acts are acts of mental cruelty, therefore, he is again trying to take advantage of his own disorder/disability. Thus, the relief of divorce cannot be granted in view of the specific provision under Section 23(i)(a) of the Act as otherwise it would amount to grant of divorce for once own fault. The decisions referred above relied upon by the learned counsel for the wife clearly lays down the ratio that the relief to the spouse who is trying to take advantage of his/her own fault has to be refused. We have considered and extracted the propositions laid down in the various judgments relied upon by the Learned Counsel for the Husband and we have no quarrel over the same. However, applying the same to the facts of the instant case, we hold that husband has failed to make out a case for divorce. Therefore, C.M.A.No.2535 of 2019 filed by the wife for setting aside the decree of divorce deserves to be allowed.

The Result :

37. For the reasons mentioned above,
(i) C.M.A.No.2655 of 2019 is dismissed and consequently, the Judgment and decree passed by the Learned Principal Family Court, Chennai in O.P.No. 2137 of 2005 is confirmed;
(ii) C.M.A.No.2535 of 2019 is allowed and the Judgment and decree passed by the by the Principal Family Court, Chennai in O.P.No.2629 of 2009, is set aside and consequently O.P.No.2629 of 2009, stands dismissed;
(iii) There will be no order as to costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

grs

To
The Principal judge,
The Principal Family Court,
Chennai.



Copy To

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

+6 cc to Mr. R.Boopathy, Advocate Sr.No.30279 & 30280

+4 cc to Mr. C.Rajan, Advocate Sr.No.30294 & 30295

C.M.A.Nos.2655 and 2535 of 2019

AK-II (CO)

AJ (08/06/2022)