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C.M.A(MD)No.789 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2022

(Reserved on 11.03.2022)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.789 of 2015

and

M.P(MD)No.1 of 2015

Nandhini

... Appellant/Respondent

vs.

Poovarasan

... Respondent/Petitioner

Appeal filed under Section 19 of the Family Courts Act (66 of 1984) against the Ex.order and fair order dated 06.06.2015 made in H.M.O.P.No.323 of 2014 on the file of the Family Court, Dindigul.

For Appellant : Mr.PT.S.Narendra Vasan

For Respondent : Mr.M.Jeyaprakash

JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The wife who suffered a decree for divorce in HMOP.No.323 of 2014 on the file of the Family Court, Dindigul, is on appeal.

2. The marriage took place on 24.01.2011 at Dindigul. Claiming that the wife left the matrimonial home even as early as on 03.02.2011 and did not return despite repeated requests by the husband and that she had committed acts of mental cruelty, by ignoring him and his parents and sharing their private life with her sisters, the husband sought for divorce. He originally filed an original petition before the Sub Court, Namakkal, in HMOP.No.51 of 2013. Pending the above petition, the wife launched the proceedings in HMOP.No.94 of 2013 on the file of the Sub Court, Dindigul, under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights. It appears that both the petitions were transferred to the Family Court, Dindigul, and re-numbered as HMOP.No.117 of 2014 (HMOP.No.94 of 2013) filed by the wife, under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights and HMOP.No.323 of 2014 (HMOP.No.51 of 2013) filed by the husband seeking divorce, under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

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3. A joint trial was ordered upon request of both the parties. At trial, however, the wife withdrew her petition in HMOP.No.117 of 2014 on 06.05.2014, by filing a memo. Though the said memo reads that the husband has withdrawn the original petition filed by him, it appears that the husband did not withdraw the original petition. However, the original petition filed by the wife was dismissed as withdrawn. Thereafter, the husband was examined as PW1 in his HMOP and Exs.P1 to P3 were marked. Though the husband who deposed as PW1, was cross-examined by the counsel for the wife, the wife did not choose to let in any further evidence. It appears that an endorsement was made by the counsel for the wife before the Family Court that she has no evidence. The Family Court, considering the evidence let in, granted divorce. It also observed that apart from committing mental cruelty, the wife has deserted the husband without any sufficient cause.

4. We have heard Mr.PT.S.Narendra Vasam, learned counsel appearing for the appellant and Mr.M.Jeyaprakash, learned counsel appearing for the respondent.

5. Mr.PT.S.Narendra Vasam, learned counsel for the appellant would vehemently contend that though there was a compromise between the parties and they had, in fact, agreed to resume the matrimonial life, based on which, the wife withdrew her HMOP, according to him, the husband had went back on his promise and prosecuted the original petition filed by him behind the back of the appellant. He would also point out that the allegations made in the petition as well as the evidence of PW1 do not form a ground for grant of divorce, particularly under Section 13(1)(ia) of the Hindu Marriage Act, 1955. He would also point out that without any pleading or without desertion being made as a ground for divorce, the learned Family Court Judge has chosen to grant divorce on the ground of desertion also.

6. Contending contra, Mr.M.Jeyaprakash, learned counsel appearing for the respondent/husband would submit that there was no agreement to withdraw the original petitions. Withdrawal of the petition filed by her under Section 9 of the Hindu Marriage Act, 1955, seeking restitution, was an unilateral act of the wife. The fact that the counsel for the wife had chosen to cross examine PW1 and to endorse that the wife has no evidence to offer in the original petition filed by the husband, would demonstrate that there was no agreement between the parties for withdrawing both the original petitions. The learned counsel would also point out the cross examination on the side of the wife, to contend that there was no cross examination on the vital evidence regarding cruelty as well as desertion. He would also contend that even though the divorce was sought for on the ground of cruelty, the Family Court had recorded a finding that there was desertion also. According to the



divorce on the basis of the available evidence, particularly in the absence of cross examination.

7. We have considered the submissions of the learned counsel appearing for the parties.

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8. The following points arise for determination:-

(i) Whether the contention of the wife that there was an agreement between the parties to withdraw both the original applications could be accepted?

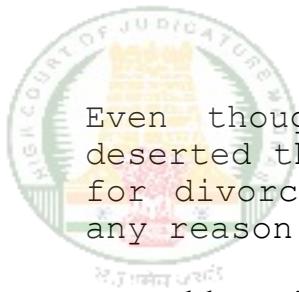
(ii) Whether the Family Court is justified in granting divorce on the ground of cruelty, on the available evidence?

9. **Point No.(i):-**

Though the learned counsel for the appellant/wife would very seriously contend that there was an agreement between the parties to withdraw both the original petitions, the records are otherwise. The wife had filed a memo on 06.05.2014 stating that the husband has already withdrawn HMOP.No.323 of 2014. It is not so. HMOP.No.323 of 2014 was actually pending on the date when the wife filed a memo seeking to withdraw HMOP.No.117 of 2014. It is also seen from the records that the counsel who had represented the wife before the Family Court, had made an endorsement in the original petition that she has no evidence to offer. This endorsement has been made by the counsel on 27.05.2015 i.e. after having withdrawn HMOP.No.117 of 2014. If only there had been an agreement as claimed by the learned counsel for the appellant, the counsel would not have made an endorsement that she has no oral evidence to offer. It is also seen from the evidence of PW1 that the counsel for the appellant/wife before the Family Court, has cross examined PW1. The said cross examination was done on 27.05.2015. A reading of the cross examination so done shows that there was no attempt to de-stabilize or discredit the evidence in the chief examination. Only a few questions were asked and none of the grounds raised by the respondent/husband seeking divorce were even disputed. It appears to be a half-hearted cross examination. We are therefore, unable to conclude that there was an agreement between the parties to withdraw the proceedings and to reunite. Therefore, Point No.(i) is answered against the appellant.

10. **Point No.(ii):-**

The learned Family Court Judge has found that the evidence on record would show that the appellant has been living away without any just cause for more than two years. He has also found that the conduct of the wife in calling the husband as stingy person (fQ;rd;) and also sharing intimate details with her sisters, would definitely amount to mental cruelty. The husband has spoken about these happenings in his chief examination and we find no cross examination on this aspect. We are therefore unable to fault the Family Court for having accepted the un-controverted evidence of the husband.



Even though the Family Court had concluded that the wife has deserted the husband without just cause, it has not based the decree for divorce on the factum of desertion. We therefore, do not see any reason to interfere with the conclusions of the Family Court.

11. The Civil Miscellaneous Appeal therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. The parties are directed to bear their own costs in the appeal.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

The Judge,
Family Court,
Dindigul.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.K.PERIASAMY, Advocate (SR-12791[F] dated 17/03/2022)

JUDGMENT MADE IN
CMA(MD)No.789 of 2015
DATED : 17.03.2022

SRR(CO)

GC(29.03.2022) 4P 5C