



C.M.A.Nos.3412 and 3413 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.11.2022
Delivered on	25.01.2023

CORAM:

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

**C.M.A.Nos.3412 and 3413 of 2021
and
C.M.P.No.19683 of 2021**

V.Elanjchezhian

... Appellant in both appeals

Vs.

G.Meka

... Respondent in both appeals

PRAYER in C.M.A.No.3412 of 2021: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act 1984 to set aside the Judgment and decree dated 08.09.2021 made in H.M.O.P.No.1204/2017 on the file of the III Additional Principal Family Court, Chennai.

PRAYER in C.M.A.No.3413 of 2021: Civil Miscellaneous Appeal is filed under



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Section 19 of the Family Court Act 1984 to set aside the Judgment and decree dated 08.09.2021 made in H.M.O.P.No.1895/2016 on the file of the III Additional Principal Family Court, Chennai and allow the H.M.O.P.No.1895/2016 filed for divorce on the ground of cruelty.

In both the appeals:

For Appellant : Mr.D.Selvam for
Mr.Ilayaraja Kandasamy

For Respondent : Mr.M.Thamizhavel

COMMON JUDGMENT

SUNDER MOHAN, J.

The above civil miscellaneous appeals have been filed by the husband aggrieved by the dismissal of his petition for divorce filed on the ground of cruelty and allowing the wife's petition for restitution of conjugal rights.

2. The appellant filed a petition for divorce on the ground that the marriage between him and the respondent never took off from the date of marriage. The marriage was not consummated. The respondent always quarrelled with the appellant and never respected the appellant's relatives. They lived together only



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for a period of 9 months i.e., from 18.04.2015 to February 2015.

3.The respondent filed a counter stating that the appellant and the respondent had good matrimonial relationship. The respondent's parents spent huge money for the marriage. The appellant is acting on the instructions of his sisters who are misguiding him. The appellant took the respondent and left her at her parent's place on 06.02.2015 without there being any serious differences between them. The respondent is always willing to live with the appellant. In April and November 2015, the elders made attempts for reconciliation, but the appellant did not co-operate and refused to even look at the face of the respondent. Normal wear and tear in the marriage is not to be projected as acts of cruelty.

4. The respondent filed HMOP No.1204 of 2017 for restitution of conjugal rights reiterating her counter filed in the divorce petition. The appellant filed a counter reiterating his averments made in the divorce petition.



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5. Before the Family Court, the appellant examined himself as P.W.1 and marked Exs.P.1 to P.7. The respondent examined herself as R.W.1 and marked Exs.R.1 to R.5. The Family Court held that the appellant had not established the acts of cruelty and dismissed the petition for divorce. However, the Family Court allowed the petition for restitution of conjugal rights stating that the respondent has established her case for restitution of conjugal rights.

6. Mr.D.Selvam, learned Counsel for the appellant submitted that the evidence would disclose that the marriage was never consummated; the respondent was in the habit of picking frequent quarrels with the appellant and with the relatives of the appellant; the appellant and the respondent are living separately for nearly 7 years and the marriage has broken down. The learned Counsel further submitted that the appellant and the respondent were referred to a Psychiatrist for mediation and the Psychiatrist had given a report stating that the couple had difficulties in getting reunited and hence, the mediation process is not successful and therefore prayed that the appeals may be allowed.



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7. Mr.M.Thamizhavel, learned counsel for the respondent submitted that the allegations of cruelty are not grave enough to grant decree of divorce. These are normal happenings in any marital life. The respondent and the appellant always had good relationship and it was the appellant's relatives who were instrumental in separating the appellant and the respondent. The averments made in the divorce petition would make it clear that there are no serious difficulties between the appellant and the respondent.

8. Heard the learned counsels appearing on either side and perused the pleadings and evidence on record.

9. We find that the appellant had pleaded in his petition for divorce and stated in his deposition before the Court that the matrimonial life was never peaceful and congenial. The respondent refused consummation of marriage and in about 9 months after the marriage, the parties started living separately. In the counter filed by the respondent herein, she had stated that the marriage was consummated. However, she would state that the relationship became strained



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only because of the relatives of the appellant. If the marriage has not been consummated it would definitely cause mental cruelty. However, this fact as stated earlier is denied by the respondent. We are of the view that the appellant's version is more probable, considering the fact that the appellant and the respondent hardly lived for 9 months. The appellant has stated in his evidence that the conjugal relationship was not very happy between the appellant and the respondent. He has reiterated this in the cross examination also.

10.The respondent has also made allegation against the appellant that he is acting on the instructions of his relatives. Further, we see that the respondent has herself made various allegations against the appellant and his sisters. The counter filed by the respondent is extracted for better understanding of her stand.

“..... In spite of all this, the Respondent was subject to great cruelty by her two sister in laws, who were staying with them in the rental house, as joint family.....”

“.....The respondent submits that her father and mother and family members went several times to the petitioner's place for reconciliation, in February, April, July and November 2015, but all efforts turned futile. In fact, she herself went with her



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parents in April and November, 2015 to meet the petitioner but he never looked at her, just ignored her and humiliated her due to which she became very upset. She is still very much loving and affectionate to the petitioner and wants to rejoin him and this she has clearly stated in her reply letter dt. 21.04.2016.”

“.....The respondent submits that they lived a happy married life, her husband i.e., petitioner was quite loving and understanding with her, in the beginning but in course of time, there has been sudden change in his behaviour which is mainly due to the instigation of his sisters, who are living with them only. So the Respondent is of the fond hope that things will change and the petitioner would certainly come and rejoin with her. The Respondent submits that it was the petitioner who had deserted the respondent on the Coercion & Instigation his family members. The petition for divorce is misconceived and filed by the petitioner on the undue influence and coercion of his parents and sisters and ought to be dismissed.”

The above passages in the counter reiterated the fact that the appellant and the respondent did not get along very well.



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11. We are of the view that the subsequent events also will establish that the matrimonial bond is beyond repair. The subsequent developments are that it is now more than 7 years since the appellant and the respondent are living separately. We are conscious of the fact that mere delay in conclusion of proceedings may not be a ground for granting divorce as held by the Hon'ble Apex Court. However, in the facts of the instant case, we find that all attempts made by parties themselves for reunion have ended in vein. This Court has also made an attempt to explore the possibility of reconciliation among the parties by referring the parties to a Psychiatrist in the Government Hospital. The parties appeared before the Psychiatrist and the Psychiatrist has given a report stating as follows:-

“Evaluated the individuals independently in different sessions and found both have adequate intellectual capacity to decide about their future. Both of them are not having any signs or symptoms of mental illness during evaluation. Subsequently, a joint session was organized in which Mrs. Meka expressed her wish to live with her spouse and Mr.Elanchezhian has a strong stubborn mindset about his marriage and believes his marriage will not work out as he had already suffered a lot. We, experts at Department of Psychologist, RGGGH are of the opinion that the



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couple have difficulties in getting reunited as Mr.Elanjchezhian is not interested in this marriage. His ideas evolved from his past experiences are influencing his current attitude towards the marriage. Hence, the mediation process is not successful.”

12. In the light of the above finding of the Psychiatrist, which is a recent development, we are of the opinion that the marriage has broken down and there is absolutely no possibility of reunion.

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

“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



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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 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.”

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



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

“(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.”

15. In the instant case, the above principles enunciated by the Hon'ble Apex Court would squarely apply. The appellant has throughout pleaded that the marriage was not consummated. The parties hardly lived together for 9 months. Thereafter, they are in continuous separation for more than 7 years now. The assessment made by the Psychiatrist confirmed that there is no possibility of reunion. In such circumstances, we cannot allow the marital life to continue only on paper and hence, we deem it appropriate to dissolve the marriage as prayed for by the appellant.



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16. In the result, both the appeals are allowed. HMOP No.1895 of 2016 filed by the appellant for divorce is allowed. HMOP No.1204 of 2017 filed by the respondent for restitution of conjugal rights is dismissed. Consequently, connected miscellaneous petition is closed. There is no order as to costs.

[V.M.V.,J.]

[S.M.,J.]

25.01.2023

skn/ay

NCC : Yes/No

Index : Yes/No

Speaking Order :Yes/No

V.M.VELUMANI, J.
and
SUNDER MOHAN, J

skn/ay

To

1.The III Additional Principal Family Court, Chennai.

2.The Section Officer,
V.R.Section,

12/13



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Madras High Court,
Chennai.

COMMON JUDGMENT MADE IN
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and
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