



C.M.A.No.920 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.09.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.920 of 2023

V.Mageshkumar ... Appellant
Vs

ELCY ... Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 55 of the Indian Divorce Act, against the judgment and decree dated 11.10.2022 made in I.D.O.P.No.49 of 2022 on the file of the Principal District Court, Tiruppur.

For Appellant : Mr.R.Prabakar
for Mr.K.Naveen Kumar

For Respondent : Mr.S.Sidhartha Vishnu

JUDGMENT

The above appeal has been filed by the husband challenging the dismissal of his petition filed for divorce before the Principal District Court, Tiruppur in I.D.O.P. No. 49 of 2022 on 11.10.2022.

2.(a)The appellant had filed a petition for divorce under Section 10(1)(x) of the Indian Divorce Act, 1869, on the ground of cruelty praying for



C.M.A.No.920 of 2023

dissolution of the marriage solemnized between the appellant and the respondent on 19.05.2016 as per the Christian Customs and rites.

(b) Before the Principal District Court, the appellant examined himself as PW1 and marked Exhibits Exs.P.1 to P.3.

(c) Though the respondent received notice of the divorce petition, she had not chosen to enter appearance.

(d) The learned Principal District Judge had dismissed the petition for divorce stating that the allegations made by the appellant have not been established by independent evidence; and that the allegations were bald and did not make out a case of cruelty.

3. Challenging the said order, the appellant has preferred the instant appeal. Though the respondent received notice in the instant appeal, she had not chosen to enter appearance before this Court also. Hence, this Court directed the High Court Legal Services Committee to appoint a legal aid counsel to assist this Court. Accordingly, Mr. S. Sidhartha Vishnu was appointed as the counsel for the respondent.



C.M.A.No.920 of 2023

4.The learned counsel for the appellant submitted that though the appellant had established that he is entitled to divorce on the ground of cruelty and the respondent remained exparte, the trial Court had erroneously dismissed the divorce petition.

5.The learned counsel for the respondent appointed to assist this Court, per contra, submitted that he contacted the respondent and the respondent had stated that she was not interested to participate in the proceedings before this Court; and that she was not interested in the marriage as well. The learned counsel submitted that the alleged instances cited by the appellant before the Court would only constitute minor matrimonial differences and are not grave enough to term it as cruelty. Hence, the learned counsel prayed for dismissal of the appeal.

6.This Court finds that the learned Judge had dismissed the divorce petition merely on the ground that the appellant had not examined any independent witness to corroborate his version; and that the allegations of cruelty were vague and bald and hence not sufficient to constitute cruelty. This Court is of the view that it is not necessary always to look for corroboration. It



C.M.A.No.920 of 2023

is quality of the evidence and not quantity that matters. The appellant was examined as PW1 and in his proof affidavit, he had stated that the marriage took place on 19.05.2016; that the appellant is an Advocate by profession; that the respondent had continuously insulted the appellant by comparing the appellant's earnings with that of her brother-in-law (sister's husband), who was working in an I.T. Company; that the respondent disrespected the appellant's family members and would often go to her parents' house by deserting the appellant; that the respondent never allowed the appellant to participate in the family functions of his sisters and other relatives; and that there were frequent quarrels between the appellant and the respondent; that the respondent always suspected the character of the appellant and picked up frequent quarrels; that the respondent never allowed a conducive conjugal relationship; that the appellant and the respondent have been living separately since 03.05.2019; that in the meantime, a girl child was born in July 2017; and that in spite of the best efforts by the family members and other well wishers, the respondent refused to live with the appellant.

7.The above instances of cruelty listed out by the appellant has not been refuted by the respondent since she remained exparte, as stated earlier. The



C.M.A.No.920 of 2023

instances cannot be stated to be vague or bald. The marriage has not worked as can be seen from the above evidence. That apart, the conduct of the respondent is also worth mentioning. The respondent remained exparte before the Principal District Court. In the instant appeal also, she had not shown any interest to enter appearance in spite of service of notice. She had also expressed to the learned counsel, who was appointed by this Court that she was not interested in the marriage. The appellant and the respondent had been living separately since 2019.

8.Considering all the above facts, this Court is of the view that the appellant is entitled to a decree of divorce on the ground of cruelty as prayed for in I.D.O.P.No.49 of 2022.

9.This Court records its appreciation for the valuable assistance rendered by the learned counsel for the respondent. He had also taken considerable effort to contact the respondent and assist the Court.

10.In the result, the judgment passed in I.D.O.P. No. 49 of 2022 dated 11.10.2022 by the Principal District Court, Tiruppur is set aside. The relief



C.M.A.No.920 of 2023

sought for in I.D.O.P. No. 49 of 2022 is granted and the civil miscellaneous appeal is allowed. No costs.

01.09.2023

vs/ay

Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

SUNDER MOHAN, J.

vs/ay

To

The Principal District Court,
Tiruppur.

C.M.A.No.920 of 2023



WEB COPY



C.M.A.No.920 of 2023

01.09.2023