



C.M.A.(MD)No.1199 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 15.11.2022

Delivered On : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1199 of 2018

and

C.M.P.(MD)No.12409 of 2018

P.Roni

.. Appellant / Respondent

Vs.

D.Priya

.. Respondent / Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, against the fair order and decretal order, dated 14.09.2018, made in D.O.P.No.318 of 2016, on the file of the Additional District & Sessions Judge – Fast Track Court, Kanyakumari at Nagercoil.

For Appellant

: Mr. R.Sreenivasan

For Respondent

: Mr. N.Dilip Kumar



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 14.09.2018, made in D.O.P.No.318 of 2016, on the file of the Additional District & Sessions Judge – Fast Track Court, Kanyakumari at Nagercoil. The appellant herein is the respondent-husband and respondent herein is the petitioner- wife in the main original petition.

2. Brief substance of the petition filed by the petitioner, in D.O.P.No.318 of 2016, is as follows:

The marriage of the petitioner and the respondent was solemnized on 08.05.2014 as per the Christian rites and ceremony at Vazhathottam C.S.I.Church, Palliyady. Both of them lived as husband and wife at the respondent's house. After that, they were residing in Chennai and lived there for two months. During the entire period, the respondent used to cause mental and physical torture to the petitioner and also abused the petitioner in filthy language. On several occasions, the respondent assaulted her with hand and committed cruelty. Due to the torture of the respondent the petitioner left out from the house on 20.08.2014 and she is living in her father's house. After mediation, the respondent returned back the dowry amount and house hold articles, but, failed to return the jewels as agreed upon.



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During the marriage, the petitioner's father gave Rs.1,00,000/- cash and 176 grams of gold and household articles worth Rs.1,00,000/, which are in the custody of the respondent. There is no possibility of a reunion and the marriage is to be dissolved.

3. Brief substance of the counter filed by the respondent, in D.O.P.No.318 of 2016, is as follows:

After the marriage, the respondent and the petitioner lived happily only for two years. The petitioner studied M.E. In Jeya Engineering College, Chennai and all the expenses for the same was met out by the respondent. It is the petitioner, who always picked up quarrel with the respondent, without any reason and she used to abuse the respondent in filthy language, even in front of his neighbours and family members. She used to consume variety of tablets particularly to avoid pregnancy and she is having the habit of talking with her boy friends through phone and she used to erase the telephone numbers in her cell phone in order to hide the same from the respondent. At the time of marriage, the respondent gave a gold Thali chain weighing 11 ½ sovereigns and 5 sovereigns of gold bangle to the petitioner. No dowry amount was given by the petitioner's parents to the respondent and that the petitioner wantonly suppressed the real facts.



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4. 1 witness was examined and 5 documents were marked, on the side of the petitioner. 1 witness was examined and 3 documents were marked, on the side of the respondent. After hearing both sides, the trial Court allowed the petition and the marriage was dissolved.

5. Against the order of order, the respondent / husband has filed this appeal on the following grounds:-

The Trial Court failed to consider that no valid ground was made out in the divorce petition. The trial Court failed to consider that it was the respondent, who deserted the appellant and voluntarily went to her parent's house, without any valid reason. The intension of the respondent is to bring the appellant to her parent's house. Immediately within two months, after the completion of M.E. Degree, the respondent filed the petition for divorce. She has not made out the case of desertion. She has not adduced any credible evidence. Till July-2016, the respondent was in the house of the appellant and the divorce petition was filed in the month of August – 2016, which will clearly prove the intension of the respondent. Seeking divorce on the ground of desertion is not valid.



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6. On the side of the appellant-husband, it is stated the it was the appellant who meet out the expenses for the respondent to complete her M.E. Course and he has spent more than Rs.4,00,000/- for her education. She waited till the completion of the course. After the completion of the course, she went out of the matrimonial house during August – 2016 and immediately she filed a divorce petition, claiming mental agony, cruelty and impotency. The appellant was working in the Ship, before his return from work, she left the matrimonial home, she took away of her belongings.

7. The respondent-wife has filed the divorce petition on the ground of desertion, cruelty, non-cohabitation and impotency. The respondent – wife was sent out from the matrimonial home on 20.08.2016 and the desertion is proved, she was subjected to mental harassment and physical harassment. The appellant failed to enter into the witness box to disprove the allegations. Hence, the trial Court has taken an adverse inference against him. Only the father of the appellant entered into the witness box and he admitted the desertion. It is further stated that the respondent has remarried and she is having two children, through the second marriage.

8. The marriage that took place on 08.05.2014 at the Vazhathottam C.S.I. Church, Palliyady, was admitted by both the appellant and the respondent. The



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respondent-wife claimed desertion and cruelty. She has stated that the appellant refused to cohabit with the respondent, while living in Chennai and he refused to consult the Doctor to correct the defect with him. Refusal of cohabitation while living in Chennai, cannot be taken as a refusal for cohabitation from the date of marriage.

9. The allegation of the wife is that the appellant assaulted her with hands and he used to make fun of her physical features. The date and time of such abuse or the assault were not mentioned in the petition. Admittedly, she herself has left the matrimonial home. The appellant failed to enter the witness box and hence, the trial Court has observed adverse inference against him. The dispute between the spouse cannot be decided without examining both of them. Though the ground of cruelty and desertion was not specifically proved by the wife, since the husband failed to enter into the witness box, the trial Court has taken an adverse inference against him and has decided that there was desertion on the part of the husband.

10. The wife has deposed that the husband caused her burnt injuries with cigarettes and threatened to murder her and that the husband scolded her to have physical relationship with her father in law, if he desires so, but, no such allegations were mentioned in the divorce petition, without pleading, the evidence put forth by



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the wife is not valid and even in the evidence of the wife, no allegation was made out against the father-in-law and hence, those allegations cannot be considered.

11. It is seen that the wife is now remarried and she is having two children through the second marriage. Admittedly, the husband and wife are residing separately from the year 2016, subsequent to the decree of divorce, the wife remarried and she is having two children.

12. The allegations made out by the wife in the divorce petition are not proved by the wife and those allegations are insufficient to order a decree of divorce. The allegations for the divorce are not proved.

13. If the trial court order is set aside, the second marriage of the respondent will be affected. Setting aside the trial Court order will not be of any use to the appellant also.

14. Considering the unique circumstances of the case and considering the welfare of both the parties, the appeal is disposed of, with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

02.12.2022

Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional District & Sessions Judge –

Fast Track Court,

Kanyakumari at Nagercoil.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1199 of 2018

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