



C.M.S.A.No.33 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Miscellaneous Second Appeal No.33 of 2019

Bakul Krishna Kotian

... Appellant

-Versus-

Mrs.Jyothi

... Respondent

Prayer :- This Civil Miscellaneous Second Appeals is filed under Section 13(1)(ia)(ib) and 3 of Hindu Marriage Act, 1955 read with Section 100 of CPC., to set aside the Judgment and decree dated 27.04.2019 passed in C.M.A.No.19 of 2017 by the Principal District Court, Chengalpet in having confirmed the fair order and decreetal order passed in H.M.O.P.No.172 of 2010 by the Subordinate Court, Tambaram, in its order dated 29.09.2016.

For Appellant	: Mr.M.Premkumar
For Respondent	: Mr.N.Kishore Kumar



C.M.S.A.No.33 of 2019

JUDGMENT

This Civil Miscellaneous Second Appeal is filed to set aside the Judgment and decree dated 27.04.2019 passed in C.M.A.No.19 of 2017 by the Principal District Court, Chengalpet, in having confirmed the fair and decretal order passed in H.M.O.P.No.172 of 2010 by the Subordinate Court, Tambaram, in its order dated 29.09.2016.

2. When the matter was taken up for hearing on 09.08.2023, the learned counsel for the respondent/wife was present and there was no representation for the appellant/husband. Hence, the matter was ordered to be listed today (24.08.2023) under the caption "for dismissal".

3. Today (24.08.2023), when the matter is taken up for hearing, both the learned counsel for the appellant and the learned counsel for the respondent are present.



C.M.S.A.No.33 of 2019

4. The appellant is husband and the respondent is wife. The husband had filed a divorce petition under Sections 13(1)(ia)(ib) and 3 of the Hindu Marriage Act, 1955 for cruelty and desertion, before the Subordinate Judge, Tambaram, in HMOP No.172 of 2010. After recording the evidence and completion of enquiry, the learned Subordinate Judge dismissed the petition for divorce filed by the husband. Challenging the said order of the learned Subordinate Judge, the husband filed an appeal before the Principal District Judge, Kanchipuram at Chengalpattu, in CMA No.19 of 2017. The First Appellate Court, after hearing the appeal, dismissed the same. Against which, the husband has filed the present second appeal.

5. Though the appellant/husband has filed this second appeal raising the following substantial questions of law, so far, this Court has not formulated any substantial question of law;

A. Whether the Court below had failed to consider the specific case of the appellant that the respondent is suffering from skin disease prior to the marriage and the treatment taken by her for the said disease which was



suppressed by the parents of the respondent during the marriage proposal and the treatment taken by her subsequent to the marriage?

B. Whether the Court below had considered (Exhibit-P8) the medical Prescription of the respondent vide which would clinches the issue that the respondent was suffering from skin disease prior to marriage and after marriage?

C. Whether the Court below had appreciated the pleadings of the appellant in so far in various infliction of mental cruelty by the respondent within a short span of marital life when no one would have expected it as they would be under the belief that marital life will be colourful, joyful and it was shattered by the act of the respondent?

D. Whether the Court below had considered the long separation between the appellant and the respondent and the same would be a valid ground for divorce and the



C.M.S.A.No.33 of 2019

same was not duly considered and appreciated by the Court below?

E. Whether the Court below had considered the specific grounds of the appellant for divorce when the respondent had voluntarily left the matrimonial home without even informing the elders of the family and further the respondent had not come forward to join with the appellant by way of filing any petition for reunion?

6. The learned counsel for the appellant/husband would submit that the respondent/wife suppressed her age and she is elder to the appellant/husband. She also suffered from some skin disease and the same was suppressed before the marriage and she is also a hysteria patient. All these facts were suppressed earlier to the marriage and only after the marriage, the appellant/husband came to know of the same. Further, the respondent/wife left the matrimonial home without any valid reason. The appellant/husband took much efforts to take her back to the matrimonial home, despite that, all the efforts ended in vain and he could not succeed to



C.M.S.A.No.33 of 2019

bring back the respondent/wife to the matrimonial home. The appellant/husband had sent a notice to the respondent/wife and after receiving the notice, she filed a false complaint against the appellant/husband and subsequently, the same was closed as false. He further submitted that the appellant/husband had earlier filed a petition for divorce in HMOP No.8 of 2008 and since the respondent/wife had expressed her willingness to reside with the appellant/husband, the appellant/husband had withdrawn the said HMOP. Even thereafter, the appellant/husband took much efforts to take the respondent/wife back to the matrimonial home. But without any reason, she refused to come back and harassed him and also caused mental cruelty not only to the appellant/husband, but also to the family members of the appellant/husband. Both the Courts below have failed to appreciate the materials. More over, the appellate Court traversed beyond the grounds taken by the appellant/husband and has given different reasons for the dismissal of the appeal and confirmed the order passed by the trial Court. Even though the divorce petition was filed in the year 2010, till 2023, the respondent/wife is not ready to live with the appellant/husband. Even, the long period of deprived



C.M.S.A.No.33 of 2019

cohabitation is also a ground for divorce. Therefore, long separation is also

WEB COPY a reason to get divorce for a spouse. The learned counsel placed reliance of the judgment of the Division Bench of this Court in C.M.A.No.3829 of 2019, dated 20.01.2021 wherein, this Court has considered the long period of separation and he stated that the marriage between the appellant and the respondent took place on 24.09.2007 and the respondent/wife left the matrimonial home on 30.03.2008 itself. Though the appellant/husband took much efforts to take her back to the matrimonial home and also sent notice, after the receipt of the notice, the respondent/wife simply sent reply to the notice and she had not taken any steps to come back to the matrimonial home. More over, she sent a false reply and also filed a private complaint with false materials on 17.09.2008 against the appellant/husband and his family members, which also caused cruelty to the appellant/husband. Subsequently, the said complaint was quashed, which itself would clearly show that the respondent/wife went to the extent of filing false complaint not only against her husband, but also against her in-laws. Under those circumstances, though the appellant/husband pleaded and substantiated all the materials to meet out the grounds under Section 13(1)(i-a)(i-b) of the



C.M.S.A.No.33 of 2019

Hindu Marriage Act, unfortunately, both the Courts below failed to consider the materials placed by both the parties. Further, the respondent/wife has not filed any petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which would clearly show that the respondent/wife is not interested to live with the appellant/husband. However, the respondent/wife filed a petition for maintenance and she is also getting maintenance, which clearly shows that the only motive of the respondent/wife is to get maintenance from the appellant/husband and not to live with him. Therefore, the judgments of both the Courts below are erroneous. More over, the First Appellate Court has not considered the pleadings and evidence and it traversed beyond the scope of the pleadings and evidence and the grounds on which the appellant/husband sought for divorce, which warrants interference. Since, the First Appellate Court had given the findings beyond the scope of appeal, it leads to the formulation of substantial question of law.

7. The learned counsel for the respondent/wife would submit that the appellant/husband has suppressed several material facts. Though he



C.M.S.A.No.33 of 2019

filed a petition for divorce on the very same ground in the year 2008, because of the subsequent developments, it was withdrawn and subsequently, without any cause of action and without any change of circumstances, he filed another application on the very same grounds. Since both the parties agreed to join together during the pendency of the earlier petition, the earlier private complaint given by the respondent/wife was allowed to be quashed and it is not as if the complaint was falsely made and therefore, the Court quashed the private complaint. He would submit that the appellant/husband only caused mental cruelty to the respondent/wife and refused to accept her. The respondent/wife is a typical Indian woman and she wants to live only with the appellant/husband and she never suppressed any fact either the age or any disease. Even the materials would clearly show that she only took treatment for scar and not for any incurable or communicable disease. The appellant/husband only has invented the reasons for getting divorce and since he could not succeed in the earlier petition, he tried to manage with that. Though he made an undertaking before the Court and the respondent/wife was always ready and willing to join the appellant/husband, he refused to take her back and again, he has filed the



C.M.S.A.No.33 of 2019

petition for divorce on the very same grounds raised in the earlier petition.

Further, the appellant/husband has not substantiated the grounds taken by him. Therefore, both the trial Court as well as before the First Appellate Court rightly appreciated and re-appreciated the evidence in proper perspective and given the findings that the appellant/husband has not proved his case and the reasons for getting divorce. Therefore, no substantial question of law arises for consideration. Even the substantial questions of law which have been raised by the appellant/husband in the grounds of appeal, are not substantial questions of law. Both the Courts below have given the factual findings based on the materials, which do not lead to any substantial question of law and there is no perversity in the appreciation of evidence by the Courts below. Therefore, the second appeal is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials available on record.



C.M.S.A.No.33 of 2019

9. Admittedly the appellant is the husband. The respondent is the wife. The appellant/husband had filed a petition for divorce under Sections 13(1)(ia)(ib) and 3 of the Hindu Marriage Act, 1955 for cruelty as well as for desertion stating that the respondent/wife suppressed certain material facts regarding her age and also ailment. Only after the marriage, he came to know from the temperament of the respondent/wife that she is mentally unbalanced and she is not fit for leading the matrimonial life. Further, she went to the extent of making false complaint against the appellant/husband and also against her in-laws, which caused him mental cruelty. After leaving the matrimonial home, though the appellant/husband took much pain to take her back to the matrimonial home, she did not accede his request and she left the matrimonial home and deserted the appellant/husband beyond the statutory period and also caused him cruelty.

10. Though the respondent/wife has denied all the allegations, a reading of the materials shows that the appellant/husband, during evidence, has admitted that the respondent/wife had disclosed her age and date of birth even prior to the marriage. Further, though the



C.M.S.A.No.33 of 2019

appellant/husband has stated about the ailment of the respondent/wife, i.e.

skin disease and mentally unbalanced, no expert opinion was called for or she was not subjected to any clinical or medical examination and there is no material evidence to prove the same. Therefore, the appellant/husband has not proved that the respondent/wife suffered from communicable disease or incurable disease. Simply, the appellant/husband has filed some medical prescriptions and the results. Therefore, both the Courts below have rightly appreciated the evidence and given the findings that the appellant/husband has not substantiated his pleadings in the manner known to law.

11. Further, the materials show that the appellant/husband has not examined any independent witness and he examined himself as P.W.1 and he was the only witness examined. He has not substantiated the allegations levelled against the respondent/wife in the complaint. In the absence of any medical or independent evidence, both the Courts below have rightly come to the conclusion that the appellant/husband has failed to prove his case. Though the appellant/husband admitted that the earlier petition filed him for divorce, was dismissed as withdrawn, he has not



C.M.S.A.No.33 of 2019

substantiated the fresh cause of action for filing the subsequent petition for divorce. Though the appellant/husband has given the reason for filing the petition as suppression of ailment, the First Appellate Court has dismissed the petition on the ground that the appellant has not established the same with documents.

12. Therefore, on a perusal of the records this Court finds that no substantial question of law arises for consideration in the present appeal, since all the findings are based on the factual aspects and the materials available before the Court. If the Courts below had failed to appreciate the available materials or erroneously appreciated the materials, then it will lead to substantial question of law, whereas, in this case, the findings of both the Courts below are entirely based on the materials available on record and there is no perversity in appreciation of the evidence. Therefore, no substantial question of law arises for consideration in this appeal.



C.M.S.A.No.33 of 2019

13. The appellant has not canvassed that substantial question of law is existing in the Second Appeal and the Court need to formulate substantial question of law and to answer for the same. Further, the decision referred to by the learned counsel for the appellant is not applicable to the present case on hand. Both the cases are entirely different and the facts and circumstances of the case referred to by the learned counsel for the appellant, is distinct from the present case on hand.

14. On a careful reading of the entire materials, this Court finds that no substantial question of law arises for consideration and the findings of both the Courts below are only on factual aspects. Under these circumstances, there is no merit in the appeal and the appeal is liable to be dismissed.

15. Accordingly, the Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs.

24.08.2023

Index : Yes / No

Speaking Order: Yes/No

Neutral Citation: Yes/No

ksa-2



C.M.S.A.No.33 of 2019

To

1. The Principal District Judge, Chengalpet
2. The Subordinate Judge, Tambaram,
3. The Section Officer,
VR Section,
High Court,
Madras.



C.M.S.A.No.33 of 2019

P.VELMURUGAN. J.

ksa-2

Civil Miscellaneous Second Appeal No.33 of 2019

24.08.2023



WEB COPY



C.M.S.A.No.33 of 2019