



CMA(MD)No.1474 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A(MD)No.1474 of 2016

Kalingaraj

...Appellant

Vs.

Nagarathinam

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the the Family Court Act to set aside the judgment and decree, dated 18.10.2016 made in H.M.O.P No.259 of 2015, on the file of the Family Court, Trichy.

For Petitioner : Mr.Raguvaran Gopalan

For Respondent : No appearance



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JUDGMENT

(Judgment of the Court was delivered by N. ANAND VENKATESH,J.)

This appeal has been filed by the husband challenging the judgment and decree passed by the family Court, Trichy, made in HMOP No.259/2015 dated 18.10.2016, dismissing the petition filed for dissolution of marriage on the ground of cruelty and desertion.

2.The case of the appellant is that the marriage between the appellant and the respondent took place on 27.06.1996 and out of the said wedlock, a female child was born on 18.03.1997. Thereafter, the respondent is said to have deserted the appellant from April 1998 onwards. A petition was filed by the respondent in HMOP No.69/2000 seeking for the relief of restitution of conjugal rights and the same was decreed on 10.02.2003. Thereafter, the respondent filed two execution petitions and both were not prosecuted and were dismissed for default in the years 2008 and 2010 respectively. Even thereafter, the respondent did not join the appellant. It was further alleged that the respondent has treated the appellant with cruelty by abusing him



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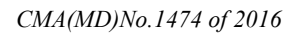
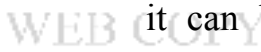
before others and also giving a criminal complaint against him and his father.

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3. The respondent filed a counter and took a stand that she was harassed and ill-treated by the appellant and his family members and she was driven out of the matrimonial home. Even after a child was delivered, the appellant did not care to take the respondent and the child back to the matrimonial home in spite of being advised by elders and police. Even though the petition for restitution of conjugal rights was ordered, the same was not complied by the appellant and hence, the appellant is not entitled for divorce.

4. The appellant examined himself as P.W.1 and marked Ex.P1 to Ex.P5. The respondent examined herself as D.W.1 and marked Ex.R1 to Ex.R8. The Court below on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the appellant has not made out a case for dissolution of marriage and dismissed the petition. Aggrieved by the same, the present appeal has been filed before this Court.

5. Heard the learned counsel for the appellant.



7. In this case, various allegations were made against the respondent to substantiate the ground of cruelty. Unfortunately, the Court below did not render any finding and the entire judgment deals only with the ground of desertion. Under such circumstances, this Court would have normally remanded the matter back to the file of the family Court. However, the appellant and the respondent are now separated for more than 24 years and no useful purpose will be served in remanding the matter back to the file of the family Court.



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8. Section 13(1A)(ii) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') provides the following as one of the ground for divorce:

“13. Divorce.—

...

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

...

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 8 [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]”

9. It is clear from the above provision that either party to a marriage can present a petition for dissolution of marriage on the ground that there was no restitution of conjugal rights for a period of one year or upwards, even after a decree for restitution of conjugal rights was passed. In the instant case, a decree for restitution of conjugal rights was passed in HMOP No.69/2000 on 10.02.2003. Thereafter, the respondent filed two execution petitions and both



the petitions were not prosecuted and they were dismissed on 05.08.2008 and 24.09.2010 respectively. Under such circumstances, the issue to be considered is as to whether divorce can be granted in favour of the husband since there is no restitution of conjugal rights for a period of more than 19 years.

10. In *Anantha Padmanabhan @ Balu v. Sassicala* [(2008) 5 MLJ 216], the Division Bench of this Court had an opportunity to consider as to whether the husband will be entitled to maintain a petition for divorce under Section 13(1A) of the Act, where the wife had obtained a decree for restitution of conjugal rights. Considering the law on the question, it was held as follows:

“11.While considering the aforesaid contention, it is to be kept in mind, whether a spouse against whom a decree for restitution of conjugal rights has been passed at the instance of other spouse can at all have locus-standi to claim divorce on the ground that there has been no restitution of conjugal rights as between the parties for a period of one year after the passing of decree for restitution of conjugal rights. Even though in first blush one may tend to accept such a contention, a careful reading of the provisions of the Hindu Marriage Act, particularly the amendments thereof from time to time persuades us to come to a conclusion that it cannot be laid down that



only the person, at whose instance a decree for restitution of conjugal rights had been granted, can claim divorce on the ground that there has been no restitution of conjugal rights within the stipulated period.

...

16. Thus, a reading of these provisions indicate that under Section 13(1), either party to the marriage can present the petition for dissolution of marriage on the ground that there was default on the part of the other. Under Section 13(2), a wife can file application for dissolution of marriage on the ground of certain defaults on the part of the husband. Similarly, under section 13(1A), the petition can be presented by either party to the marriage on the ground of non-resumption of cohabitation for a period of one year after the decree for judicial separation or non-restitution of conjugal rights for a period of one year after such a decree for restitution of conjugal rights. While the emphasis under sections 13(1) and 13(2) is on some fault of the other party, Section 13(1A) recognises dissolution of marriage on the footing that marriage has broken down. Section 13(1A) does not contemplate that only the party who had obtained the decree for judicial separation or the decree for restitution of conjugal rights can alone sue for dissolution of marriage on the ground that there has been no resumption of cohabitation or on the ground that there has been no restitution of conjugal rights. It is thus clear that either party to the marriage can sue for dissolution of marriage under Section 13(1A) on the ground that there has been no restitution of conjugal rights for a period of one year after such a decree has been passed.”



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11. It is clear from the above that the husband can maintain a petition for dissolution of marriage under Section 13(1A) of the Act even though a decree for restitution of conjugal rights was obtained by the wife. As stated above, the appellant and the respondent have been separated for more than 24 years and the marriage itself has become a deadwood. The agony has to come to an end at some stage and no useful purpose will be served in once again driving the parties to the Court below. In view of the same, this Court is inclined to grant divorce to the appellant under Section 13(1A) (ii) of the Act.

12. In the result, the judgment and decree passed by the family Court, Trichy in H.M.O.P No.259 of 2015 dated 18.10.2016 is hereby set aside and the marriage between the appellant and the respondent that took place on 27.06.1996 is hereby dissolved and this appeal stands allowed. No costs.

[M.S.R.,J] [N.A.V.,J]
17.11.2022

Index : Yes / No
Internet : Yes
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To

The Family Court, Trichy.

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