



C.M.A.(MD).Nos.247 & 248 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 12.10.2023

Delivered on: 08.11.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

C.M.A.(MD)Nos.247 & 248 of 2019

N.Poornima Devi

.. Appellant / Petitioner
in both CMAs

Vs.

S.K.Ganesan

.. Respondent / Respondent
in both CMAs

Prayer:- Appeal filed under Section 19 of the Family Court Act, against the fair and ex-order in H.M.O.P.Nos.284 of 2016 and 431 of 2017, dated 19.09.2018, pending on the file of the Family Court, Madurai.

(In both C.M.As)

For Appellant : Mr.P.R.Prithivi Raj

For Respondent : No appearance

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

These two Civil Miscellaneous Appeals are at the instance of the wife, who was the unsuccessful petitioner before the Family Court,



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Madurai, in H.M.O.P.No.284 of 2016, where she had sought for a decree of dissolution of her marriage with the respondent and the same came to be dismissed and in H.M.O.P.No.431 of 2017, where the petition filed by her husband, the respondent herein, seeking restitution of conjugal rights came to be allowed, in and by a common order.

2. For the sake of convenience, the parties are described as wife (appellant) and husband (respondent).

3. The brief facts, that are necessary for deciding the present Civil Miscellaneous Appeals, are as follows:

The appellant and the respondent were married to each other on 08.09.2003. According to the wife, in her petition for divorce, the wife claimed that she never got to see her husband before her marriage and the first word spoken by her husband on the day of marriage during Grahapavesam function was that "the wife was black and ugly and that the husband did not like her". The husband left her with his parents at Sivagiri and went to work. The wife did not enjoy even basic amenities and even when the respondent was pregnant, her in-laws did not provide any help to



her and it was only the neighbours, who came to her rescue and provided food so that she regained her health. The first baby was born on 18.08.2004 and a second baby was born on 30.03.2007.

4. According to the wife, her husband suffered with skin disease and had symptoms of venereal diseases. After 2006, there was no cohabitation between them. Her husband has not been a good father to the children and has been repeatedly threatening to commit suicide. Complaining of all these acts, the wife has filed a petition seeking dissolution of their marriage on the ground of cruelty.

5. The husband filed a counter resisting the said claim for dissolution of marriage. According to the husband, she got employment at Pandyan Grama Bank and she was living in her father's house at Madurai, comfortably. The husband was paying the school fees for the children and only after getting employment, the attitude of the wife changed and the husband has specifically denied that the allegation that he does not like his wife and was not a good father. On the contrary, he was willing to condone all acts of the wife and resume cohabitation with his wife in the interest of



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the children. He, therefore, prayed for dismissal of the petition for divorce.

6. Reiterating the very same averments set out in the counter affidavit to the divorce petition, filed by the wife, the husband has sought for a restitution of conjugal rights. The said application was resisted by the wife, reiterating the very same averments and allegations which formed the basis of her petition for dissolution of marriage.

7. Before the Family Court, both the cases were tried jointly and the wife herself examined as P.W.1 and one Narasingaperumal was examined as P.W.2 and 5 documents were marked as Ex.P1 to Ex.P5 on the side of the appellant. On the side of the respondent, the husband examined himself as R.W.1 and 14 documents were marked as Ex.R1 to Ex.R14.

8. The Family Court, after elaborately considering the pleadings of the parties in the respective cases and also oral and documentary evidence adduced by them, dismissed the wife's petition for divorce and



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allowed the husband's petition seeking restitution of conjugal rights.

9. Aggrieved by the said common order of the Family Court, the wife as appellant has preferred the above Civil Miscellaneous Appeals on the following grounds:

(i) the Family Court failed to see that the petition for restitution of conjugal rights was only a counter blast to the wife's divorce petition;

(ii) the Family Court has brushed aside the acts of cruelty pleaded by the appellant, without any justifiable reasons;

(iii) the Family Court failed to see that the husband admitted to the lack of basic amenities in his parent's house and ought to have taken this as an act of mental cruelty;

(iv) the Family Court has not rightly appreciated the evidence with regard to the non-provision of the medical help when the appellant was pregnant, viz., Ex.R14 - Medical certificate produced by the husband which was issued by a private Doctor and the Family Court erred in relying upon the same, in the absence of the Doctor being examined; and

(v) the Family Court erred in holding that since the husband was



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sending money to the wife, the same would not automatically mean that the husband was a dutiful father.

10. Though the respondent (husband) has been served and his name has also been printed in the cause list, there has been no appearance. We, therefore, proceeded to hear Mr.P.R.Prithiviraj, learned counsel appearing for the appellant. We have perused the records available before us, including the impugned common order of the Family Court.

11. The appellant's case is that the appellant never saw her husband before their marriage and the very first words spoken to her by the husband was that "she was black and ugly" and the husband did not like her. According to the appellant, even in the first night, the respondent behaved brutally and claimed that she was an unpaid prostitute to him. Subsequently, the appellant lived with the parents of the respondent, where even basic amenities were not available. However, when she was pregnant, the respondent or his parents did not give food and medical help and only neighbours had taken care and gave her food. The respondent has



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not denied such claims made by the appellant as being false and baseless.

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It is an admitted fact that the appellant and the respondent were blessed with two sons, the first son born on 18.08.2004 and the second son born on 30.03.2007.

12. The husband also filed H.M.O.P.No.431 of 2017, seeking restitution of conjugal rights, before the Family Court. The father of the appellant has been examined and he has stated that even before the marriage, an engagement function was celebrated, in which, the respondent participated personally and that the engagement was held and celebrated only at his residence. Insofar as the allegation that the respondent left the appellant in his parents' house, where there were no basis amenities, that too, for a lady to reside comfortably, it is seen from the evidence that even though the respondent accepted about the lack of amenities in his parents' house, but, it is seen that subsequently, the respondent has taken the appellant to the residential quarters provided by employer which would only go to show that the appellant was living with the respondent's parents only temporarily. Further, it is not also possible to accept the version of the appellant as it is highly improbable that the appellant or at least her



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parents would not have visited the respondent's parents before the marriage. Insofar as the allegations that the parents of the respondent did not provide proper medical assistance to the appellant, when she was pregnant, the respondent has exhibited Ex.R13. Ex.R13 produced by the respondent would go to show that the stand of the appellant that the respondent did not provide any medical help to the appellant during her pregnancy, is not true. Insofar as the claims of the appellant that the respondent was suffering from venereal disease, the appellant has not been able to prove such claim by adducing acceptable documentary evidence. On the contrary, the respondent has filed Doctor's certificate to belittle such false claim made by the appellant. The further relevant circumstances that militate against the allegations made by the appellant are the birth of the 2 children on 18.08.2004 and 30.03.2007. In the light of two sons being born to the appellant and the respondent after their marriage on 08.09.2003, it only raises very serious doubts over the truth in the allegations made by the appellant.

13. The Family Court has also elaborately discussed the various incidents where there was quarrel between the appellant and the respondent and has ultimately found that such quarrel between couples was



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not uncommon and would not amount to causing mental agony to the appellant. The Family Court has also taken note of the fact that the respondent has abandoned trial mid-way and never chose to appear thereafter. However, despite the same, the Family Court came to the conclusion that the appellant had failed to substantiate her allegations of cruelty, entitling her to a decree of dissolution of marriage and that the respondent has withdrawn himself from the matrimony, without any valid reason and therefore, the respondent was entitled to a decree of restitution of conjugal rights.

14. We do not find any error or infirmity in the findings arrived at by the Family Court, warranting interference in the Appeals before us.

15. In fine, both the Civil Miscellaneous Appeals stand dismissed. There shall be no order as to costs.

(T.K.R.J.) & (P.B.B.J)
08.11.2023

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- To
- 1.The Family Court,
Madurai.
 - 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J

Ls

judgment in
C.M.A.(MD).Nos.247 & 248 of 2019

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