



WEB COPY

CMA.No.3411 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.06.2023

Judgment Pronounced on : **17.07.2023**

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.3411 of 2017

S.Usharani

.. Appellant

Versus

P.Nagarajan

.. Respondent

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, to Set Aside the order & decree passed in O.P.No.607 of 2015 on 29.05.2017 on the file of the Principal Family Court, Chennai, and thereby dissolve the marriage between the Appellant and the respondent solemnized on 03.06.2013 and



subsequently registered on 26.08.2013 before the Sub registrar's Office
Kodambakkam.

WEB COPY

For Appellant:M/s.K.S.Kumar

For Respondent : M/s.J.P.Karunakaran

JUDGMENT

D.BHARATHA CHAKRAVARHY, J.

This Civil Miscellaneous appeal is filed against the judgment and decree of the Principal Family Court at Chennai dated 29.05.2017 in O.P.No.607 of 2015, in and by which the petition filed by the appellant wife for dissolution of marriage was dismissed by the Trial Court. Hereinafter in the judgment, the parties are referred to as the husband and wife.

2. The case of the wife is that they got married on 03.06.2013 and only for a short period, the married life was normal and thereafter, due to his drinking habits, the husband started pledging the jewels of the wife. Thereafter, he had started treating her with cruelty both by verbal abuse and also by physically beating her. As a matter fact, on account of blows, she became partially deaf. After making the



wife to take refuge in her parent's house for a period more than one year from 07.09.2013, she was also deserted. Therefore, she had prayed for dissolution of the marriage on the ground of cruelty.

3. The husband resisted the petition by filing a counter affidavit by stating that, up to the 1st wedding day in the year 2014, there was absolutely no problem between himself and his wife and in June 2014, the wife had undergone a procedure, since they didn't have any child. It is only the husband, who spent Rs.62,000/- for the said surgery. Thereafter, the wife had stayed in her parent's house by taking rest for three months. Thereafter, it is only the wife's father who abused the husband and in spite of the repeated steps taken by the husband for reunion, on the ill advice of her father, the wife filed the divorce petition.

4. With the above pleadings the parties went into the trial. The wife examined herself as P.W.1 and Ex.P1 to Ex.P4 were marked. The husband examined himself as R.W.1 and Ex.R1 letter was marked. Thereafter, the trial Court proceeded to consider the case of the parties and based on the answer in the cross examination of PW1 wife, while she had averred physical torture and beating



her in front of her in-laws and in her house in her petition, but in her cross examination she claimed that she was only beaten on the way from Chennai to Madurai in the bus. Therefore finding inconsistency in her version, the Trial Court disbelieved the wife on the allegations of cruelty and dismissed the petition for divorce. Aggrieved by the same, the wife has filed this appeal.

5. Heard Mr.K.S.Kunar, learned counsel appearing on behalf of the appellant wife and Mr.J.P.Karunakaran, learned counsel appearing on behalf of the respondent husband.

6. Mr.K.S.Kumar, pointing out to the oral and documentary evidence on record would contend that when it is consistent case of the wife that all along she was treated with cruelty and only on account of the same, she was forced to live in her parent's house right from the year 2013, the Trial Court omitted to consider the same. On a minor contradiction, her entire evidence was disbelieved. He further submitted that except for living together for a period of 3 months, parties are living separately now for a period of more than 10 years and there are no children born out of the wedlock and absolutely there is nothing left in the marriage for the



parties. The learned counsel would also rely upon the judgment of the constitution

Bench of the Hon'ble Supreme Court of India in 2023 (3) CTC (550) to contend

that irretrievable break down of a marriage can also be a ground for divorce.

7. Per contra, Mr.J.P.Karunakaran, learned counsel appearing on behalf of the respondent would submit that when it is a clear and categorical averment of the wife that the petitioner used to torture her by beating her, especially in front of her in-laws and everyone else and when she was unable to withstand the cross examination and stick to the said fact and gave a contradictory version that only in the bus from Chennai to Madurai, her husband had beat her, the trial Court had rightly rejected the case of the cruelty. He would submit that when the husband is ready to live with the wife, the judgment of the trial court need not be interfered with.

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



9. On perusal of the pleadings and the oral evidence of both sides, it can be seen that the wife had made allegations of both physical and mental cruelty. She had stated in the petition and also in her chief examination that she was put to physical and mental torture. According to the respondent husband, the reason for the marital conflict is that the wife's father wanted to grab the property of the husband and therefore, ill treated the husband and sent him out of his house and thereafter, in spite of his effort, the wife did not join him. The case of the wife is that she had under went both physical and mental torture, therefore she left for her parent's house. What is admitted is that at least from the year 2014, the parties are living separately. There are no issues born out of the wedlock. Ex.R1 letter is the only communication between the parties, whereby, the wife's father had invited the husband for his house for '*seer*'. The case of the husband that it is only the wife's father, who had instigated the appellant wife to file the proceedings is not supported by the facts or circumstances of the case. Though the wife has not conclusively proven that her deafness was caused only on account of the physical torture of the husband, still the circumstance that she was living in her parent's



house at least admittedly from the year 2013 and till the application for divorce was filed only in the year 2015 and there is no communication whatsoever from the husband, either to call her or to make any attempt to bring her to the matrimonial home stands proved.

10. In that view of the matter, when the parties are married only in the year 2013 and when the wife was unable to bear the conduct of the respondent/husband and started living in the parent's house and even thereafter, when no steps is being taken for reunion of the marriage, when the wife has suffered the behavior of the husband, she being unable to withstand the same. The humiliating activities of the respondent husband would amount to mental cruelty and therefore, we are unable to agree with the findings of the trial Court that the respondent wife had not proved the allegations of the cruelty.

11. In the result, CMA.No.3411 of 2017 stands allowed,

(i) The judgment and decree of the learned Principal Family Court, Chennai dated 29.05.2017 in O.P.No.607 of 2015 is set aside.



(ii) O.P.No.607 of 2015 is allowed by dissolving the marriage between the petitioner and the respondent dated 03.06.2013 solemnized at Arulmighu Vadapalani Andawar Thirukoil, Vadapalani, Chennai and registered before office of the Sub-Registrar, Kodambakkam by granting a decree of divorce;

(iii) It is made clear that there shall be no further claim of any nature whatsoever between the parties and that the appellant wife is not entitled for any alimony whatsoever.

(iv) There shall be no orders as to costs.

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

17.07.2023

Index : yes/no

Speaking/Non-speaking order

Neutral Citation : yes/no

mpl

To

The Principal Family Court,
Chennai.



WEB COPY

CMA.No.3411 of 2017



**J.NISHA BANU, J.
AND
D.BHARATHA CHAKRAVARTHY, J.**

mpl

Pre-Delivery Judgment in

C.M.A.No.3411 of 2017

17.07.2023