



C.M.S.A. No.35/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.11.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.S.A. NO.35 OF 2021

Satheesh Kumar

.. Appellant

- Vs -

Sreedevi

.. Respondent

Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w 100 of the Code of Civil Procedure, against the fair and decreetal order dated 04.02.2019 passed in CMA No.12 of 2015 by the III Addl. District & Sessions Court, Virudhachalam, confirming the fair and decreetal order dated 15.04.2015 passed in H.M.O.P. No.30 of 2009 on the file of the Sub Court, Neyveli.

For Appellant : Mr. P.Mani

For Respondent : Mr. V.Rajesh Babu



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JUDGMENT

Assailing the concurrent judgment and decree passed by both the courts below dismissing the plea of the appellant for divorce, the present appeal has been filed by the appellant.

2. The brief facts of the case, as averred by the appellant seeking divorce, which are necessary for the disposal of this appeal are as under :-

The marriage between the appellant and the respondent was solemnised on 6.2.2003 at Neyveli and since then, they were living together. It is the averment of the appellant that at the time of marriage, though it was claimed by the respondent that she is a graduate, however, she had passed only 12th standard. It is the further case of the appellant that they had started living in Hosur happily initially and, thereafter, friction started to arise between the appellant and the respondent. It is the further case of the appellant that the respondent was not inclined to stay with her in-laws nor was inclined to allow them to come to her place. Further the respondent was



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also not inclined to allow the appellant to help his parents monetarily. It is the further case of the appellant that he got a gainful employment at Nagpur and he relocated to Nagpur along with the respondent. However, the respondent was too inquisitive and had casted allegations against his conduct. It is the further case of the appellant that the respondent never treated the appellant as her husband and used to ill-treat him. Thereafter, the appellant got shifted in his job and went to Rajasthan. In spite of the appellant advising the respondent to mend her ways and lead a normal and happy life, the respondent did not heed to the advice either given by the appellant or his parents.

3. It is the further case of the appellant that the respondent was taken to her parental abode by her parents and during July, 2014, without informing the appellant and his parents, the respondent's parents conducted the Seemandham function of the respondent and they even did not keep the appellant informed of any acts, including the birth of his child. Further, the parents of the respondents also did not conduct the rituals, that is to be conducted at the birth of the child. Thereafter, the appellant secured a job at



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Saudia Arabia and relocated there, but the respondent insisted that he should not go there and insisted that he come over and stay at Neyveli. In spite of the best efforts taken by the appellant and his parents to make the respondent realise and come and live with the appellant, the same went in vain. Since the respondent did not show any inclination to come and lead a matrimonial life with the appellant, the appellant sent a lawyer's notice and due to the same, the parents of the respondent along with their relatives came to the house of the appellant and entered into a wordy and physical altercation leading to intervention of the police authorities and also leading to the mother of the appellant filing a private complaint. Since the respondent and her parents were not willing to allow the respondent and appellant to live peacefully and as the respondent was not inclined to lead a matrimonial life, the present divorce petition was preferred by the appellant.

4. Countering the same, the respondent filed counter statement alleging that it was the appellant and his parents, who had ill-treated the respondent. It was further averred by the respondent that all along, the respondent was threatened and she was meted out with physical and mental



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abuse. It was the further averment of the respondent that not only the appellant and his parents, but also the sister-in-law and her husband were constantly pestering the respondent to bring dowry in the form of cash from her parents and the respondent was sent to her parental abode to bring dowry. It is the further averment of the respondent that the relocation of the appellant to Rajasthan and subsequent employment at Saudia Arabia were not made known to the respondent. Only when the appellant returned and when her parents went to meet the appellant so as to make him unite with the respondents, her parents were physically assaulted and threatened that if dowry is not provided, divorce will be sought for by the appellant resulting in a complaint being given against the same to the police and warned and let off the appellant and his relatives. Thereafter, the appellant sent the stridhana materials by lorry to the respondent's place and, thereafter, the divorce notice was issued for which reply was sent to the appellant resulting in the filing of the present divorce petition.

5. Before the trial court, on the side of the appellant, P.W.s 1 to 3 were examined and Exs.P-1 to P-10 were marked. On the side of the respondent,



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R.W.s 1 to 5 were examined and Exs.R-1 to R-5 were marked. Based on the oral and documentary evidence, the trial court held that none of the allegations raised against the respondent was proved by the appellant and further the allegation of cruelty put forth by the appellant has also not been proved, so also the suicidal tendencies of the respondent, which was the cause of the divorce petition. Accordingly, the trial court rejected the petition for divorce, aggrieved by which the appellant/husband preferred appeal, which also ended in dismissal affirming the order passed by the trial court. Against the said judgment and decree, the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that the severing of relationship between the appellant and respondent is strengthened by the fact that the respondent has not taken any steps to get herself united with the appellant. Further, the respondent and her child are living separately, thereby, they have deserted the appellant, which is a clear case of desertion causing mental cruelty to the husband.



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7. It is the further submission of the learned counsel that the breakage of relationship and its impossibility of revival is further evidenced by the fact that complaints and counter complaints have been lodged by the warring parties against each other and in fact, filing of a complaint before the police authorities by the respondent is nothing but maligning the reputation of the appellant and his parents, which is a sort of cruelty, which deters any reunion between the warring spouses.

8. It is the further submission of the learned counsel that inspite of the fact that the appellant called upon the respondent to come back to her matrimonial home and live with him, the respondent had not taken any steps to return to her matrimonial home, is evidenced by Exs.P-5, P-6 and P-7, but the trial court had erroneously held that the appellant deserted the respondent without any intention to take back and live with her. Further, the courts below erred in holding that the appellant had not taken any steps to live with the respondent is evident from the fact that he had not filed any petition for restitution of conjugal rights, but had sought for divorce, which



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clearly shows the intention of the appellant and strengthens the stand of the respondent that it is for other purposes, divorce is sought.

9. It is the further submission of the learned counsel that the best efforts taken by the appellant to reunite were rejected by the respondent and the cause for the break up is the respondent and not the appellant and further the articles belonging to the respondent were sent to the respondent at Neyveli at her behest when the appellant went to Saudia Arabia and it was not at the instance of the appellant, but the said aspect has not been properly considered by the courts below.

10. It is the further submission of the learned counsel that the mental cruelty caused by the respondent is evident from her deposition as R.W.1, wherein she has admitted about her threatening to commit suicide, but the said aspect has not been properly considered by the courts below while rejecting his prayer for divorce. Further the appellant and respondents not having lived together for more than 15 years, there is no possibility of reunion which shows that the marriage had irretrievable broken down and this aspect



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should have weighed with the courts below while considering the petition for divorce. Therefore, he prayed for setting aside the orders of the courts below and to grant divorce to the appellant.

11. In support of the aforesaid submissions, learned counsel for the appellant placed reliance on the following decisions :-

- i) *G.P.Rajkumar – Vs – Sunanthini (C.M.A. Nos. 53 & 54 of 2018 – Dated 01.12.2022);*
- ii) *Jerome Paulraj – Vs – Alexis Amala Jency (2023 (3) CTC 241); and*
- iii) *Samar Ghosh – Vs – Jaya Ghosh (2007 (3) CTC 464)*

12. Per contra, learned counsel appearing for the respondent submits that none of the ingredients of Section 13 (1) (i-a) of the Hindu Marriage Act, seeking divorce has been proved by the appellant. It is the further submission of the learned counsel that though it is the claim of the appellant that divorce is sought on the allegation of cruelty in the form of the respondent threatening the appellant that she will commit suicide, however, no material whatsoever, either in the form of documentary evidence or oral evidence, evidencing the said act of the respondent has been filed before the courts



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below. However, it is contended by the learned counsel for the respondent that the whole case of the appellant hinges on the respondent not yielding to providing dowry as demanded by the appellant. It is the further submission of the learned counsel that though the respondent was ready and willing to join and live with the appellant, as would be evident from the reply given to the notice calling upon the respondent to come and live with the appellant, yet the appellant has not taken any steps to take the respondent from her matrimonial home and live with her, which clearly shows that records have been created only for the purpose of filing divorce at a later point of time. It is submission of the learned counsel that the appellant has not proved the allegations, as has been raised in the petition and all the materials have been rightly appreciated by the courts below while negating the prayer for divorce, which does not require any interference.

13. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the orders passed by the trial court and the appellate court.



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14. At the time of admitting the appeal, this Court framed the following substantial question of law for consideration :-

“Whether the continuous threat to commit suicide given by the respondent/wife to the appellant/husband would amount to cruelty entitling him to get divorce under Section 13 (1) (i-a) of the Hindu Marriage Act.”

15. The case of the appellant lingers on the alleged cruelty, meted out to the appellant by the respondent in the form of maligning his character and conduct in front of other persons, constantly threatening the appellant that she will commit suicide; that inspite of the best efforts of the appellant towards reunion, the respondent was never willing to come and live with the appellant; that the respondent seldom gave respect to the appellant and to her family members; that the appellant and her family members were not even invited for the birthday celebrations of the child of the appellant; that the appellant and his family members were brutally attacked by the family members of the respondent. To make out a case for cruelty, general



allegations would not suffice, but specific and pointed allegations should be raised, which should be established through cogent and convincing oral and documentary evidence. Therefore, necessarily, it is for this Court to find out whether the allegation of cruelty has been established by the appellant so as to come to a conclusion that there has been an irretrievable breakdown of marriage necessitating the grant of divorce.

16. The ground of cruelty is premised upon the threat alleged to have been made by the respondent before the appellant. Though such an allegation is made, except for the oral submission on behalf of the appellant, no other evidence in the form of neighbours, relatives, etc., have been filed by the appellant. Mere claim of the appellant that the respondent threatened that she will commit suicide, without it being backed by supportive evidence, cannot be taken to mean that the plea of cruelty has been established. The appellant, once makes an allegation of cruelty, is bound to establish the same through corroborative testimony in the form of neighbours. Further, the specific instances when such a threat was made has also not been specified in the petition, nor any evidence is also available on record. Mere allegation



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without concrete materials would not be suffice to bring home the allegation of threat to commit suicide. Further, stray instances cannot be a ground for this Court to infer cruelty being perpetrated by the respondent. Neither any ocular evidence nor documentary evidence has been filed to substantiate the said charge. The only evidence available on record is the notice of the appellant, in which the appellant has averred that the respondent, to unite with the appellant, should submit an undertaking that she will not make threats that she will commit suicide. In the absence of any corroborative materials, the notice of the appellant alleging threat meted out by the respondent that she will commit suicide cannot be said to have been established in the manner known to law. ***Therefore, the substantial question of law is answered against the appellant.***

17. Further, insofar as the other allegations raised, it is the allegation of the appellant that his character and conduct was maligned by the respondent before third parties, the said allegation has also not been established through the said third parties, before whom such a conduct was exhibited by the respondent.



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18. Further, the allegation that the appellant and his family members were not given the proper respect by the family members of the respondent and also by the respondent and that they were not called for the birthday celebrations of the appellant's child also has not been established through proper corroborative evidence. Further, the said allegation is negated by the very testimony of P.W.1 in which there is a categorical admission by P.W.1 that the appellant as well as his family members were invited for the function and that his sister and her husband had attended the function. Likewise, the birth of the child of the appellant was also communicated and after a period of ten days, the sister of the appellant had gone and seen the child.

19. Further, the fact that the appellant was disinclined to have contact with the respondent is evident from the fact that his leaving to Saudia Arabia for job was neither communicated to the respondent at the time of leaving nor had any call been made by the appellant to the respondent while he was in Saudia Arabia. Further, when the appellant came back to India, no communication was given about his return to India to the respondent, who,



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as on date, is his legally wedded wife. Further, it is the categorical submission of the appellant that during his work in Saudia Arabia, the appellant had not sent any money to the respondent to take care of herself and their child. This clearly shows that that the appellant was not truthful to his wife, as his wife, viz., the respondent was not kept in the thick of things with regard to the acts of the appellant, including his movement for livelihood to Saudia Arabia.

20. In the absence of any conclusive and corroborative evidence, establishing the allegation raised by the appellant, the courts below have come to the right conclusion that no case has been made out for grant of divorce. Further, the irretrievable break down of marriage cannot be presumed in this case, as the respondent is willing to rejoin with the appellant and lead her matrimonial life. However, the materials available on record reveal that no steps have been taken by the appellant to bring the respondent back to her matrimonial home and to lead a happy and healthy life.

21. When the appellant claims that he was always inclined to lead a matrimonial life, yet there are no materials placed by the appellant to show



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the steps, which he had taken to reunite with the respondent. Mere words without any action from the appellant cannot be construed to mean that the respondent was not willing for reunion. When in the reply to the notice sent by the appellant, it was the categorical stand of the respondent that the appellant can come within ten days and take her to her matrimonial home, the steps taken by the appellant to bring her back has not been established nor the fact that inspite of the appellant taking requisite steps, the respondent was not willing to keep up her word in the reply notice has also not been established. In the absence of any material, the only logical inference that could be drawn is that all the allegations made by the appellant are figment of imagination and have been formulated only for the purpose of the divorce petition and there is no material to establish that such allegations are true and genuine and rightly appreciating the above, the courts below have negated the prayer of the appellant for divorce, which stands on sound and logical reasoning and does not warrant any interference.

22. It is to be pointed out that to substantiate the allegations, no independent witnesses, who were witnesses to the allegations have been



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examined to prove the same. Without there being independent ocular testimony, more so in the case of familial relationship, when pointed allegations as to the presence of third parties are pleaded, it is for the person pleading the same to prove through the said third parties about the said occurrence and in the absence of any independent testimony establishing the same, the courts below cannot be faulted in their approach to appreciate the evidence and give a finding against the appellant.

23. Though certain decisions, which have been pointed above, have been relied on, on behalf of the appellant, yet the said decisions would in no way further the case of the appellant for the simple reason that there are no materials on the basis of which the case of the appellant has been established. Except for averring in the petition, the allegations have not been established in the manner known to law, either through ocular testimony or through documentary evidence. That being the case, the ratio laid down in the aforesaid decisions would in no way help the appellant to canvass the plea for divorce before this Court.



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24. There being no cogent and convincing material on which this Court could take a different view and in the absence of any infirmity or error in the appreciation of evidence, the judgment and decree passed by the courts below cannot be interfered with.

25. For the reasons aforesaid, this appeal is dismissed confirming the fair and decreetal order dated 04.02.2019 passed in CMA No.12 of 2015 by the III Addl. District & Sessions Court, Virudhachalam, confirming the fair and decreetal order dated 15.04.2015 passed in H.M.O.P. No.30 of 2009 on the file of the Sub Court, Neyveli. However, there shall be no order as to costs.

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To

1. III Addl. District & Sessions Court

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