



C.M.A. (MD) No. 892 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.08.2023

PRONOUNCED ON : 14.09.2023

CORAM:

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

C.M.A(MD).No.892 of 2017

T.Babukumar

...Appellant

Vs

Elavarasi

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to call for the records pertaining to the decree and judgment passed in HMOP.No.54 of 2016 on the file of the Family Judge, Tirunelveli and set aside the same.

For Appellant : Mr.T.A.Ebenezer

For Respondent : No appearance

J U D G M E N T

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

The husband is the appellant. He had filed HMOP.No.54 of 2016 before the Family Court, Tirunelveli for the relief of divorce on the ground of alleged



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mental cruelty. The said application was dismissed by the Family Court on 09.05.2016. Challenging the same, the present appeal is filed.

2.Summary of the allegation in the Divorce Petition:

(i)The husband is a diploma holder and the wife is a B.Tech Graduate and therefore, the wife was always taunting the husband citing his lesser educational qualification.

(ii)Within a week from the date of marriage, the wife insisted to go to her parental house for preparing for Group-II examination much against the wishes of the husband and his family members. The wife returned to the matrimonial home only after a week.

(iii)Though the husband's mother was admitted to the Hospital, the wife did not visit her and she left for the first Deepavali leaving the husband to take care of his mother.

(iv).When the relatives of the husband met the wife at her parental home and requested her to come back, she initially refused to return to the matrimonial home, but ultimately she came back only on 25.12.2014.

(v).During her stay in the matrimonial home, she was not taking care of the domestic work and she used to abuse the husband and his mother. On 26.01.2015 when the husband was away from the town, she left the matrimonial



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home along with her brother taking away all her jewels. Though the relatives attempted to stop her, she humiliated every one and left the matrimonial home.

(vi) After the wife reached the parental home, it was diagnosed that she is on the family way and the husband and his relatives attempted to bring her back. However, they were humiliated and sent back.

(vii) The birth of the girl child on 30.09.2015 was not informed to the husband and the husband and his relatives were not permitted to see the child. In view of various incidents of the mental cruelty perpetrated by the wife, the marriage is irretrievably broken down and the same may be dissolved.

3.Summary of the defence of the wife is as follows:

(i) The husband had married only due to the compulsion of his sister and he was not really interested in the marital life.

(ii) The husband insisted the wife to get a Government job and he also declared that she will be treated as servant maid until she gets a Government job.

(iii) The husband had often come to the house in a drunken mood and used to beat the wife. The husband and his family members did not permit the wife to prepare for Group-II examination.



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(iv) When birth of the girl child was informed to the husband, he told the wife that the child is not born to him and therefore, he would not make any attempt to see the child.

4. Findings of the Family Court:

(i) The husband had developed inferiority complex due to the higher educational qualification of the wife.

(ii) During deposition, the husband had admitted that he has not permitted the wife to prepare for Group-II examination. Therefore, it is clear that the husband alone has caused cruelty to the wife.

(iii) Though some erroneous statements have been made in the counter affidavit of the wife relating to the fact that there are no sibling to the wife, the same cannot be a ground for granting divorce.

(iv) Based upon the said findings, the divorce petition filed by the husband was dismissed by the Family Court. Challenging the same, the present appeal has been filed by the husband.

Submissions of the Counsels:

5. The learned counsel for the appellant had contended that the Family Court has not properly appreciated the pleadings and the evidence let in by the husband relating to the physical and mental cruelty caused by the wife. He had



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further contended that the Family Court should have properly appreciated the fact that there is no possibility of reunion and no prejudice would be caused to either parties in granting divorce.

6.The learned counsel for the appellant had further contended that the wife had left the matrimonial home in January 2015 and she has not initiated any proceedings for restitution of conjugal rights either before filing of the divorce petition by the husband or thereafter. The wife had left the matrimonial home within one week from the date of marriage and therefore, the Family Court was not right in arriving at a finding that the husband has prevented the wife from preparing for Group-II examination.

7.The learned counsel had further contended that the wife had caused mental cruelty to the husband and his family members by uttering that the husband is a drunkard and impotent person without any basis whatsoever. Without taking any genuine steps for reunion, the wife had pleaded in her counter that she is ready and willing to live with the husband. In view of irretrievable break down of marriage, the Family Court ought to have granted a divorce decree as prayed for by the husband.

8.The learned counsel for the respondent had reported 'no instruction'. A Court notice was issued to the respondent indicating the next date of hearing as



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28.08.2023. The said Court notice was refused by the respondent. Hence, we are proceeding to decide the appeal on merits on the basis of the submissions made by the learned counsel appearing for the appellant.

Discussion:

9.The divorce petition has been filed by the husband on the ground of mental cruelty. The husband in the divorce petition had cited the following instances.

(a)The wife had left for the parental home within one week from the date of marriage for preparing herself to appear for Group-II examination and she returned only after a week.

(b)When the mother of the husband was admitted as an inpatient, the wife had left to her parental home to celebrate Deepavali without taking care of her mother-in-law.

(c)She abused and humiliated him in front of the neighbours when she came to take back her belongings.

10.During cross examination, the husband had admitted that he has not permitted his wife to prepare herself for Group-II examination on the ground that, in case had she passed, she would leave the matrimonial home. Therefore, it is clear that the husband wanted to prevent the wife from pursuing her career



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who is a B.Tech Graduate. Admittedly, the wife had returned back to the matrimonial home within a week after appearing for the examination. Desire expressed by the wife to pursue her career cannot be considered to cause mental cruelty to the husband. The Division Bench of Bombay High Court in a judgement reported in 2022 SCC Online Bom 3171 (Pundlik Martandrao Yevatkar Vs. Sau.Ujwala) in Paragraph No.18 has held as follows:

“18. Here in the present case, expressing desire by wife who is well qualified that she wants to do the job does not amount to cruelty. The appellant/husband has to make out a specific case that the conduct of wife was such a nature that it was difficult for him to lead the life along with her.....”

11. The husband had alleged that the wife did not take care of her mother-in-law when she was admitted in the hospital. Except this single incident, no other instance of cruelty has been pointed out. The Hon'ble Supreme Court in a judgment reported in (2010) 14 SCC 301 (Gurbux Singh Vs. Harinder Kaur) in Paragraph No.16 has held as follows:

“16. The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing



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certain displeasure about the behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty.....”

12.The isolated incident of ill-conduct cannot be treated as mental cruelty unless it extends to a fairly lengthy period. Therefore, the husband has not made out a case for grant of divorce on the said allegations.

13.The husband has alleged that he was abused and humiliated by the wife in front of his neighbours. However, none of the neighbors have been examined to establish the same. PW2 is a distant relative of the husband. During his cross examination, he had admitted that he heard these instances only from the mother of the husband. Therefore, it is clear that he is only a hearsay witness and he does not have any personal knowledge about the allegation made by the husband.

14.When a girl child was born to the couple on 30.09.2015, instead of rushing to see the child, the husband has enquired with some of the relatives whether he could come and see the child. The wife in her counter had categorically pointed out that the husband had never seen the child or made any attempt to see the child at any point of time. The husband has not placed on



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record any reason for not making any attempt to see his child. Therefore, it is clear that the husband alone was not interested in continuing the tie but has made allegations of mental cruelty as against the wife.

15.The Hon'ble Supreme Court in a judgment reported in (1994) 1 SCC 337 (*V.Bhagat Vs. D.Bhagat*) in paragraph No.16 has held as follows:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party.”

16.In the present case, the husband has not established that the mental pain and suffering caused by the wife were to such an extent that it is not possible for him to live with the wife. Knowing fully well that the wife is having better educational qualification, he had married her. On a later point of time, when the wife attempted to pursue her career, the husband had entertained distrust against the wife, which has resulted in filing of the divorce petition. The Family Court has properly considered the pleadings and evidence and has arrived at a finding that the husband has not established his allegation of mental



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cruelty. We do not find any reason to interfere in the said order. This Civil

Miscellaneous Appeal stands dismissed. No costs.

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

14 .09.2023

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

1. The Family Court, Tirunelveli

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



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

msa

Pre-delivery Judgment made in
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