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CMSA No.19/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.01.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.S.A. NO.19 OF 2020

S.Gunasekaran

.. Appellant

- Vs -

E.Hemalatha

.. Respondent

Civil Miscellaneous Second Appeal filed under Order XLII of the Code of Civil Procedure r/w Section 28 of the Hindu Marriage Act praying to set aside the order and decretal order dated 11.7.2019 made in CMA No.1/2016 on the file of the learned Addl. District Judge (Fast Track Court), Kancheepuram, confirming the order and decreetal order dated 29.03.2016 made in HMOP No.102/2012 on the file of the learned Subordinate Judge, Kancheepuram.

For Appellant : Mr. V.B.Thirupathi Kumar

For Respondents : Mr. Kanchi G.V.Mathiyazhagan



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JUDGMENT

The present appeal is directed against the order of the learned Addl. District Judge, Fast Track Court, Kancheepuram, in CMA No.1/2016, in and by which the rejection of the divorce sought for by the appellant in HMOP No.102/2016 by the learned Subordinate Judge, Kancheepuram, was confirmed.

2. In 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 13.11.2005 at Kanchipuram and that they were leading a happy life and during the said period, the respondent went to her parent's house for giving birth to their female child. Thereafter on return, the petitioner and the respondent were living separately at Kanchipuram. Since the return of the respondent from her matrimonial home after child birth, the respondent had been causing mental agony to the petitioner and had been making false allegation against the



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petitioner alleging that he was having illicit relationship with another woman.

The petitioner lived with the respondent in her parent's house and that the respondent took all the jewels and articles, which were given to her to her parental house. The petitioner was given scant respect and even was not served with food and often the petitioner had to take food outside. It is the further averment of the petitioner that he was beaten by the respondent's father and was driven out of the house and since then the petitioner was living separately and all along, the petitioner wanted to unite and live with the respondent, but she refrained from coming and living with him. Since the respondent was not ready and willing to come and live with him, the petitioner filed the petition seeking divorce on the ground of cruelty and desertion.

3. Countering the aforesaid averments, it is the stand of the respondent that the respondent was behaving as a dutiful wife and was always ready and willing to cohabit with the petitioner, but he left his job and started living with his parents and was demanding money from the father of the respondent. The petitioner's parents drove the petitioner and the respondent out of their house



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and, thereafter, the petitioner and respondent had been living at her parental abode, thereby, causing great burden to her parents. From the year 2010, the petitioner was living at Chennai and had never parted with his residential address and he did not take care of the respondent and his child and that the respondent had not lodged any case against the petitioner till date and even as on date, the respondent is willing to live with the petitioner and, accordingly, sought for dismissal of the petition for divorce.

4. Before the trial court, the petitioner examined himself as P.W.1 and marked Exs.P-1 to P-8. On the side of the respondent, the respondent examined herself as R.W.1 and no documents were marked. The trial court, on the basis of the oral and documentary evidence held that the ground of cruelty and desertion raised by the petitioner has not been proved and that there are no justifiable grounds to grant divorce and, accordingly, dismissed the petition for divorce.

5. Aggrieved by the said dismissal, the petitioner preferred appeal before the appellate court, which concurred with the view of the trial court and



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dismissed the relief of divorce to the petitioner, prompting the petitioner to file the present second appeal before this Court.

6. Learned counsel appearing for the appellant submitted that the courts below had not taken note of the pleadings, evidence and exhibits in proper perspective and had erred in dismissing the petition filed by the appellant.

7. It is the further submission of the learned counsel that inspite of the fact that the respondent had not taken any steps to come and live with the appellant, which is nothing but cruelty and also having not filed any petition for restitution of conjugal rights, the finding recorded by the courts below that the respondent was all along ready and willing to come and live with the appellant is wholly erroneous and not supported by any material. It is the further submission of the learned counsel that no attempts have been made by the respondent to cohabit/join and live with the appellant, which clearly and conclusively prove that the respondent had deserted the appellant.



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8. It is the further submission of the learned counsel that the finding of the courts below that it is the appellant, who had deserted the respondent is not proved by any materials on record and that the act of the respondent leaving the house of the appellant and living for more than 10 years clearly establish the act of desertion on the part of the respondent.

9. It is the further submission of the learned counsel that the appellant was forced to abandon his parents and live with the respondent due to the cruelty meted out to the appellant and making the appellant to abandon his parents amounts to cruelty. It is the further submission of the learned counsel that the finding of the courts below that the appellant has not proved the cruelty meted out by the respondent is wholly perverse, as the materials available on record prove that the appellant was denied food by the respondent and her parents which is nothing but an act of cruelty. Further, it is submitted that the appellant and the respondent are living separately since 25.12.2009 and the extended period of separation is nothing but desertion, which deserves consideration for grant of divorce.



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10. It is the further submission of the learned counsel that though the appellant had called upon the respondent to come and join him in his matrimonial life, but the same was not heeded by the respondent and no steps were taken by the respondent for union, which clearly shows that desertion has been caused by the respondent and not by the appellant.

11. It is the further submission of the learned counsel that though the appellant had placed materials to show that he had taken steps to unite with the respondent, however, no materials have been placed by the respondent to show that she was always ready and willing to unite with the appellant, which clearly establishes that the respondent was never willing to join with the appellant. However, this factum was totally lost sight of by the courts below while dismissing the case of the appellant and, therefore, the same requires interference at the hands of this Court.



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12. Per contra, learned counsel appearing for the respondent submitted that the courts below have considered the materials placed before it in proper perspective and had come to the conclusion that it was the appellant, who had not taken any steps to unite with the respondent and that there was no desertion caused by the respondent and that the respondent was all along ready and willing to cohabit with the appellant and in fact it is the appellant, who had not provided the address of his stay so as to enable the respondent to unite with him and all the aforesaid facts have been properly appreciated by the courts below while negating the relief sought for and, therefore, no interference is warranted with the said orders and, accordingly, prayed for dismissal of the present appeal.

13. This Court gave its careful consideration to the submissions made by the learned counsel appearing on either side and perused the materials available on record.

14. The factum of marriage and the birth of the child is not in dispute. Equally, the stay of the appellant along with the respondent in the house of the



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parents of the respondent is also admitted by the appellant. The whole genesis of the case unfolds only thereafter, wherein it is alleged that the appellant was ill-treated and he was not provided with food and he was driven out of the house of the respondent's parents. In the aforesaid backdrop, divorce has been sought for by the appellant on two grounds, viz., cruelty and desertion.

15. Insofar as cruelty is concerned, the main allegation is that the appellant was not provided with food by the respondent and that the respondent had not come along with the appellant to live at the matrimonial abode along with the appellant's parents. The trial court had come to the conclusion that the allegation of non-providing of food and not living in the matrimonial abode along with the appellant's parents cannot be said to be acts of cruelty warranting grant of divorce. The said finding by the courts below cannot be said to be perverse or unreasonable as there could be very many reasons for the respondent to leave her matrimonial home and in the absence of any conclusive evidence, barring the evidence of P.W.1 to show that it was the act of the respondent to leave the matrimonial home, the same cannot be termed to be cruelty, thereby, attracting



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the benefit of grant of divorce in favour of the appellant. Therefore, on the ground of cruelty, as alleged, this Court is of the considered view that the findings recorded by the courts below are well founded and the same does not require any interference.

16. Turning to the ground of desertion, the claim of the appellant is that he was driven out of the respondent's parents house when he was living there with the respondent. It is the case of the respondent that he was living separately and though he had been calling upon the respondent to come and live with him, however, she did not come to live with him and for the past 10 years they are living separately. However, it is the case of the respondent that the appellant left for Chennai and had been staying there and he had not provided the respondent with the address to enable her to go there and unite with him.

17. In this regard, a perusal of the evidence of P.W.1, more particularly in cross examination, as has been pointed out by the trial court that the appellant had been residing at Chennai and that he had not taken the respondent along



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with him and further in cross examination had stated to a pointed question whether he would have lived with her, had the respondent contacted him for which the appellant had replied that he would not have. The above evidence of the appellant clearly shows that no inclination was shown by the appellant to unite with the respondent and the allegation that no steps were taken by the respondent to unite with the appellant is nothing but a piece of material made up for presenting the case of desertion. When the appellant had not revealed his whereabouts and had not even called upon the respondent to come and live with him either in person or through a legal notice showing his inclination for union, the appellant cannot come before the courts and claim that no steps were taken by the respondent to unite with him. It is the appellant, who had gone away to reside in Chennai and it is the duty of the appellant, as the husband, to take his wife along with him and he cannot put the ball in the court of the respondent to state that she had not taken any steps to come and cohabit with the appellant. Therefore, the ground of desertion claimed by the appellant also withers away.



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18. Though the appellant had contended that the respondent had levelled allegations of illegal intimacy with other woman, however, except for the bald statement, which is shown as allegation at the hands of the respondent, there is no material to show that the respondent had made such allegation. If really the respondent had alleged as above, necessarily, the aid of the police would have been sought. However, it is borne out by record, as also recorded by the courts below that no complaint has been given before the law enforcing agency. This clearly shows that the allegation of the respondent, as alleged to have been made, is wholly without any material and, therefore, that cannot form the basis of cruelty and, the same also deserves negation.

19. On an holistic consideration of the entire materials placed before this Court as also on a perusal of the orders passed by the courts below, this Court is of the considered view that the view of the trial court, as affirmed by the appellate court, is based on proper appreciation of the materials placed before it and the appellant has not made out any case by placing proper materials in support of the relief sought for and rightly the courts below have dismissed the



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petition filed by the appellant, which orders does not warrant any interference at the hands of this Court.

20. For the reasons aforesaid, this appeal lacks any merit and the same is accordingly dismissed confirming the judgment and decree passed in CMA No.1/2016 by the Addl. District Judge, Fast Track Court, Kancheepuram, dated 11.7.2019. However, there shall be no order as to costs in this appeal.

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To

1. The Addl. District Judge
(Fast Track Court)
Kancheepuram.

2. The Subordinate Judge
Kancheepuram.



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M.DHANDAPANI, J.

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