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C.M.A.No.7 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2022

PRONOUNCED ON : .11.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No. 7 of 2020
and C.M.P.Nos.1862, 1865 and 64 of 2020

Nithya

.. Appellant

Vs.

Kirubanandan

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Courts Act, 1984, to set aside the Order and Decretal Order passed in O.P.No.366 of 2016 dated 25.09.2019, on the file of the learned Principal Family Court Judge, Chennai.

For Appellant

: Mr.B.Balavijayan
for M/s.C.S.Associates

For Respondent

: Mr.R.Rajarajan
for M/s.T.Gandhi



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J U D G M E N T

WEB COPY(Judgment of the Court was delivered by **T.V.THAMILSELVI, J.**)

The appellant herein is the respondent in HMOP.No.366 of 2016 on the file of Principal Family Court, Chennai. The said original petition was filed by the respondent herein/husband under Section 13 (1)(ia) of the Hindu Marriage Act, praying for divorce by dissolving his marriage with his wife/ the appellant herein on the ground of cruelty caused by her.

2. The said petition was contested by the wife/ appellant herein by filing a detailed counter statement. After considering the pleadings, oral and documentary evidence let in by them before the Court below, the learned Trial Judge allowed the application and granted the decree of divorce in favour of the husband on the ground of cruelty. Challenging the said order, the wife has preferred this Civil Miscellaneous Appeal.

3. The learned counsel appearing for the appellant/wife herein submitted that she was always intended for reunion, however, the learned Family Judge ought to have given sufficient opportunity to the parties for finding an amicable settlement between the parties for reunion in the form of



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counselling, but the Trial Judge failed to consider the same.

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4. According to the appellant/wife both have undergone certain untoward events and incidents, which were triggered solely because of lack of communication between the parties. Though, the appellant/wife herein had lodged police complaints against her husband, but she had withdrawn those complaints with an intention to live with her husband. Nevertheless, her husband also expressed his willingness to live with the appellant/wife. But the learned Family Court would have helped the parties to lead a happy life, instead of that it had passed a decree of divorce. Hence, prayed to set aside the same.

5. By way of reply, the learned counsel appearing for the respondent would submit that even before the engagement the appellant/wife expressed her unwillingness to have marriage with this respondent. When he informed about her unwillingness to the marriage to her parents, they convinced him and arranged the marriage. Accordingly, they got married on 28.10.2012. From the date of the marriage itself she is not interested to have marital life with this respondent. That apart she is also not interested to have sexual



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relationship with the respondent. If any advice was given to the wife, she used to threaten the respondent as well as his family members that she would commit suicide. Thereby she caused all sort of physical and mental torture to the respondent and in spite of the advice given by the elders, she has not adhered to. On the contrary she left the matrimonial home and gave false complaint against her husband and his family members. Therefore, the respondent filed a petition for divorce. But the appellant/wife falsely submitted that she is intended for reunion. In reality her intention is only to harass the husband and all those facts were rightly appreciated by the learned Trial Judge. Hence, this Court has no reason to interfere with the order passed by the learned Trial Judge.

6. Heard the submissions made by the learned counsel for the appellant and the respondent. Perused the materials available on record.

7. Points for consideration arisen in this appeal is whether the impugned order dated 25.09.2019 made in O.P.No.366 of 2016 by the Principal Judge, Family Court Chennai is liable to be set aside?



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WEB COPY 8. The facts reveal that the appellant and the respondent got married on 28.10.2012. Thereafter, they started to live in a separate residence nearby the appellant's parents. From the date of the marriage itself, the appellant was not interested in the marital life with this respondent. When she was advised by his family members, she used to leave the matrimonial home and go to her parent's house. When she was advised to live with her husband she used to threaten them that she would commit suicide. Thereby the conduct of the appellant/wife caused mental agony to the respondent herein. She is not co-operative for sexual relationship with the respondent, thereby marriage also has not been consummated. On one occasion both were suggested to have medical counselling and as per the report there is some issue in the private part of the wife/appellant herein. So the marriage has not been consummated as per the evidence let in by the husband. It was not totally denied by the wife but she admits that she had undergone medical counselling with respect to consummation of the marriage. Thereafter, she left matrimonial home and gave the complaint against her husband and his family members that they demanded dowry. Many times when she gave complaints, while she was called for enquiry, she used to withdraw the complaints and thereafter she



used to give another complaint against her husband. Hence, the husband filed the petition for divorce. It was also stated that since even after completion of one year of marriage, the marriage has not been consummated, same amounts to cruelty.

9. The appellant/wife denied all the allegations and contended that she always intended for reunion. Though there is some misunderstanding between them she took all efforts for reunion. But the husband has not proved that her conduct caused mental agony to him and also not established that marriage was not consummated.

10. A perusal of evidence reveals that on the side of husband Ex.P1 to Ex.P27 were relied and on the side of the wife Ex.R1 to Ex.31 were relied.

11. Contention of husband is that marriage was not consummated and the appellant/wife also was not interested in the marital life with him. He has produced the medical records before the Trial Court and the learned Trial Judge analysed the medical records as well as the evidence in respect of the consummation of marriage. The evidence of P.W.1 reveals that he also



undergone the fitness test and his report was normal. But in respect of the wife as per the advice of the doctor that she is not co-operative for the consummation of marriage. She had some issue in her private part which resulted in non consummation of the marriage. As per the medical record, the Doctor used the word "UCM" which is found in the prescription and it denotes unconsummated marriage. Though this was denied by the appellant/wife, she has not denied the allegation made by the husband that the marriage was not consummated in her written statement and the same was appreciated by the learned Trial Judge which needs no interference. Therefore the evidence of both the parties as well as the medical records prove that their marriage was not consummated and the same is proved by the husband as discussed above.

12. Apart from the above, on seeing the facts of the case and evidence let in it reveals that the appellant herein/wife used to give lot of complaints against her husband and his family members to the Police and the same was admitted by appellant during her cross examination before the Trial Court. As per the evidence of the appellant it reveals that she gave a complaint against her husband and his family members that they have demanded dowry before



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All Women Police Station, Kallakurichi. She gave another complaint before

All Women Police Station, Vadapalani. Again she gave a complaint before

Royal Nagar Police Station, Ramapuram against her husband.

13. Finally she gave complaint before Vadapalani police station and also she filed a Criminal Original Petition before this Court seeking a direction to the Vadapalani police station to take action on the complaint made by her on 11.08.2013. Within a short span of time from the date of marriage she gave large number of complaints against her husband and his family members. She submits that above complaints are not properly investigated. But her own evidence reveals that she has not co-operated for the enquiry before the Police officials and at the same instance she used to give complaints against Police officials. Apart from that she used to do phone calls to her husband and enquired him whether he is in office or not. All these facts clearly reveal that the appellant/wife wants to harass the respondent/husband and put him behind the bars. The learned Trial Judge elaborately discussed all these facts and evidence and rightly concluded that the conduct of the appellant/wife certainly caused mental agony to the respondent/husband.



14. The learned Trial Judge, in his judgment, has rendered the following findings;

" At this stage, this Court relies upon a decision reported in CDJ 2015 MHC 7988 Indra versus B.G. Giri wherein it has been held that,

8. The word "cruelty" has not been defined in the act, though it has been specifically used in Section 13(1)(ia) of the Hindu Marriage Act. We may make useful reference to a decision of the Supreme Court in the case of Shobha Rani V.Madhukar Reddi reported in (1998) 1 SCC 105: AIR 1988 Pg.121. In this decision, the Supreme Court had an occasion to examine the concept of "cruelty". In this case, the Supreme Court has interpreted the word "cruelty". The Supreme Court observed that "cruelty" is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse".



15. The learned counsel for the appellant submits that the learned Trial

Judge ought to have made an attempt to give her counselling and made them to have reunion, but instead of that, divorce had been granted as such is unfair and he prayed to set aside the findings. But the evidence of both parties reveals that immediately after the marriage there was some panchayat in the presence of family members and they gave advise to both the parties to live peacefully. Accordingly they started to live in separate residence, even then there was some misunderstanding arouse between them thereafter and on many occasions elderly people advised the appellant/wife to live peacefully with the husband. But she failed to comply to those counselling and she used to give complaint against her husband and his family members. Therefore, the conduct of the wife clearly reveals that she does not intend to live with her husband, she wants to harass her husband by giving number of police complaints and also enquired his whereabouts by checking him through phone calls during office hours. All these things would cause both physical and mental torture to the respondent herein. Further more, marriage also not been consummated and the same would also amounts to cruelty. Therefore in all respects the respondent herein established that the conduct of his wife caused harassment to his physical and mental health and the learned Trial



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Judge rightly concluded that the husband is entitled for divorce on the ground of cruelty.

16. Accordingly, this Court finds no ground to interfere with the findings of the learned Trial Judge, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(V.M.V., J) (T.V.T.S., J)

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Index : Yes / No
Speaking/Non-speaking Order
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To
The Principal Family Court, Chennai.



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**V.M.VELUMANI, J.
and
T.V.THAMILSELVI, J.**

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Pre-delivery judgment in
C.M.A.No.7 of 2020

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