



C.M.A(MD)Nos.905 & 906 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.11.2023

Delivered on: 21 .12.2023

CORAM:

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

C.M.A(MD)Nos.905 and 906 of 2017

Deva Sagayam

... Appellant
in both appeals

Vs.

Mahalakshmi @ Maha Roseline

... Respondent
in both appeals

Prayer in C.M.A(MD)No.905 of 2017:- Civil Miscellaneous Appeal filed under Section 55 of the Divorce Act, 1869 r/w 19(1) of Family Courts Act against the judgment and decree dated 07.09.2016 passed in I.D.O.P.No.16 of 2016, on the file of the learned Family Court, Tiruchirapalli, Tiruchirapalli District, wherein the petition filed by the appellant herein under Section 32 of Indian Divorce Act, 1869 was dismissed.

Prayer in C.M.A(MD)No.906 of 2017:- Civil Miscellaneous Appeal filed under Section 55 of the Divorce Act, 1869 r/w 19(1) of Family Courts Act against the judgment and decree dated 07.09.2016 passed in I.D.O.P.No.45 of 2015,016, on the file of the learned Family Court, Tiruchirapalli, Tiruchirapalli District, wherein the petition filed by the respondent herein,



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seeking Divorce U/s.10(ix(x) of the Indian Divorce Act, 1869 was allowed.

For Appellant : Mr.N.Subramani
in both appeals

For Respondent : M/s.N.Vinitha
in both appeals for Veera Associates

COMMON JUDGMENT

RMT.TEEKAA RAMAN,J.

For the sake of convenience, the parties are referred to according to their litigative status before the Family Court in I.D.O.P.No.45 of 2015 as husband and wife.

2. From the lower Court records, we find that the wife has filed I.D.O.P.No.45 of 2015 before Family Court, Trichirappalli for divorce under Section 10 (ix) (x) of the Indian Divorce Act, 1869 for dissolution of marriage and thereafter, the husband filed I.D.O.P.No.21 of 2015 under Section 32 of the Indian Divorce Act for restitution of conjugal rights before the Family Court, Sivagangai. During the hearing of the case, the wife has confronted with certain difficulty and life threatening and hence,



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she filed Tr.C.M.P(MD).No.400 of 2015 before this Court and the same was allowed and the case was transferred to Family Court, Trichirappalli and renumbered as I.D.O.P.No.16 of 2016.

3. The evidence was recorded in the first case viz., I.D.O.P.No.45 of 2015 and the wife herself was examined as P.W.1 and marked Ex.P1 to Ex.P5 and she was treated as R.W.1 in the connected I.D.O.P.No.16 of 2016. The husband was examined as R.W.1 and treated as P.W.1 in the connected I.D.O.P.No.16 of 2016.

4(a). The petitioner /wife born as a Hindu and converted to Christian and married the respondent / husband on 07.06.2001 as per the Christian Customs and Rights in the Holy Soosaiappar Church at Soosaiappar Pattinam, Sivagangai in the presence of the respondent's relatives and it is love- cum- arranged marriage.

4(b).At the time of marriage, the petitioner / wife was working as Assistant Professor in Government College for Women at Kumbakonam and subsequently, got transferred to Pudukkottai Government College for Women. At the time of marriage, the husband represented that he was



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running a jewellery shop and also running chicken farm. In the year 2003 and 2007 two children were born. The wife has instituted the I.D.O.P.No. 45 o 2013 for dissolution of marriage under Indian Divorce Act as she was converted to christianity and the marriage between the parties was solemnized under the Christian Customs and Rights.

5(a). The main ground that was alleged by the wife is that in the year 2009 the wife has attended the Orientation Course conducted by the UGC at Trichy Jamal Mohamed College. It is alleged by the husband that at that time of attending the Orientation Course, the wife got introduced one Gopalakrishnan and during the Course, she has developed the illicit intimacy with him, thereby, he was addicted to alcohol and he had unwanted enquiry in the college at Pudukottai and it has created a total embarrassment for the wife and entertained the suspicion and thereby, she was subjected to cruelty.

5(b).The other incident was that after the birth of the second child in the year 2007, the wife was suffered with Umbilical Hernia, despite the fact that she was having physical discomfort and pain and suffering. The husband has treated her with cruelty and when she was transferred from



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Pudukottai to Trichy he has not vacated the house in the housing board, Pudukottai and thereby, she was subjected to ill-treatment and social discardment and hence, she compelled the husband to vacate the house since after transfer, she cannot retain the housing board flat at Pudukkottai and thereby, they shifted to Trichy 'Green House Apartments' and there also, he has created a problem with neighbours in drunken state and therefore, further she was shifted from the another house. Hence, for the last four years, she was living separately from her husband and she was subjected to humiliation and mental agony and physical agony, by life threatening, as he was always on the drunken mood and caused nuisance to the entire neighbourhoods at Thillai Nagar, Kakkan Colony and hence, she filed the complaint before the All Women Police Station, Trichy on 12.05.2015 and the police are reprimanded him.

6. In the counter statement filed by the husband he denied the fact that there was a false representation regarding the employment before marriage. It is the love marriage between the parties. Since the wife was Hindu, she converted herself as Christian and in the presence of the respondent/husband's relatives, the marriage was solemnized at Church. He has further alleged that there is a illicit intimacy between the said



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Gopalakrishnan and his wife while she was attending the Orientation course. However, no evidence has been placed before the Court to substantiate the said pleadings and re-asserted by the husband in the counter statement that there is a illegal relationship between the wife and the said Gopalakrishnan. In the trial, the husband was examined as R.W.1 and wife was examined as P.W.1 and marriage invitation and the marriage registration certificate and the joint photographs have been marked and no other documents are marked in either of the case.

7. On consideration of both oral and documentary evidence, the trial Court has come to the conclusion that the husband has caused incense to the injury and un-wantonly entertained the suspicion that the wife is having a illicit relationship with the said Gopalakrishnan which is not at all proved in the manner known to law and the husband was addicted to alcohol and she has treated both physically and mental cruelty and accordingly allowed the application filed by the wife for divorce and dismissed the application filed by the husband for restitution of conjugal rights and hence, the husband has filed these Civil Miscellaneous Appeals.

8. The learned counsel for the appellant/husband would contend that



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the appellant had developed the habit of taking liquor only after coming to know the fact that the wife is moving closely with her colleague by name Gopalakrishnan and hence, she is the sole cause for his alcohol addiction and he has taken the steps for reunion for 5 long years, however, due to adamant character of the wife alone, reunion was not made possible and also stated that the mental cruelty alleged to have been proved before the trial Court is unsustainable in law.

9. The respondent/wife made submission in support of the order passed by the Family Court.

10. Heard both. Perused records.

11(a). During the cross-examination of P.W.1/wife has admitted that by his consent only she was converted into Christianity after obtaining the Gnanasthanam and renamed herself from Mahalakshmi to Maha Rosline and they blessed with two daughters and in the community certificate, she has indicated the religion of the two children as Hindu only and without any income, her husband used to drink alcohol by misusing the ATM card. She has specifically stated in the evidence that after consumption of



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alcohol, he had ill-treated her not only in the house, but also the entire housing flats at Pudukkottai. She has also stated that her freedom as a woman was totally abrogated by her husband.

11(b).After perusing the cross-examination of R.W.1, namely, the husband, he had categorically admitted that on 12.05.2015 his wife has gave a complaint before the All Women Police Station, Ponmalai. In the Police Station, he was reprimanded and she has also stated that the husband has admitted that as per the complaint before the said Police Station, they are living separately for 5 years and as he went and created a ruckus in the flat of the wife, the police has reprimanded and advised them to make necessary legal course. Accordingly, the case has been closed and hence, as per the admission of R.W.1-husband in the cross-examination, the misbehaviour and criminal trespass, life threatening committed by the husband in the flat of the wife resulted in filing of the FIR before the All Women Police Station on 12.05.2015 which is the cause of action for the wife to initiate the divorce proceedings.

11(c).He has also admitted that they are living separately for 5 years. He also admitted that he started consuming alcohol from the year 2008 and



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when they are moved from the housing board apartment at Pudukottai to Green house apartment in Trichy, he accepted the same, however, he denied suggestion, but however, started giving an explanation which is unconnected with the case.

12(a). Even in the Green house apartment due to the inebriated mood of the husband, the wife was forced to vacate the house. He admitted that they are living separately since 08.03.2010 in the cross-examination. He has also admitted that he is not willing for the wife to complete her Ph.D., On the other hand, the evidence of P.W.1 is clear and cogent.

12(b).The entire issue has started emerging when the husband was indulged in Alcohol consumption and he was addicted to alcohol in the year 2008, at that time, he has no self income and he has misused the ATM card of the wife and used to withdraw the amount and consume and he has entertained a doubt without any basis that his wife is having a illicit relationship with one Gopalakrishnan. He also admitted in the cross-examination that he used to enquire with the Head of the Department, where his wife is working.



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12(c). Such a course of action adopted by the husband being definitely affected the dignity and decorum of the wife besides the self respect and the chastity of the wife and hence, at her request, she got transfer from Pudukkotti Government College to Trichy, there also, by his own act, he has not allowed the wife to have a peaceful life.

12(d). By his act of alcoholism and his decreed motion, making false allegations, touching upon the chastity of the wife amounts to mental cruelty, she has also not treated in a proper manner either at Pudukkottai or in the 'Green House Apartment' in Trichy forcing the wife to live separately and hence, the Family Court has rightly appreciated the version of the P.W.1/wife and also the admission made R.W.1/husband whereby, the nature of the allegation levelled against the husband with regard to the cruelty is made out. Accordingly, the Family Court Judge has rightly held that the wife is entitled for divorce and consequently, dismissed the petition for restitution of conjugal rights.

13. On re-appreciation of the evidence of both oral and documentary and also the evidence of P.W.1 regarding the averments touching upon the manner of the cruelty and admission of R.W.1-husband in the cross-



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examination, we find that there is no merits in these Civil Miscellaneous Appeals.. The findings rendered by the Family Court on the point of cruelty as well as the desertion are made out and hence, the divorce granted by the Family Court Judge is just and proper and the findings connected there with does not suffer from any irregularity or illegality warranting interference at this appellate stage.

14. In this view of the matter, these Civil Miscellaneous Appeals are dismissed. No costs.

Internet : Yes
Index :Yes/No
Neutral Citation:Yes/No
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(T.K.R.J.) & (P.B.B.J)
21.12.2023

To

1.The Family Court,
Tiruchirapalli.

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



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**RMT.TEEKAA RAMAN, J.,
and
P.B.BALAJI,J**

am

judgment in
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