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C.M.A.No.836 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHACHAKRAVARTHY**

C.M.A.No.836 of 2021

Nithiya ... Appellant

Vs.

Shanmugam ...Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, against the Judgment and decree dated 01.06.2020 in F.C.O.P.No.469 of 2012 on the file of Family Court, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondent : Ms.J.Prithivi

J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant/wife aggrieved by the decree of divorce granted by the Family Court, Salem dated 01.06.2020 in F.C.O.P.No.469/2012.

2. Heard Mr.R.Nalliyappan, learned counsel for the appellant and



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Ms.J.Prithvi, learned counsel for the respondent.

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3. Mr.Nalliyappan, learned counsel for the appellant, taking this Court through the order of the trial Court, would firstly contend that even though the husband had filed an application for divorce on the ground that the respondent aborted the child without the consent of the husband and the respondent used to converse in the mobile phone with third parties all the time and she behaved in a cruel manner, the fact remains that as per the counter affidavit, only because she was tortured for further dowry and also suspected the fidelity unnecessarily, the husband is one who committed cruelty on the wife. The trial Court ought not to have relied upon the evidence of PWs.3 and 4, who were interested in the case of the husband and therefore, in the absence of any other proof that the appellant/wife only committed cruelty, the trial Court ought not to have dissolved the marriage.

4. Per contra, the learned counsel for the respondent would submit that a specific allegation of cruelty has been made in the petition which is listed out by the trial Court at para No 9 of the order. In proof of the said allegation, apart from examining himself as P.W.1, three other witnesses were examined. P.W.3 and P.W.4 were only neighbours and as such, they



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were independent witness and by duly considering the oral and documentary evidence on record, the case of the husband has been accepted by the trial Court and the same does not call for any interference by this Court.

5. We have considered the rival submissions made on either side and perused the material records of the case.

6. At the outset, before proceeding to hear this matter, by our order dated 20.06.2023, we asked both the parties to be present before this Court for interaction. The respondent/husband was present. The appellant/wife was not present. Learned counsel for the appellant would represent that at this point of time, she was also not interested in rejoining the husband and therefore, she was not present for the talks. However, he argued the appeal on merits. He also made an alternative submission that even if the Court does not accept the case on merits, the Court may order for permanent alimony to the appellant/wife.

7. This prayer was also opposed by the learned counsel for the respondent by saying that already a sum of Rs.3,50,000/- had been paid to the appellant/wife, while the Court ordered for interim maintenance. The respondent /husband is a flower vendor and he would not be in a



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position to pay any further.

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8. It is seen that the husband filed application for divorce on the ground of cruelty. When the appellant/wife is not ready to live with the respondent/ husband and when the trial Court has considered the evidence on record and had rendered the finding, at this stage, academically, this Court need not go into the submission made by the learned counsel for the appellant on each and every aspect. It is suffice to say that the trial court has passed an order of divorce, after considering the evidence on record. As far as the question of grant of alimony is concerned, considering the overall facts and circumstances and considering the submissions made by the learned counsel for the respondent that a sum of Rs.3,50,000/- had been paid as interim maintenance and considering the status of the parties, we are of the view that no further sum can be ordered to be paid as alimony. Accordingly, we find no merits in the appeal. Therefore, this Civil Miscellaneous Appeal stands dismissed. No costs.

(J.N.B,J.) (D.B.C, J.)
28.06.2023

Index : Yes / No
Internet : Yes
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To

The Family Court, Salem.



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J. NISHA BANU, J.
and
D.BHARATHA CHAKRAVARTHY, J.

vsi

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