



C.M.S.A(MD)No.10 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.04.2023
DELIVERED ON : 01.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.S.A(MD)No.10 of 2008

S.Dharmalingam

... Appellant/Respondent/
Petitioner

Vs.

Sooria Praba

... Respondent/Appellant/
Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 108 r/w Order 42 of Code of Civil Procedure, to set aside the decree and judgment, dated 28.09.2007 made in A.S.No.76 of 2005 in the Court of District Judge, Kanyakumari, Nagercoil reversing the judgment and decree, dated 11.07.2005 in H.M.O.P.No.74 of 2004 on the file of the 1st Additional Subordinate Judge, Nagercoil, Kanyakumari District.

For Appellant : Mr.T.Lajapathi Roy
Senior Counsel
for Mr.S.Rajasekar

For Respondent : Mr.T.Selvakumaran



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JUDGEMENT

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The husband had filed H.M.O.P.No.74 of 2004 on the file of I Additional Sub Court, Nagercoil seeking divorce on the ground of mental cruelty said to have been inflicted by the respondent wife. Considering the oral and documentary evidence on either side, the trial Court was pleased to allow the petition and has granted divorce decree. The wife had filed A.S.No.76 of 2005 on the file of District Court, Kanniyakumari at Nagercoil. The learned first appellate Judge after re-appreciating the oral and documentary evidence, has allowed the appeal and dismissed the divorce petition filed by the husband. Challenging the same, the present second appeal has been filed by the husband.

2. The allegations in the divorce petition could be summarized as follows:

(i) Due to the non-cooperation and hostile attitude of the wife, the petitioner's parents were separated within a week of marriage and the wife was not prepared to live in a joint family.

(ii) The wife was always picking up quarrel with the petitioner and had created nasty scenes and refused to discharge her marital obligations



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in view of the superiority complex that she is working in Bank and receiving more salary than the husband who is a conductor.

(iii) The wife used to insult the petitioner in vulgar language in the presence of his relatives, friends and guests and also in public places which caused mental and physical agony to the petitioner.

(iv) The wife was in the habit of residing in her parental home and not returning to the matrimonial home without any lawful excuse or reason.

(v) On 12.02.2001, the wife had left the matrimonial home while she was pregnant and the birth of the child was not informed to the petitioner.

(vi) The husband has sent 2 letters on 05.11.2001 and 12.11.2001 to the wife requesting her to come back to the matrimonial home. However, there was no response from the wife.

(vii) On 05.03.2002, the petitioner directly met the wife in her office and requested to rejoin in the matrimonial home and she refused to



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return to the matrimonial home.

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(viii) She returned to the matrimonial home in the first week of June 2002 and on 28.06.2002, the wife and her brother Subramaniam Raja had attacked the petitioner which resulted in filing of a police complaint in Crime No.118 of 2002 on the file of South Thamaraiikulam Police Station.

(ix) The husband has issued legal notice on 22.09.2003 seeking divorce and a reply was sent by the wife on 03.11.2004 making allegations against the petitioner that he demanded dowry and her salary. The petitioner had again approached the respondent on 17.11.2004 in her office and requested her to come back. However, there was no response from the wife. Hence, the present petition.

3. The contentions of the wife could be summarized as follows:

(i) The petitioner and the respondent were living in the petitioner's house at Agastheeswaram until she was taken to her parental home for her first delivery.



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(ii) As a Bank employee, the respondent is drawing more salary than the petitioner and this has developed a sort of inferiority complex in the petitioner. Because of the said complex, the petitioner used to ill-treat and abuse the respondent in filthy language. The petitioner used to beat the respondent demanding more money as dowry.

(iii) The petitioner had never bothered to see his own child and he never came to the respondent's house and he did not take any steps to take the respondent to his house.

(iv) In her reply notice, dated 03.11.2004, the respondent had called upon the petitioner to come and accompany her and the child to the matrimonial home within 5 days. However, the petitioner has not turned back. Therefore, the petitioner is not entitled to seek divorce on the ground of mental cruelty.

4. The findings of the trial Court:

(i) The wife has not established the fact that she had informed her husband about the birth of the child and therefore, the allegation that the husband has not visited the mother and the child in the hospital is not factually correct.



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(ii) The husband has addressed 2 letters to the wife under Exhibits P.2 and P.3 requesting her to return back to the matrimonial home after the delivery. Though these letters are admitted by the wife, she has not responded to the same.

(iii) In her reply, dated 03.11.2004 under Exhibit P.5, the wife has demanded a sum of Rs.500/- (Rupees Five Hundred only) towards maintenance for her son. Therefore, it is clear that the wife had no intention to join with her husband.

(iv) The husband has lodged a complaint before family counselling centre at Ramavarmapuram, Nagercoil. Therefore, it is clear that the husband was taking every steps to reunite with his wife. However, there was no response from the side of the wife.

(v) There are no records to establish that the husband and the wife have lived together in the last 2 years prior to the filing of the petition. The wife has not taken any steps to reunite with her husband or file any application for restitution of conjugal rights.



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(vi) Though the wife had contended that the husband used to beat

her and demanded dowry, she had not lodged any police complaint.

Further, the wife had given inconsistent version in her deposition relating to the beating of the husband demanding her salary.

(vii) There was a quarrel between the wife's brother and the petitioner in which the petitioner is said to have sustained injuries and police complaint has been lodged. Though the husband was admitted to the hospital, the wife has not taken care to visit him in the hospital.

(viii) From the evidence of P.W.2 who is the neighbour, it is clear that the petitioner and the respondent are living separately for more than 3 years and the wife had often picked up quarrel with the husband and was in the habit of going back to her parental home. Therefore, it is clear that the wife is residing away from her husband without any reasonable cause.

(ix) Based upon the above said findings, the trial Court granted a decree for divorce.



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5. The findings of the first appellate Court:

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(i) The husband in his deposition has admitted that during his child's first birthday, the husband and wife have jointly gone to Uvari Temple and offered hair Kaanikkai. Therefore, at the relevant point of time, the petitioner and the respondent were in cordial terms.

(ii) After issuance of Exhibits P.2 and P.3 notices, the husband and wife have got re-joined and they were leading a happy life. Therefore, the allegation of desertion as alleged by the husband is not a ground for seeking divorce.

(iii) Based upon the said findings, the first appellate Court allowed the appeal and dismissed the divorce petition.

6. The contentions of the learned counsel appearing for the husband:

(i) The marriage between the petitioner and the respondent had taken place on 10.09.2000 and she had left the matrimonial home without informing the petitioner on 12.02.2001. The birth of the son on 29.06.2001 was not informed to the petitioner. The petitioner/husband had sent 2 letters under Exhibits P.2 and P.3 on 05.11.2001 and 12.11.2001 requesting the wife to return to the matrimonial home. These



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2 letters were received by the wife, but there was no response from the wife. The husband had personally met the wife in the bank on 05.03.2002 and requested her to come back to the matrimonial home.

(ii) The learned counsel for the appellant has further contended that the wife had returned back to the matrimonial home in the first week of June in 2002, but the wife's brother had attacked him on 28.06.2002 which resulted in lodging of a police complaint in Crime No.118 of 2002 on the file of South Thamarai Kulam Police Station.

(iii) The learned counsel for the appellant had further contended that the husband was constrained to issue a legal notice on 22.09.2003 for which the wife replied on 03.11.2004 demanding Rs.500/- (Rupees Five Hundred only) as maintenance to the son. Therefore, it is clear that the wife did not have any intention whatsoever to rejoin with the husband. Even thereafter, the husband had met the wife in person in the Bank on 17.11.2004 in an attempt to reunite with the wife. However, the wife had refused to rejoin.

(iv) The learned counsel for the appellant had further pointed out that Exhibits P.2 and P.3 letters sent by the husband are not disputed by



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the wife. In fact in her counter affidavit, she had contended that the husband is suffering from inferiority complex due to his employment as a conductor while the wife is employed in a cooperative bank. Therefore, it is clear that the wife has no intention whatsoever to rejoin with the husband. The learned counsel appearing for the appellant relied upon a judgment of the Hon'ble Supreme Court reported in **2007 (4) SCC 511 (Samar Ghosh Vs. Jaya Ghosh)** to contend that when there is a long period of continuous separation, it can be concluded that the matrimonial bond is beyond repair. He further pointed out the marriage has become a fiction and it does not serve the sanctity of marriage. Therefore, long period of continuous separation would also amount to mental cruelty. In the present case, according to the learned counsel for the appellant, the parties are living separately for more than 20 years. Their son is now aged 22 years. Therefore, no purpose would be served in retaining of the marital life.

(v) The learned counsel for the appellant had further contended that the trial Court after properly appreciating the oral and documentary evidence had arrived at a conclusion that the wife did not have any intention to rejoin with the husband and has granted a decree for divorce.

However, the first appellate Court relying upon few stray sentences in



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the cross-examination of P.W.1, had allowed the appeal and dismissed the divorce petition. The pleadings of the parties and the deposition of P.W.1 and D.W.1 should be read harmoniously and some stray sentences cannot be picked up and a decision could be rendered relying upon the said stray sentences. Hence, he prayed for allowing the appeal and restoring the judgment and decree of the trial Court.

7. The contentions of the learned counsel appearing for the respondents:

(i) The divorce petition has been filed by the husband only on the ground of mental cruelty. Therefore, the entire burden is upon him to establish the fact that the wife had inflicted mental cruelty upon the husband to such an extent that it would not be possible for him to live together hereafter. However, in the present case, the husband has miserably failed to establish the ingredients of mental cruelty.

(ii) The learned counsel for the respondent has further contended that all the allegations made in the divorce petition are frivolous in nature which would not attract the definition of mental cruelty even assuming that the pleadings are true. In fact the husband suffers from inferiority complex due to the fact that he is a conductor by profession drawing



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lesser salary than wife, who is employed in a cooperative bank. Due to this inferiority complex, the husband used to abuse the wife and beat her.

The husband was more interested in getting the salary of the wife than in living together with her as husband and wife. The husband has not even chosen to visit the child and the mother in the hospital.

(iii) The learned counsel for the respondent had further contended that though the wife has sent a reply notice on 03.11.2004 calling upon her husband to take her back to the matrimonial home, there was no response from the husband and immediately, he had filed the divorce petition. This will clearly disclose the fact that there was no mental cruelty on the part of the wife. He further pointed out that in case if the wife had inflicted mental cruelty upon the husband, the husband would not be writing letters requesting his wife to return back to the matrimonial home. Therefore, the husband has miserably failed to establish his case of mental cruelty alleged to have been inflicted by the wife.

(iv) The learned counsel for the respondent had further contended that the trial Court had erroneously placed the burden of proof on the wife and picked up holes in the pleading and deposition of the wife and



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has granted divorce to the husband. However, the first appellate Court had rightly fixed the burden of proof upon the husband/petitioner and dismissed the divorce petition on the ground that he had not established the ingredients of mental cruelty warranting divorce. Hence, he prayed for dismissal of the appeal.

8. I have carefully considered the submissions made on either side and perused the records.

9. The above appeal has been filed raising the following the substantial questions of law:

“1. The petitioner had sent three notice one on 01.07.2001 and 05.11.2001 and one advocate notice 25.10.2004, the Appellate Court had not taken into consideration the time delay for joining matrimonial home, and it leads to long separation or not?

2. It is on the part of the respondent to leave the matrimonial home after the compromise made by the family conciliation committee. It is the respondent who deserted the petitioner, from 2002 onwards the respondent not living with the respondent. That the desertion of the respondent frequently against petitioner will amount to cruelty or not?

3. As the respondent tried many times to co-habitate



with the matrimonial home by the respondent. It is the respondent who neglected the petitioner voluntarily. The respondent used to scold the petitioner with filthy words before the relatives and friends will it amount to cruelty or disharmony?

4. Whether the first appellate Court is right in reversing the well founded finding of the trial Court in granting divorce on the ground of cruelty?

5. That when cruelty is on the part of respondent and there is no specific cross-examination to disprove the same. Whether the appellate Court is right in reversing the finding of the trial Court?

6. The petitioner voluntarily tried many times to join with the respondent even on his work schedule, he tried to conduct her and sent many representation, attended the marriage conciliation and tried to cope up with the respondent. But it is the respondent who often went to the house of her mother and avoided particularly the petitioner will it amount to desertion of cruelty or what ever it may be named?

7. The petitioner was completed vexed in life and tried to commit suicide may times by the activities of the respondent and he was consoled by the relative and parents will it amount to cruelty on the part of the respondent or not?"



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10. The appellant and the respondent have got married as per Hindu customs and rites on 10.09.2000 and a son was born to them on 29.06.2001. At the time of marriage, the husband was working as a conductor in Tamil Nadu State Transport Corporation and the wife was employed in Kanniyakumari District Central Cooperative Bank as a steno typist. These facts are not in dispute.

11. The divorce petition has been filed under Section 13 (1) (1a) of Hindu Marriage Act, 1955 seeking divorce on the ground of mental cruelty. The husband has alleged that within a weeks time of marriage, at the insistence of the wife, the petitioner's parents were separated and she refused to cohabit in a joint family. It is further alleged by the husband that the wife used to pick up quarrel with him on a regular basis and refused to discharge her marital obligations since she had developed the superiority complex. He had further alleged that the wife used to abuse him in vulgar language in the presence of the relatives and friends. He has further alleged that despite 2 letters been addressed to the wife on 05.11.2001 and 12.11.2001, she has not returned back to the matrimonial home. A perusal of the counter affidavit filed by the wife reveals that she alleges that the husband is having inferiority complex due to his employment as a conductor. The wife has not disputed the fact that she



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was averse to a joint family and wife has also not disputed the 2 letters written by the husband on 05.11.2001 and 12.11.2001 seeking reunion.

The wife has also not disputed the allegation of the husband that on 28.06.2002 that her brother had assaulted the husband which resulted in a criminal case. Most of the allegations made by the husband in the divorce petition have not been specifically denied or disputed by the wife.

12. In Paragraph No.7 of the counter affidavit, the wife has specifically contended that the husband has never bothered to see his own child after his birth. However, during cross-examination, she had admitted that her husband came to see the child. She further deposed that in case if she had made a statement in the counter that the husband has not met the child, then it is a mistake.

13. The wife in Paragraph No.9 of the counter had contended that despite receiving the reply notice under Exhibit P.5, the husband has not taken any steps to take her and the child back. However, in Paragraph No.11 of the divorce petition, the husband has specifically contended that the petitioner had approached the respondent on 17.11.2004 in the Bank in which she is employed and asked her to come with the



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petitioner, but the respondent had refused. This allegation of the husband in Paragraph No.11 of the divorce petition has neither been denied nor disputed by the wife in her counter.

14. Though the wife has alleged in the counter that the husband used to abuse her and torture her physically, demanding dowry, there are no records to indicate that at any point of time any complaint was lodged before the police authorities. The wife in her deposition has not explained the circumstances or the days during which she was subjected to physical or mental cruelty.

15. In the divorce application, the husband has contended that the wife is suffering from superiority complex in view of the fact that she is drawing more salary. In fact the said allegation is admitted by the wife in Paragraph No.4 of the counter to the effect that husband is suffering from inferiority complex and he was ill-treating the wife. Therefore, it is clear that right from the beginning, there was some ego clash between the husband and wife due to their respective employment status.

16. A combined reading of the pleadings of the parties and the deposition of P.W.1 and D.W.1 will clearly indicate that the couple had



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lived together between 10.09.2000 and 12.02.2001. Thereafter, they have again lived together between 11.09.2001 and 13.09.2001. Again the couple had being together in June 2002. At least on 2 occasions, the husband has written letters to the wife requesting her to come back to the matrimonial home. On 05.03.2002 and 17.11.2004, the husband has met the wife in her office and requested her to return to matrimonial home. The wife has not responded positively. Therefore, the husband was constrained to issue a legal notice. The husband has contended that on 28.06.2002, he was attacked by the brother of the wife. The said fact is also not disputed in the counter filed by the wife. The wife had admitted in her deposition that she had not visited her husband in the hospital pursuant to the alleged attack made by her brother. Considering the above said facts, it is clear that there is complete break down of relationship between the parties and there is no longer an emotional bond between the parties. They are living separately for more than 20 years. Their son is aged about 22 years as on today. The matrimonial bond seems to be beyond repair and it has become a fiction just supported by the Court proceedings. The Hon'ble Supreme Court in a judgment reported in 2007 (4) SCC 511 (Samar Ghosh Vs. Jaya Ghosh) in Paragraph No.101 has enumerated some instances of human behaviour which may be relevant in dealing the cases of mental cruelty. The



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Hon'ble Supreme Court was pleased to point out various instances which are illustrative in nature. One of the instances mentioned in Paragraph No.14 is extracted 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.”

17. The Hon'ble Supreme Court in a recent decision in **Civil Appeal No.2012 of 2013**, dated 26.04.2023 in **Shri Rakesh Raman Vs. Smt. Kavitha** in Paragraph No.16 has held as follows:

“16.....Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party “has, after the solemnization of the marriage treated the petitioner with cruelty”. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the facade of this broken marriage alive would be doing



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injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (ia) of the Act.”

18. In view of the judgments of the Hon'ble Supreme Court cited supra, it is clear that a marital relationship which has lost all its emotional bonding between the parties and it just revolves around the legal tie of marriage, it leads to mental cruelty.

19. In the present case, the husband has retired as a driver from the Tamil Nadu Transport Corporation and he is drawing pension. As on today, the wife is working in the managerial cadre in a cooperative bank and drawing a salary of more than Rs.1,00,000/- The son is aged about 22 years. The parties could not reconcile with each other for more than 20 years. The husband alleges superiority complex on the wife and the wife alleges inferiority complex on the husband. In such view of the matter and in consideration of the judgments of the Hon'ble Supreme Court, this Court is of the view that the marriage has become a fiction and any continuation of the said relationship would amount to mental cruelty on either party. All the questions of law are answered in favour of



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the appellant.

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20. In view of the above said deliberations, the Civil Miscellaneous Second Appeal is allowed. The judgment and decree of the first appellate Court are hereby set aside and the judgment and decree of the trial Court is restored. No costs.

01.06.2023
(2/2)

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The District Judge,
Nagercoil,
Kanyakumari.
- 2.The Additional Subordinate Judge I,
Nagercoil,
Kanyakumari District.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Pre-delivery order made in
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01.06.2023