



C.M.A(MD)No.300 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.07.2023

PRONOUNCED ON:11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.300 of 2016

R.S.Durai @ R.Sermadurai : Appellant/Petitioner

Vs.

M.Melba Vasanthi : Respondent /Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, against the Judgment and Decree, dated 17.12.2014, made in I.D.O.P.No.151 of 2011, on the file of the Principal District Court, Tuticorin.

For Appellant : Mr.S.Sivathilakar

For Respondent :Mr.F.X.Eugene



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JUDGMENT

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This Civil Miscellaneous Appeal is directed against the order passed in I.D.O.P.No.151 of 2011, dated 17.12.2014, on the file of the Principal District Court, Tuticorin, dismissing the petition for divorce filed under Section 10(1)(x) of the Divorce Act.

2. It is not in dispute that the appellant married the respondent on 07.03.2011 at CSI Church, Kamaraj Nagar, Surandai. The appellant/husband, by alleging that he was subjected to cruelty, has filed a petition in I.D.O.P.No.151 of 2011 for divorce. The respondent/wife has filed a counter statement raising serious objections. During trial, the respondent has examined herself as R.W.1 and exhibited one document as Ex.R.1. The appellant has examined himself as P.W.1 and one Thangadurai as P.W.2 and exhibited 3 documents as Exs.P.1 to P.3. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned order dated 17.12.2014, dismissing the divorce petition. Aggrieved by the order of dismissal, the husband has preferred the present appeal.



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3. The main complaint of the appellant/husband is that the respondent was not at all interested in sexual relationship since their marriage and therefore, the marriage was not at all consummated, that the respondent has informed him that she was not interested in the marital relationship and only at the compulsion of her family, she had agreed for the marriage, that the respondent had not treated the appellant even as a person and she used to place the food as if the same was given to a pet animal, that whenever the appellant was attempting to talk with the respondent, she used to throw the articles and break them, that the respondent is not having a female character, but instead she has been behaving as a male, that the respondent does not know about the cooking and household works, that the respondent had been threatening that she would commit suicide if she is invited for sexual relationship, that the respondent used to threaten that she would lodge false complaints against the appellant for dowry harassment and for claiming maintenance, that the respondent used to take more than 1 ½ hours for taking her food, that since the respondent's behaviour and attitude was not normal, the appellant has requested her to accompany him for medical treatment, but she refused, that though the appellant was tolerating all her adamant,



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cruel and disrespectful behaviour, she left the matrimonial home on 22.03.2011 without intimating anybody and that when the appellant, after coming to know that the respondent was in her parents house, had contacted her family members, but they have abused and threatened the appellant as if he was at fault and that since the appellant's steps for reunion through elders were of no avail, he was constrained to file the above petition seeking divorce.

4. The defence of the respondent/wife is that the appellant was not willing and interested to have sexual relationship, that the appellant had been avoiding the respondent since the date of marriage, that when the respondent had enquired about his conduct, he informed that he was having issues outside, that the appellant had suddenly informed on 22.03.2011 that the police striking force was coming to arrest him and if the respondent is available in the house, the woman police would take her and hence, directed her to go to her parents house, that the respondent was not aware at that time that the appellant was having 2, 3 criminal cases against him, that the appellant had stayed in his sister's house on that night and without informing the respondent, proceeded in a car at about 05.00a.m., on 22.03.2011, that though the appellant had



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informed the respondent's brother that he would return to Surandai, he has not returned thereafter, that the appellant had also vacated the house in which they were residing earlier, that the appellant has neither visited nor contacted the respondent subsequently, but summons in the divorce case came to be served on the respondent, that the appellant had appeared before the Tiruchendur All Women Police Station in pursuant to the complaint lodged by the respondent and at enquiry, he had refused to live with the respondent and further informed that he would commit suicide, if he is compelled to live with the respondent and that the respondent has been ready and willing to live with the appellant and hence, the appellant is not entitled to get the relief claimed.

5. The learned Counsel for the appellant would submit that the trial Court erred in holding that the appellant directed the respondent to go to her parents house, as he was afraid of criminal cases, when there was absolutely no evidence available on record, that the trial Court erred in observing that the allegations against the respondent are flimsy in nature, that the respondent alone was not willing and interested in sexual affairs and that is why the marriage was not consummated, that the appellant has proved that the respondent alone had refused to have sexual relationship



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and irritated the appellant by her odd behaviour, which has caused mental agony and unbearable harassment and that the learned trial Judge erred in dismissing the divorce petition.

6. The learned Counsel for the respondent would submit that the respondent was subjected to medical examination during the pendency of the complaint before the Tiruchendur All Women Police Station and a report was given that the respondent had sexual relationship, that though the appellant has raised various allegations, he has not produced any evidence to prove the same and that the learned trial Judge, has specifically observed that the appellant has raised flimsy allegations and that he had not taken any steps to join hands with the respondent and that therefore, the impugned order is liable to be confirmed.

7. The points for determination are:

(1) Whether the learned trial Judge erred in dismissing the divorce petition on the ground that the appellant had raised flimsy allegations and the appellant had not taken steps to join hands with the respondent, despite showing that the marriage was not consummated as the respondent was not interested to have sexual relationship and that the



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respondent alone by her irritating and odd behaviour has caused mental agony to the appellant?

(2) Whether the appellant has proved the ground of cruelty as alleged by him?

(3) Whether the appeal is liable to be allowed?

Points 1 to 3:

8. As already pointed out, the appellant has claimed divorce only on the ground of cruelty under Section 10(1)(x) of the Divorce Act. Section 10(1)(x) of the Divorce Act contemplates that the marriage can be dissolved on the ground that the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner, that it would be harmful or injurious for the petitioner to live with the respondent.

9. In the present case, the main allegation against the respondent is that she was not interested to have sexual relationship with the appellant since the marriage and that therefore, the marriage was not consummated. But on the other hand, the respondent has taken a specific stand that the



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appellant was not interested and he was avoiding the same since the marriage. As rightly contended by the learned Counsel for the respondent, though the appellant has alleged non-consummation of their marriage, he has not chosen to take that ground under Section 10(1)(vii) of the Divorce Act for claiming divorce. According to the respondent, they had sexual relationship for one time. It is not in dispute that when the complaint lodged by the respondent against the appellant was pending before the Tiruchendur All Women Police Station, the respondent was subjected to medical examination. It is the specific contention of the respondent that the report on the medical examination would reveal that she was involved in the sexual relationship. Admittedly, the appellant has not chosen to subject himself for medical examination. The respondent in her cross-examination would say that she was ready to undergo medical examination again.

10. It is pertinent to note that even according to both the parties, they got separated from 22.03.2011, 15 days after their marriage. Though the appellant has alleged that the respondent had left the matrimonial home by herself without intimating anybody, the respondent had taken a stand that the appellant had directed her to go to her parents



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house, as he was expecting arrest from the striking force. It is pertinent to mention that the appellant as well as his witness P.W.2 would admit that the appellant was having criminal cases. Though both of them have stated that the appellant was acquitted, they have not chosen to produce any records to prove the same.

11. The contention of the respondent that subsequently the appellant had vacated the house where they were residing earlier, has not been disputed by the appellant. Considering the above, the action of the respondent to return to her parents house cannot be found fault with. Though the appellant has alleged in the main petition that his efforts for reunion through family elders were of no avail, he has not elaborated anything further. It is pertinent to note that the appellant, in cross-examination would specifically admit that he had not taken any mediation efforts through elders.

12. As already pointed out, the appellant has alleged that the respondent had behaved abnormally and went to the extent of threatening that she would commit suicide. But admittedly, the appellant has not chosen to examine any witness to prove the alleged abnormal behaviour



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and the irritating and odd conduct of the respondent. The only witness examined by the appellant is P.W.2, who is none other than his sister's son. Even according to P.W.2, he was residing at a distance of 6 kms from the house of the appellant. P.W.2 has filed a chief examination affidavit reiterating the allegations raised in the chief examination affidavit of the appellant. But in cross-examination, he would admit that he was not aware of the incidents that occurred between the appellant and the respondent and that he does not know as to whether there was any marital relationship between them. Moreover, P.W.2 has not stated that he had witnessed the abnormal behaviour of the respondent and her irritating or odd attitude against the appellant.

13. As rightly observed by the learned trial Judge, the appellant, without any valid reason or ground, by raising flimsy reasons, has filed the divorce petition within three months from the date of their marriage. As rightly pointed out by the learned Counsel for the respondent, the appellant has miserably failed to prove that he was treated with cruelty, which causes reasonable apprehension in his mind that it would be harmful or injurious to live with the respondent. Considering the above, the decision of the trial Court that the appellant has not proved the



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ground of cruelty and as such, the petition is liable to be dismissed, cannot be found fault with. Hence, this Court concludes that the Civil Miscellaneous Appeal is devoid of merits and the same is liable to be dismissed. Accordingly, the above points are answered. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

14. In the result, the Civil Miscellaneous Appeal is dismissed. The parties are directed to bear their own costs.

11.08.2023

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

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To

1.The Principal District Court, Tuticorin.

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



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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