



C.M.A(MD)No.868 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

CORAM:

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

**C.M.A(MD)No.868 of 2019
and
C.M.P(MD)No.11488 of 2019**

V.Sindhia

... Appellant/Respondent

.Vs.

S.Robinson

... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to call for the records of the order and decretal order passed in I.D.O.P.No.161 of 2018 (Previously ICOP No.453 of 2014) on the file of the learned District Judge, Family Court, Kanyakumari Division at Nagercoil and set aside the same by allowing this present Civil Miscellaneous Appeal.

For Appellant	: Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers
For Respondent	: Mr.G.Aravinthan



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

This Civil Miscellaneous Appeal is filed by the wife being aggrieved by the decree of divorce passed by the Family Court, Kanyakumari at Nagercoil in I.D.O.P.No.161 of 2018.

2. This Court, on 29.11.2019, after hearing the parties and the counsel appearing for the respective parties and perusal of the records, has passed the following order:-

“We have heard Mr.K.Ragatheesh Kumar, learned counsel for Mr.P.Muthuvel, learned counsel for the petitioner and Mr.S.R.Sathan Boopathy, learned counsel for the respondent.

2. This appeal by the wife is directed against the judgment and decree passed in I.D.O.P.No.161 of 2018 on the file of the learned District Judge, Family Court, Kanyakumari District at Nagercoil.

3. The respondent / husband filed petition under Section



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10(x) of the Indian Marriage and Divorce Act, 1869 to dissolve the marriage between the appellant and the respondent solemnized on 22.10.2001. Before the Family Court, the respondent / husband himself was examined as P.W.1 and P.W.2, who was working as Attender in a Hospital, where the appellant had taken treatment, was also examined. On the side of the respondent / husband ten documents were marked including medical records of the appellant / wife. The appellant examined herself as R.W.1. The learned Family Court, after considering the documentary evidence has framed the following three issues:-

“1.Whether the petitioner-husband proved the plea of cruelty against the respondent / wife?

2.Whether the petitioner is entitled for the relief of divorce from the respondent?

3.To what other relief the petitioner is entitled?”

4. The petition was allowed holding that the appellant / wife had treated the husband / respondent with cruelty. The learned Family Court also took note of the fact that two minor girl children were always under the care and custody of the respondent / husband. The appellant wife did not take steps even to visit them. The respondent filed petition for declaring him as guardian of the two minor girl children in G.W.O.P.No.150 of 2018 and the same was allowed by an order dated 29.06.2018. It is note worthy to state that the appellant / wife did to challenge the said order



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and the children are under the care and custody of the respondent / husband.

5. Further more, we note that an Interlocutory Application was filed in the divorce proceedings by the respondent / wife in I.A.No.175 of 2015 seeking a sum of Rs.8,000/- per month as interim alimony and also to pay a sum of Rs.10,000/- as litigation expenses. Against the order passed in the said petition dated 27.06.2016, the respondent / husband filed C.R.P.(MD)No.1786 of 2016. The said petition was dismissed. The learned counsel for the respondent / husband submitted that when the Civil Revision Petition was pending before this Court, the learned Single Bench of this Court had attempted for settlement between the parties. In spite of best efforts, no settlement was arrived at.

6. The learned counsel for the respondent / husband submit that at this juncture, to refer the matter for mediation as requested by the learned counsel for the appellant, is a wasteful exercise and that the respondent / husband is not willing to participate in any mediation proceedings except with regard to maintenance amount, which the respondent / husband has been directed to pay in terms of the impugned order. It is the submission of the learned counsel for the respondent that the respondent / husband is willing to discuss for permanent alimony to be paid in respect of the direction issued. In other aspects, the respondent is not willing to participate in any mediation proceedings. In the absence of the



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same, we cannot compel the parties to be present in mediation proceedings.

7. Therefore, we have heard the learned counsel for the appellant elaborately and considered the correctness of the order passed by the learned Writ Court. In fact, the learned Family Court in paragraph No.8 of the order has referred to an attempt made by the Mediation Centre at Nagercoil for settlement and that both parties had reported that they are not willing to participate in the mediation and therefore, the case bundle was sent back to the Court. This is the one more reason for us not to refer the matter for Medication.

8. There is no error in the order passed by the learned Family Court and exercising our jurisdiction under Section 19 of the Family Court Act, we do not find any specific ground to interfere with the order passed by the learned Family Court and we also took note of the conduct of the appellant / wife, which we have set out in the preceding paragraphs.

9. All these observations, would be sufficient to dismiss this appeal. However, since the respondent / husband is willing to attempt a mediated settlement for permanent alimony, we refer this matter for mediation only for such purpose. In all other respects, we uphold the order passed by the learned writ Court. In the event, there is no settlement arrived at between the parties with regard to the permanent alimony, the matter has to be placed



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10. The Registry is directed to place this matter before the Mediation Centre.”

Today when the matter is listed for further order, the failure report from the Mediation Centre has been placed before this Court for consideration.

3. The learned counsel appearing for the appellant submitted that though the respondent was ready to pay the lumpsum amount as permanent alimony to the appellant, the appellant has not able to arrive at an agreement regarding the quantum of permanent alimony.

4. In view of the above fact, since the Hon'ble Division Bench of this Court has already observed that the appeal needs to be dismissed on merits for the reasons stated in above referred paragraphs 6 to 9 in its order, dated 29.11.2019, and taking note of the fact that no settlement been arrived between the parties with regard to the permanent alimony, the appeal stand dismissed.



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5. It is always open to the parties, in future if they arrived at any settlement regarding the permanent alimony, the same may be reported to the concerned Family Court and seek for modification or alteration as provided under the statute. No costs. Consequently, connected miscellaneous petition is closed.

[G.J.,J.] [S.M.,J.]
08.12.2022

Index : Yes / No
Internet : Yes / No
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To

The District Judge,
Family Court,
Kanyakumari Division at Nagercoil.



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