



C.M.A.(MD) No.898 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2022

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HON'BLE MR JUSTICE SUNDER MOHAN**

**C.M.A(MD)No.898 of 2015
and
M.P(MD)No.1 of 2015**

D.Rachel Malini

... Appellant/Respondent

.Vs.

S.Israel

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, to allow this appeal and to set aside the impugned fair and decreetal order passed by the learned Family Judge, Madurai in I.D.O.P.No. 4 of 2006, dated 26.02.2014 and dismiss the same.

For Appellant : Mr.N.Dilip Kumar

For Respondent : No appearance



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JUDGMENT

**DR.G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.**

The appellant is the respondent in I.D.O.P.No.4 of 2006. She got married to one S.Israel on 19.05.1997 as per Christian Rites and Customs. Both are working. Even after few years of marriage, the appellant could not conceive due to gynaecological issues and the same has been well discussed by the trial Court and established through exhibits. As the days passed, the spouse lost compatibility.

2. Alleging that, the appellant has lost interest in the marriage and sexual relationship and refrained herself from cohabitation for more than two years due to her mental disorder, the respondent herein filed a petition for divorce under Section 10(1)(iii)(vii) (ix)(x) of the Indian Divorce Act.

3. The above allegations were denied by the appellant and also a counter allegation was alleged that her husband had developed intimacy with one of his student.



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4. The parties entered into the witness box, marked exhibits. An Advocate Commissioner was appointed by the Court and he was examined as a Court witness. The report of the Psychologist Dr.Rawlin Chinnian was marked as Court exhibit.

5. The trial Court, after appreciating the evidence placed before it, held that the respondent herein/petitioner has established that his wife suffers some sort of mental depression and her act has caused mental cruelty to him and they are living separately for more than 7 years and no steps have been taken for reunion and also inferring that her contact does not indicate that she had an intention to reunite her husband, the petition was allowed, granting divorce by dissolving the marriage solemnized on 19.05.1997.

6. The learned counsel appearing for the appellant passionately argued that the respondent herein, who was not loyal to the wife, had developed intimacy out side the wedlock, made uncharitable allegation of mental illness and also had advantage of dissolution of marriage on the said ground. The learned counsel for the appellant referring to Ex.C2,



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which is a report of Dr.Rawlin Chinniah, Psychologist, submitted that the petitioner/respondent herein infact had developed passionate love affair with the girl and that has abruptly come to an end due to the intervention of the girl's parents. Further, by relying upon the photographs marked as Ex.R8 and Ex.R9, the learned counsel for the appellant would submit that the petitioner/respondent herein cannot have the premium for his extra marital affair and get a divorce on the false ground.

7. This Court, after considering the medical reports and the Psychiatrist report of Rawlin Chinniah, marked as Ex.C2, finds that the parties are not interested in restoring their marital relationship. As far as the psycho diagnostic profile of the appellant is concerned, it indicates that she suffers Bipolar mood disorder. Physiological impediment for begotting the child or psychological treatment for Bipolar mood disorder, are not a ground for granting divorce. However, taking note of the fact that marriage took place in the year 1997 and got separated in the year 2005, till date, they have not able to fix their (the spouse) future and ascertain their marital status, even though the trial Court granted a decree of divorce on 26.02.2014.



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8. Since the present appeal is pending before this Court for the past 8 years, this Court is of the view that the parameter laid down by the Hon'ble Supreme Court in paragraph 101(xiv) in **Samar Ghosh vs. Jaya Ghosh** reported in **2007 (4) SCC 511** squarely applies to this case. To be more explicit, the said parameter of the Hon'ble Supreme Court, is extracted below:-

“101(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

9. For the said reason, this Court is not inclined to interfere with the order of the trial Court, dissolving the marriage and decree of divorce and the same is confirmed on the sole reason that the long period of continuous separation between the spouses shows that the matrimonial bond has been broken long back and cannot be retrieved further.



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10. In view of the above, this Civil Miscellaneous Appeal is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] [S.M.,J.]

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Index : Yes / No

Internet : Yes / No

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To

The Family Court,

Madurai.



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