



C.M.A.Nos.2736 & 2737 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.11.2022
Delivered on	25.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.2736 and 2737 of 2019
and
C.M.P.No.13911 of 2019

R.Alamelu @ M.Alamelu

... Appellant in both appeals

Vs.

M.Ramkumar Murugappan

... Respondent in both appeals

PRAYER in C.M.A.No.2736 of 2019: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act 1986 to set aside the Judgment and decree passed by the Principal Judge, Family Court, Chennai, dated 30.04.2019 and made in HMOP Nos.1133 of 2012 and consequently, allow the petition filed by the appellant.



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PRAYER in C.M.A.No.2737 of 2019: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act 1986 to set aside the Judgment and decree passed by the Principal Judge, Family Court, Chennai, dated 30.04.2019 and made in HMOP No.1496 of 2013 whereby the Trial Court allowed the petition of the respondent for dissolution of marriage on the ground of cruelty.

In both the appeals:

For Appellant : Ms.K.Santhakumari
For Respondent : Mr.Om.Prakash
Senior Counsel for
Mr.R.Ezhilarasan

COMMON JUDGMENT

SUNDER MOHAN, J.

The above civil miscellaneous appeals have been filed by the appellant/wife challenging the decree of divorce granted to the respondent/husband on the ground of cruelty and dismissing her petition for restitution of conjugal rights.

2. The respondent/husband filed a petition for divorce stating that the



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marriage between him and the appellant/wife was solemnized on 17.06.2005. Ever since the date of marriage, the respondent never lived happily. The appellant did not allow consummation of marriage. The appellant imposed several conditions for consummation. The appellant was always money minded. She had, on several occasions, physically and verbally abused the respondent, when they were living in USA. The quarrels sometime led to complaints to the police as well. On many days, the respondent was forced to sleep in his car and stay away from the house, unable to bear the harassment caused by the appellant. On one occasion, the respondent was forced to leave the apartment after the appellant took away the cash, his wallet and cell phone and had to spend the whole-night on the street. The appellant prevented the respondent from talking to his parents. Even as early as in the year 2006, the appellant left the matrimonial home and came back to India. The appellant filed O.P.No.3573 of 2007 for restitution of conjugal rights. A compromise was arrived at and for a few months thereafter, the respondent and the appellant lived together. Thereafter, misunderstanding arose between the parties and the appellant continued to treat the respondent cruelly. She would continuously make suicide threats. In fact, the respondent was also



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prevented from using the toilet used by the appellant, which forced him use the office toilet. On one occasion, the appellant made repeated calls of nearly 40 to 50 times per day. She threatened the respondent stating that she would complain to the Manager of the respondent's company. Unable to bear the harassment, the respondent approached the Court of USA for temporary restraining order and the same was granted on 04.05.2011. Thereafter, the appellant left to India along with her parents. The petition for divorce was filed in the year 2013.

3. The appellant filed a counter denying the averments made in the divorce petition. The appellant stated that it was the respondent, who postponed consummation and she never objected to consummation. The respondent deliberately stayed in his office for long hours and sometime never returned home. She had to make phone calls to find out his whereabouts. The respondent was always in the habit of threatening the appellant that he would divorce her even for small misunderstandings and petty quarrels. On one occasion, the respondent physically assaulted the appellant and she suffered injuries. The respondent in order to avoid the appellant, went and slept in the car on his own accord. He



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danced to the tune of his parents and caused insecure feeling in the mind of the appellant. On one occasion i.e., 17.02.2006, the respondent assaulted the appellant and due to the noise, the neighbours informed the police. When the police came to the house of the respondent, the respondent requested the appellant to state before the police that she attacked the respondent first as otherwise he would lose his job. The statement made by her before the police that the respondent is sought to be projected as acts of cruelty. She never treated the respondent with cruelty. The respondent neglected her and did not attend her phone calls. Therefore, once she consumed sleeping pills. She was saved by the respondent's friends by admitting her in the hospital. All the other allegations made by the respondent accusing her of cruelty are false.

4. Prior to the filing of the divorce petition, the appellant had filed petition for restitution of conjugal rights and the respondent filed a counter. The averments made by both the parties in the divorce petition were reiterated in the said petition.



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5. Before the Family Court, the respondent examined himself as P.W.1 and marked Exs.P.1 to P.25. The appellant examined herself as R.W.1 and marked Exs.R.1 to R.42.

6.The Family Court, on the basis of the pleadings and evidence let in by the parties, held that the respondent established the fact that the appellant had committed cruelty and was not entitled to restitution of conjugal rights. The Family Court thus granted a decree of divorce.

7(a).Mrs.K.Santhakumari, learned counsel appearing for the appellant submitted that the grounds of cruelty alleged by the respondent are not grave enough to constitute mental cruelty warranting decree of divorce. The appellant was always willing to lead a peaceful life with the respondent. Her efforts taken on account of her love towards the respondent are sought to be interpreted as harassment. Various instances cited by the respondent for divorce can be explained. The respondent had exaggerated trivial incidents. The respondent's main aim was to somehow get a decree of divorce. The learned counsel submitted



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that the Family Court has misread the evidence and had not taken into consideration the documents filed on her behalf to show that the respondent is not entitled for divorce.

7(b). The learned counsel further submitted that since the respondent switched off his cell phone, the appellant sent e-mails to the respondent, which were marked as Ex.P.7. These e-mails were not meant to harass the respondent. The appellant suffered a feeling of insecurity and helplessness due to the conduct of the respondent. The learned counsel further submitted that the appellant was subjected to harassment by the respondent on the instigation of his parents. The learned Judge erroneously relied upon Exs.P.23 to Ex.P.25 communications sent by the appellant in the year 2015, wherein, she had made certain admissions and pleaded for reunion. The learned counsel submitted that these mails would show that the appellant was interested in continuing the matrimonial life and cannot be construed as admission of cruelty. The other instances relied upon by the learned Judge are trivial incidents and cannot be basis for grant of divorce and hence, prayed for allowing the appeals.

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8.Mr.Om Prakash, learned Senior Counsel appearing for the respondent submitted that the Judgment of the Family Court is a well considered one and the instances relied upon by the Family Court for granting divorce cannot be said to be trivial. The appellant was in the habit of picking up frequent quarrels and abusing the respondent on several occasions. The appellant prevented the respondent from talking his parents. On several occasions, she physically assaulted him, besides insulting him. Exs.P.6 and P.7, which are the call lists and e-mails communications, are sufficient to establish cruelty. Due to the harassment of the appellant, the respondent had gone to the extent of staying in the car, hotels or even in the streets on several occasions. The appellant was also in the habit of threatening to commit suicide. The learned Senior Counsel submitted that the Family Court had elaborately considered all the evidence and found that the respondent has proved cruelty and hence, prayed for dismissal of the appeals.

9.Heard the learned counsels and perused the pleadings and evidence on record.

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10.Points for consideration:

- (i)Whether the appellant is entitled for restitution of conjugal rights?
- (ii)Whether the respondent is entitled for divorce on the ground of cruelty?

11.Admittedly, the appellant and the respondent are living in continuous separation since 2011. All efforts made for reunion have ended in vain. The marriage took place in the year 2005. The parties lived in USA for sometime and thereafter, the appellant returned to India due to a misunderstanding. The petition for restitution of conjugal rights filed by the appellant in O.P.No.3573 of 2007 after the first separation would show that the marriage was not successful even from the inception. A compromise was arrived at and O.P.No.3573 of 2007 was disposed of in terms of the said compromise. Even thereafter, it is seen from the records that the respondent did not take the appellant immediately to USA. The parties entered into an agreement of compromise on 01.05.2009. The said compromise was marked as Ex.R.6. One of the terms in the said compromise is that both the parties would not create a scene, when they go to USA (including



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roughing up, chasing, manhandling) in the public places during an argument. The terms of Ex.R.6 is similar to the terms of a commercial contract. A reading of the agreement would show that the parties did not have mutual trust. Husband and Wife relationship cannot be based on the written agreements. The documents filed by the parties show that the parties were in the habit of entering into written agreements exposing their weak relationship. Even in USA, they had entered into an agreement on 11.05.2010 which was marked as Ex.R.24. The terms confirms the strained relationship. They are

“1.The Husband agrees to give's wife a written promise that he will not threaten Divorce in his life period till death,

a. The Husband agrees not to say or ask wife for to put signature in the Divorce paper for any reason in his life period till death;

b. The Husband agreed he will not make any suitable arrangements to Divorce his wife till death for any reason.

c. The Husband agrees he will not Divorce his wife without the consent of her for any reason in his life period till death.

d.The Husband agrees that he will live together and lead a better family life with his wife till death.

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This would reveal that there was no mutual trust between the parties.

12.Further, Exs.P.6 and P.7 phone calls and e-mail communications, which have been extracted by the Family Court in the Judgment and admitted by the appellant, though the appellant would deny the reason for sending those mails, are certainly grave enough to cause cruelty. The contents of those mails would show that the appellant had sent those mails not out of love and affection but with the clear intent to harass the respondent. In certain mail communications, the appellant just sent a blank message. In a span of about three hours, she had sent about 15 mails. She had also insulted and humiliated the respondent in those mails. Therefore, these cannot be brushed aside by saying that since the respondent refused to respond to the calls, the appellant was desperate to contact him. The appellant had cross examined the respondent through her counsel elaborately and in such cross examination, nothing has been elicited to disprove



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the allegations of the respondent.

13.The respondent had made allegations of specific instances when according to him, the appellant physically assaulted him. The appellant sought to explain such incidents. Ex.P.16 is the 'Offense Report' of the Daly City Police Department, in which, it is recorded that the appellant slapped the respondent and thereafter, the respondent slapped the appellant. She deposed that she was forced to tell a lie to the police since the respondent pleaded with her to say so as otherwise he would lose his job in USA. We are of the opinion that whatever may be the cause for the incident and whoever may be the aggressor the fact is that the husband and wife did not enjoy a great matrimonial life in USA. The Family Court has extracted the other instances of cruelty when the respondent was harassed to step out of the car when the appellant and the respondent went on a trip. The respondent was forced to handover the car's keys, wallet and was asked to stay out. When the respondent refused to step out of the car, the appellant threatened that she would jump out of the car. The respondent stood out of the car for nearly 6 to 7 hours. Thereafter, on the intervention of the police, he could

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take the car and reach home. Likewise, several incidents have been shown by the respondent in his petition for divorce and his deposition. The learned counsel for the appellant had conducted elaborate cross examination of the respondent, but nothing could be elicited to conclude that the instances cited by him were false. On the other hand, the reading of the cross examination only confirms those incidents. However, the appellant sought to give an explanation for those incidents. The evidence of the parties clearly demonstrates that both the appellant and the respondent have been trading serious allegations against each other.

14.The subsequent conduct after separation of the appellant by sending e-mails to the respondent would support the case of the respondent that he had not treated the appellant badly. The appellant had words of praises for the respondent stating as to how he treated the appellant nicely in USA. She would also apologize for hurting him badly. The reading of those mails would further confirm that the respondent's allegations against the appellant are true. These mails are of the year 2015. When the appellant had sent these mails, the marriage had already broken down and there was no possibility for reunion as could be seen from the



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evidence on record. Those e-mails are marked as Exs.P.23 and P.24, P.25 and R.37. They would only establish that the respondent's case cannot be false. Those cannot be called as normal wear and tear in marital life. The allegations are grave enough to constitute cruelty.

15.The reading of the evidence as a whole clearly establishes that the matrimonial bond is beyond repair. There is absolutely no chance of reunion between the parties. It is not only the averment of the respondent that he suffered cruelty at the hands of the appellant, the appellant has also made serious allegation against the respondent alleging cruelty by him though she would say that she is interested in continuing the matrimonial life. The appellant cannot blow hot and cold at the same time. It is not possible to sustain the marriage after the appellant has made serious allegations of the nature found in the instant case.

16. The Hon'ble Supreme Court in the case of **Naveen Kohli Vs. Neelu Kohli** reported in (2006) 4 SCC 558 has held as follows:



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“74. ... once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. ...

86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the



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respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto.”

17. The Hon'ble Supreme Court in the case of **Samar Ghosh Vs. Jaya**

Ghosh reported in (2007) 4 SCC 511 had observed as follows:

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is



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such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy,



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selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.



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(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

18. Applying the principles to the instant case, we find that the respondent had established that the marriage was not successful ever since it was solemnized. The incidents of physical assault by the appellant on the respondent cannot be said to be false. The allegations with regard to harassment while the respondent was in the office, have been established. The manner, in which, the parties have been entering into written agreements to enforce their respective terms show that there was absolutely no mutual trust and congenial relationship in the marriage.



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As stated earlier, the marriage cannot be sustained based on written agreements. The respondent's allegation that he was made to go out of the house due to the harassment of the appellant, has not been disputed by the appellant. The appellant sought to justify it by saying that it was the respondent who went on his own volition out of the house. The nature of the allegations and the documents which runs to several hundreds of pages filed on either side, would only show that the marriage is only on paper. In such circumstances, if the divorce is not granted as prayed for by the respondent, it would cause cruelty to the parties further. The parties would be in a state where they would not know the future of their marital status. From the above materials, it is clear that the appellant has treated the respondent with cruelty and the respondent has proved the cruelty meted out by him. Hence, point (i) is answered against the appellant and point (ii) is answered in favour of the respondent.

19. Accordingly, we are of the view that the marriage has been rightly dissolved by the Family Court and there is no reason for interfering in the said Judgment of the Family Court. In such view of the matter, both the Civil



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Miscellaneous Appeals are dismissed. In fine, HMOP NO.1496 of 2013 is allowed and HMOP No.1133 of 2012 is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

[V.M.V.,J.]

[S.M.,J.]

25.01.2023

skn

NCC:Yes/No

Index : Yes/No

Speaking Order :Yes/No

To

1.The Principal Judge, Family Court, Chennai.

2.The Section Officer,
V.R.Section,
Madras High Court,
Chennai.



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and
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COMMON JUDGMENT MADE IN
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