



C.M.A. (MD) No.127 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 12.09.2023

PRONOUNCED ON : 25.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.A(MD).No.127 of 2017
and CMP(MD).No.1334 of 2017

P.Rajeshwari

...Appellant

Vs

I.Ganeshan

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the fair and final order of the Family Court, Trichy made in HMOP.No.546 of 2014 dated 28.12.2016 and dismiss HMOP.No.546 of 2014 on the file of the Family Court, Trichy by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.K.K.Senthil

For Respondent : N.Marimuthu

For Mr.A.Chandra Sekar



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J U D G M E N T

(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The respondent/husband had filed HMOP.No.546 of 2014 before the Family Court, Trichy for the relief of divorce on the ground of mental cruelty. The said petition was allowed on 28.12.2006. Challenging the same, the wife had filed CMA(MD).No.127 of 2017.

2.The husband in his divorce petition had contended that the wife was not taking care of him or his parents. Despite a compromise attempt made by the village elders, she continues to abuse the husband. According to the husband, they are living separately for more than 15 years, on the date of filing of the divorce petition. Though several attempts were made to bring her back to the matrimonial home, she had refused to do so. According to the husband, having lost the hope of reunion, he had filed the present application.

3.The wife had contended that the husband has not come forward to bear the marriage expenses of the daughter and she is left in lurch. The husband is leading a extra-vagant life, since he is a Central Government Servant. In order to prevent the wife and children from getting any benefit, the husband is attempting to divorce her.



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4.The Family Court found that the husband has not established the fact that the wife had caused mental or physical cruelty. However, considering the fact that the couple is living separately for the past 15 years and the wife has not given any reason whatsoever for living away from the husband for more than two years, the Family Court has proceeded to grant a decree for divorce. Challenging the same, the present appeal has been filed by the wife.

5.The learned counsel appearing for the appellant had contended that when the wife had faced mental cruelty at the hands of her husband, she is entitled to stay away from the husband. The said fact cannot be considered to be desertion. He had further contended that the wife is ready and willing to resume the marital life on such terms as may be reasonable. When the Family Court has arrived at a specific finding that the husband has not established the mental cruelty perpetrated by the wife, the Court was not right in granting decree for divorce on the alleged ground that the wife is residing away from the husband for more than two years. The Court has not taken into consideration the fact that only due to the conduct of the husband, the wife is residing away. Therefore, the husband cannot take advantage of his own fault and complain that the wife is staying away from the husband.



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6. Per contra, the learned counsel appearing for the respondent/husband had contended that in her counter, the wife has not made any specific allegation as against the husband that she was forced to live away from her husband. Though the wife had contended that the husband had perpetrated physical violence upon her and the husband was having extra marital affairs, she has not chosen to prove the same. Therefore, the wife had no reasonable cause to stay away from the husband. Hence, the Family Court was right in granting decree for divorce on the ground that the wife was residing away from the husband for more than 15 years without any reasonable cause.

7. We have given anxious consideration to the submissions made on either side and perused the material records.

8. The couple got married on 07.02.1980 and blessed with a daughter and a son. The daughter and son are married. The couple are living separately from 1998 onwards. These facts are not in dispute.

9. Though the husband had contended that the wife had perpetrated mental cruelty upon him by abusing him and by alleging extra marital affairs as against him, the Family Court has arrived at a finding that the husband has failed to establish those facts. However, the Family Court had proceeded to grant divorce



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on the ground that the couple are living separately for more than 15 years and during the entire period, the wife has not initiated any steps for a reunion.

10.Though the wife had contended that the husband has caused mental cruelty to him and he is leading a wayward life which keep her away from the matrimonial home, she could not establish those facts. Consequently, it is clear that she had stayed away from the matrimonial life without any reasonable cause. The children are major and they are not dependant on their parents.

11.The Hon'ble Supreme Court in a judgment reported in (2007) 4 SCC 511 (*Samar Chosh Vs. Jaya Chosh*) in Paragraph No.101 (xiv) has held as follows:

“101.(xiv)Where there has been a long period of continuous separation, it may fairly be surmised 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”

12.The Hon'ble Supreme Court in a judgment reported in 2023 SCC Online SC 497 (*Rakesh Raman Vs. Kavita*) in Paragraph No.21 has held as follows:

“21.We have a married couple before us who have barely_



stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under [Section 13\(1\) \(ia\)](#) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

13.In the present case, the couple got married in the year 1980 and they are living separately from the year 1998 onwards. Even when the divorce petition was filed, the parties were living apart for the past 15 years. As on today, they are living separately for the past 25 years. During the said period, neither of the parties were serious enough to restore the matrimonial bond and there is complete breakdown of marital tie.



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14. In view of the above said facts, we are not inclined to interfere in the order of the family Court, granting divorce. There are no merits in the appeal and this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]

25.09.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
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To

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



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Pre-delivery Judgment made in
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