



C.M.A.(MD).Nos.499 & 1058 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on :30.11.2023	Delivered on: 22.12.2023
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CORAM:

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

C.M.A.(MD).Nos.499 & 1058 of 2018

and

C.M.P.(MD)No.5949 of 2018

C.M.A.(MD).No.499 of 2018

R.Anusiya .. Appellant / Respondent / Wife

Vs.

D.Ravi .. Respondent / Petitioner / Husband

Prayer:- Appeal filed under Section 19 of the Family Court Act, against the judgment and decree dated 04.04.2018 made in H.M.O.P.No.103 of 2014 on the file of the Family Court, Trichy.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.A.V.Rajasekaran

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R.Anusiya .. Appellant / Petitioner / Wife

Vs.



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D.Ravi

.. Respondent / Respondent / Husband

Prayer:- Appeal filed under Section 19 of the Family Court Act, against the judgment and decree dated 04.04.2018 made in H.M.O.P.No.156 of 2015 on the file of the Family Court, Trichy.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.A.V.Rajasekaran

COMMON JUDGMENT

P.B.BALAJI,J.

The wife, aggrieved by the grant of a decree of dissolution of marriage in H.M.O.P.No.103 of 2014 and dismissal of her H.M.O.P.No. 156 of 2015 on the file of the Family Court, Trichy, which was filed by her, seeking restitution of conjugal rights, is the appellant before us, in the above Civil Miscellaneous Appeals.

2. The respondent filed H.M.O.P.No.103 of 2014 (earlier H.M.O.P.No. 411 of 2010, before the Principal Sub Judge, Trichy and the same was transferred to the Family Court, Trichy and renumbered).



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3. The brief facts of the case are that the husband and wife were married on 08.11.2006 and the case of the respondent / husband is that after the appellant /wife went to her parents' house for delivery, her behaviour changed and she started abusing the respondent / husband for no reason whatsoever. A male child was born on 12.12.2007 and even thereafter, she did not change and the appellant would merely follow the directions of her father. Alleging cruelty and so desertion, the H.M.O.P.No.103 of 2014 came to be filed.

4. The said petition was resisted by the appellant by filing a counter statement. In here petition, she has stated that the matrimonial life was happy and only the respondent's attitude had changed towards the appellant and he would quarrel with her for no reason and that even after the birth of the child, the respondent never came even to see the child or her. To the notice issued by the respondent, the appellant had replied stating that the respondent can come and take her back within 10 days. Thereafter, at the instance of relatives and senior members of the family, the respondent took back the appellant and the child and continued the



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matrimonial life. However, after two months, the respondent started to torture the appellant and the child. Further, the respondent also had an illegal relationship with another woman, who resided near the matrimonial home and when the respondent was questioned, the appellant was assaulted and driven out of the matrimonial house and only under such circumstances, she was forced to return her parents. The appellant has further stated that she lodged a complaint to the Superintendent of Police, Sivagangai District and on enquiry by the All Women Police Station, Devakottai, the respondent admitted to take the appellant back and also accepted to set up a separate house within four months and in the meantime, he would pay Rs.1,500/- towards maintenance. The wife therefore prayed for dismissal of the divorce petition.

5. Pleading similar averments and allegations, the appellant / wife filed her restitution of conjugal rights petition, which was resisted by the respondent / husband on the same set of pleadings which had been narrated in his petition for dissolution of marriage.

6. Before the Family Court, in H.M.O.P.No.103 of 2014, the



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respondent / husband examined himself as P.W.1, one Nondisamy was examined as P.W.2 and 4 documents were marked as Ex.P1 to Ex.P4. On the side of the appellant/ wife, she examined herself as R.W.1, one Mariappan was examined as R.W.2 and no documents were marked. In H.M.O.P.No.156 of 2015, the appellant / wife examined herself as P.W.1, and 3 documents were marked as Ex.P1 to Ex.P3, on the side of the appellant. On the side of the respondent / husband, he examined himself as R.W.1 and no documents were marked.

7. The family Court passed separate orders in both the petitions for divorce as well as restitution of conjugal rights on 04.04.2018, granting a decree of dissolution of marriage in favour of the respondent / husband and dismissing the petition seeking restitution of conjugal rights filed by the wife.

8. We have heard the learned counsel for the appellant and the learned counsel for the respondent. We have also gone through the records, including the impugned orders of the Family Court in both H.M.O.P.No.103 of 2014 and H.M.O.P.No.156 of 2015.



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trial. The allegations that have been made against the wife are nothing but incidences of normal wear and tear between a husband and wife and the same do not amount to mental cruelty, warranting dissolution of marriage. Even insofar as the ground of desertion, it is clear from the pleadings and evidence that there was no voluntary abandonment of the matrimonial home by the appellant / wife and only because of the conduct of the respondent, she was forced to leave the matrimonial home. The same will not amount to desertion, warranting grant of a decree for divorce under the Hindu Marriage Act.

12. Further, from Ex.P4, we find that the husband has given a written response to the police authorities stating that he would not cause trouble in future and he would undertake to pay a sum of Rs.1,500/- p.m. for the maintenance of the wife and child. If really the respondent is not at fault, then there was no necessity for the husband to have written so. This clearly shows that the allegations put forth in the petition for divorce are factually untrue. However, the Family Court has not discussed any of the circumstance and as rightly pointed out by the learned counsel for the appellant, has merely proceeded to narrate the rival contentions of the



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appellant and the respondent and in a couple of sentences in the concluding paragraph of the order, has concluded that the respondent is entitled to the decree of dissolution and consequently the Family Court has also chosen to dismiss the petition filed by the wife. We find the approach of the Family Court to be far from proper and the same is therefore, liable to be set aside. The decree for dissolution of marriage cannot be granted for the mere asking of a spouse, unless the person seeking such dissolution of the marriage clearly pleads specific and particular acts of cruelty which also amount to mental cruelty and establishing the said acts by reading evidence and warranting grant of a decree of divorce. Though the term “mental cruelty” is not defined under the H.M.O.P., the Courts have over time, shall for time discussed this concept of mental cruelty and settled various principles and enunciating as to what would constitute mental cruelty in order to enable the parties seeking dissolution of marriage to succeed in a petition for divorce.

13. In ***Samar Ghosh V. Jaya Ghosh*** reported in ***(2007) 4 SCC 511***, the Hon'ble Supreme Court has stated as under:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing



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with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommodate or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the



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resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife



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undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.”

14. In fact, the Hon'ble Supreme Court in ***Samar Ghosh's*** case, has discussed the instances of 'mental cruelty' and set out several illustrations of acts that would constitute “mental cruelty”. Testing the facts of the present case, in the light of the ratio laid down in the Hon'ble Supreme Court, we do not find any of the averments and allegations set out in the petition for divorce amounting to satisfaction of the settled principles of law that have been enunciated in the said decision. The Family Court clearly fell in error in granting a decree of divorce in favour of the respondent, without even judiciously appreciating the pleadings and evidence on record.

14. For all the above reasons, Civil Miscellaneous Appeals are allowed. The order of the Family Court, in H.M.O.P.No.103 of 2014, the



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decree for divorce is set aside and H.M.O.P.156 of 2015, restitution of conjugal rights is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(T.K.R.J.) & (P.B.B.J)
22.12.2023

Internet : Yes
Index:Yes/No
Neutral Citation:Yes/No
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To

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

judgment in
C.M.A.(MD).Nos.499 & 1058 of 2018

22.12.2023