



A.S.(MD)No.131 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	23.11.2023
Pronounced on	22.12.2023

CORAM:

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

**A.S.(MD)No.131 of 2023
and
C.M.P.(MD)No.7532 of 2023**

P.K.Mukmuthu Sha

... Appellant / Defendant

-VS-

P.S.Mohammed Afrin Banu

... Respondent/Plaintiff

PRAYER : The Appeal is filed under Section 96 of C.P.C. against the Judgment and Decree passed in O.S.No.30 of 2021, dated 24.03.2023 on the file of the Family Court, Tirunelveli.

For Appellant : M/s.K.Abiya

For Respondent : M/s.C.Jeya Indira Patel
Legal Aid Counsel



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JUDGMENT

RMT.TEEKAA RAMAN, J.

The Appeal is directed against the Judgment and Decree passed in O.S.No.30 of 2021, dated 24.03.2023 on the file of the Family Court, Tirunelveli.

2. The husband has preferred this appeal against the order of dissolution of marriage passed by the Family Court, Tirunelveli.

3. For the sake of convenience, the parties are referred to as defendant/husband and plaintiff/wife.

4. The wife/plaintiff, the respondent herein, filed a suit under Section 2(ii) (iv)(viii)(a)(d) of Dissolution of Muslim Marriages Act, 1939 for declaration by dissolving the marriage between her and the appellant/defendant which was solemnized on 03.01.2016, on the ground of cruelty and not treating equivalent to the second wife of the husband.



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5. The prime allegations in the said plaint are as follows:

5.1. During her pregnancy, the husband and his mother not treated the plaintiff well, and they are behind the jewels given by the parents of the plaintiff. Without considering that the plaintiff is pregnant, the mother of the husband/defendant scolded her for not draping the saree properly, and also the husband has taken photos of the plaintiff and the defendant when they are in-mate position. When the plaintiff/wife went to Chennai to live along with her husband, during September 2016, a child was born to the parties. However, the child died on the next day. On that score, the husband's sister abused the wife by stating that she could solemnize another marriage of the defendant/husband, since the plaintiff/wife has no child.

5.2. Further, during their stay, the father of the defendant insisted that the doors of the bed room should not be closed and the defendant also insisted the plaintiff to eat foods that were allergic to her and as a result she suffered vomiting and headache, further he used to throw the meal plates on the face of the plaintiff by stating that the food prepared by her were not of his liking and he compared her with one Nasima, who is his relative and caused mental cruelty to her. The



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plaintiff/wife has to look after the house and hence, unable to bear the cruelties of the defendant/husband, the plaintiff came to her parents home and however, the defendant/husband threatened the plaintiff/wife by uttering that if she is not coming back to live with him, he will solemnize another marriage and also could publish photographs taken by him at the time of close intimacy through internet and also caused cruelties to the family members of the wife alleging that he will murder the family members of the wife.

5.3. Unable to maintain herself, the plaintiff filed M.C.No.71 of 2019, which was allowed in her favour and also filed a complaint in D.V.C.No.43 of 2009 to bring back the jewels and household articles, which is kept to be pending at the time of the trial of the above suit. In the meantime, the defendant/husband appears to have filed O.S.No.25 of 2019 for the relief of restitution of conjugal rights and the same was allowed on 04.05.2021 and immediately on 05.09.2021, the defendant/husband married another lady and ill-treated the plaintiff/wife and not treated the plaintiff/wife on par with the second wife. Hence, the suit for dissolution of marriage by wife.



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6. The defendant/husband filed written statement denying various averments made therein an *interalia* contended that the husband had filed O.S.No.25 of 2019 for the relief of restitution of conjugal rights and the same was allowed on 04.05.2021 and as the wife does not comply the said judgment and hence, as per Islamic Law, he had contracted marriage with another woman since the Islamic Law permits Polygamous marriage and therefore, merely because the defendant/husband married another woman, the plaintiff/wife cannot seek the relief of divorce and the defendant is paying the maintenance amount to the plaintiff and the jewels given to the plaintiff/wife as Mahar weighing about 144 grams gold are still with the plaintiff, the defendant after marriage also gifted 7 sovereign of jewels to the plaintiff and also denied the various issues and averment of wife.

7. In the written statement, he has accepted that it is specifically pleaded that the plaintiff/wife issued Kula notice on 25.04.2018 and the defendant had sent a reply to the same and called upon her for reunion. But the plaintiff avoided



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to receive the above said reply. Thereafter, the father of the defendant/husband gave petition before the Jamad, compromise talks were held and they were also ended in failure and as the plaintiff refused to live with the defendant/husband and the defendant/husband also refused to return the jewels given to her at the time of the marriage, she is not entitled for any relief.

8. During the trial, the plaintiff examined herself as P.W.1 and marked Ex.A.1 to Ex.A.12. The defendant examined himself as D.W.1 and the President of the Jamad was examined as D.W.2 and independent witness was examined as D.W.3 and Ex.B.1 and Ex.B.2 were marked.

9. Heard the learned counsel for the appellant/husband and the Legal Aid counsel for the respondent/wife.

10. The factual matrix of the case are as under:

10.1. The date of marriage, birth of a son, born to them and that he died on the very next day of birth were admitted. On 05.09.2021, the defendant/husband got married another lady. The wife, prior to initiation of this dissolution of



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divorce proceedings, had initiated M.C.No.71 of 2019 and the same was allowed as could be seen from Ex.A.7 and the restitution relief was granted to the husband in O.S.No.25 of 2019 on 04.05.2021 as could be seen from Ex.A.8. Four months from the date of the restitution of conjugal rights, it appears that the appellant/husband married another lady on 05.09.2021 and begotten a child by name Shah Azim as could be seen from EX.A.11. The respondent/wife has alleged the cruelty and unequal treatment with the second wife of the appellant/husband.

11. The learned counsel for the respondent/wife (Legal Aid appointed Counsel) drew our attention to the evidence of Ex.A.7 to Ex.A.9 to show that the husband has deliberately failed to maintain the respondent/wife, resulted in passing of the award in M.C.No.71 of 2019 and after the restitution of conjugal rights was ordered in favour of the appellant/husband, without filing any execution petition, he had married another lady, as admitted by the appellant/husband in the counter statement, on 05.09.2021.



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12. After hearing the Legal Aid Counsel for the wife and the order passed by the Trial Court and the records of the Trial Court, we find that the main grievance of the wife is that both the husband and wife were living separately from 13.11.2017 and the appellant/husband failed to care for the wife and not maintaining her, which as resulted in filing of maintenance case in M.C.No.71 of 2019 before the Family Court and the defendant has not complied with the order passed in the maintenance case and accordingly, we find that after separation of the plaintiff, the defendant/husband failed to maintain the wife resulted in M.C.No.71 of 2019 has held that the husband has not provided maintenance to the wife for more than two years.

13. Yet another point is that the husband has failed to perform her marital obligations for more than three years. The admitted date of separation is 13.11.2017. The wife had issued Kula notice on 25.04.2018. The husband has filed restitution suit in O.S.No.25 of 2019. During the cross examination of D.W. 1 (husband), he had admitted that he has not taken any steps or measures to execute the decree for restitution of conjugal rights and also admitted in the cross examination that the appellant/husband had married another lady on 05.09.2021



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and thus, from the date of separation, namely, 13.11.2017 till the date of filing of the present suit for divorce by the wife for three years, the husband has not discharged his marital obligations and taking into consideration of all these things and also taking into the evidence of P.W.1 (wife) that no prudent women will leave the matrimonial home without any reason unless she was compelled to do so by the circumstances felt by her that it is totally unsafe for her to stay in the matrimonial home.

13.1. It is a specific evidence of P.W.1 that she is unable to bear the cruelties committed by the husband and his mother. The defendant got married another lady on 05.09.2021 and got a child through the said marriage as could be seen from Ex.A.11 and hence, from the evidence of P.W.1 coupled with Ex.A7 to Ex.A.9 and the admission by P.W.1, the trial Court has come to the conclusion that the appellant/husband has failed to take care of the first wife (the plaintiff) and he is living happily with the second wife. Thereby, he has not treated the first wife and the second wife equally as required under the provisions of Islamic Law. Under the Islamic Law, the husband is entitled for Polygamous marriage, however, he has to treat all the wife equally.



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13.2. Here in the instant case, P.W.1 has successfully demonstrated that the husband had treated her unequally with his second wife and he has not taken care of the wife and not maintained her and he did not do marital obligations after they got separated and lived with the parents. As a husband, he is duty bound to maintain the plaintiff even while she was with her parents. If at all he is aggrieved by her separation, then he should have took measures for reunion and if it fails then on reasonable ground, he can pronounce Talaq as per the Personal Law. In this case, no such act was done by the defendant. Admittedly, the defendant did not maintain the plaintiff and failed in his duty and has married another woman. Therefore, all these circumstances goes to show that the claim of the plaintiff that the defendant has met out several cruelties to her and as a result, she went away to her parental home and there she was not maintained by the defendant and he has not performed his marital obligations.

14. The learned appellant/husband would state that the wife has not honoured the decree of restitution granted in O.S.No.25 of 2019 on 04.05.2021. In this regard, our attention is drawn to the Kula notice issued on 25.04.2018 by



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the plaintiff. Only after issuance of Kula notice, the husband has filed O.S.No.25 of 2019 for restitution of conjugal rights. Though the restitution was ordered in favour of the husband on 04.05.2021, thereafter, he has married another woman on 05.09.2021. Besides after the second marriage, the husband has not treated the first wife and the second wife equally which is discussed in *supra*.

15(a). Hence, we are of the considered view that the husband having not treated the first wife and the second wife equally and the plaintiff, who is the first wife has clearly demonstrated before the Court, the cruelties met out by her and the husband has failed to maintain the wife for two years and failed to discharge the matrimonial obligations for three long years.

15(b). We also drew our attention to consider the right of muslim woman to live separately when congenial atmosphere is not available in the matrimonial home in S.A(MD)No.62 of 2006, dated 08.06.2017 [***Kothar Beevi @ Badrunnisha Vs. K.Aminudeen***].



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16. Hence, we are of the considered view that the findings rendered by the Family Court that the husband had treated the wife with cruelty and has not treated the wife on par and equally with the second wife and accordingly granted the dissolution of marriage under the above provision of Muslim Law is well considered and well merited, does not warrant any interference at the appellate state and hence, we find that there is no merits in this appeal and accordingly, this appeal is dismissed. The decree of dissolution passed by the Family Court in O.S.No.30 of 2021 in favour of the wife is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

[T.K.R., J.] [P.B.B., J.]

22.12.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1. The Family Court, Tirunelveli.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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Pre-delivery Judgment made in

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