



C.M.A(MD)No.957 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.10.2023
Pronounced on	20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A(MD)No.957 of 2017

S.Mallika

... Appellant / Respondent

-VS-

S.Senthilkumar

... Respondent / Petitioner

PRAYER : Civil Miscellaneous Appeals have been filed under Section 19 of Family Courts Act against the order and decreetal order dated 28.02.2017 passed in H.M.O.P.No.5 of 2017 on the file of the Family Court, Tirunelveli.

For Appellant : Mr.S.R.A.Ramachandran

For Respondent : Mr.P.Samuvel Gunasingh

JUDGMENT

(Judgment of the Court was made by RMT.TEEKAA RAMAN, J.)

This Civil Miscellaneous Appeal is directed against the order and decreetal order dated 28.02.2017 passed in H.M.O.P.No.5 of 2017 on the file of the Family Court, Tirunelveli.



2.The wife is the appellant herein. The respondent/husband filed H.M.O.P.No.05 of 2017 for divorce on the ground of cruelty. After trial, the same was allowed and hence, the appeal by the wife.

3.Initially, the husband has filed FCOP No.265 of 2013 under Section 12(1)(iii) and 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, before the Sub Court, Tambaram and subsequently, as per the order of this Court in Tr.C.M.P(MD)No. 362 of 2013 and M.P(MD)No.1 of 2013, dated 16.07.2015, the case was transferred from Sub Court, Tambaram to Family Court at Tirunelveli and renumbered as H.M.O.P.No.305 of 2015. After trial, the learned Family Judge has found that there are multiple procedural mistakes found in the amendment petition and the pleadings in the amendment petition and hence, rejected the said H.M.O.P.No.305 of 2015 with liberty to file fresh application so as to avail future litigation. Accordingly, the husband has filed H.M.O.P.No.5 of 2017 before the Family Court at Tirunelveli. After trial, the petition was allowed.

4.For the sake of convenience, the parties are referred to as per their ranking as husband/petitioner and wife/respondent before the trial Court.



5.The admitted factual matrix of the case are as under:

5.1.a.The husband is working as a Clerk in the State Bank of India and the marriage between the parties was solemnized on 18.10.2012 at Arulmigu Thirisoolanatha Swamy Koil, Thirisoolam, Chennai - 43. The respondent/wife is a resident of Tirunelveli. The wife's family came to know about the husband family through one Muthusamy, Professor in Pachayappa College.

5.1.b. The marriage was conducted by the husband's side. The reception was held on 19.10.2012 at Cantonment Marriage Hall at Pallavaram. The marriage was held in the temple and reception was held in Cantonment Marriage Hall on 19.10.2012.

5.1.c. On 21.10.2012, the married parties went to the parents house of the wife at Thenkalampudur, Tirunelveli by bus. The date for consummation of marriage (Shanthimuhurtham) was arranged on 24.10.2012. On 30.10.2012, the petitioner and the respondent left Tirunelveli to Chennai by train and on 16.11.2012, both the parties returned back to Chennai after deciding their native place for Deepavali.



5.1.d. On 19.11.2012, certain actions of the wife were found to be abnormal and hence, he has connected by the parents of the wife. On 25.11.2012, the family members of the wife along with 10 persons came to Chennai and stayed at Urapakkam and it was resolved by the family Panchayatar to have a medical checkup of both the persons in view of certain abnormality in behaviour of non-cooperation by the wife with regard to the matrimonial obligations of speaking, reacting, showing affection and physical intimacy.

5.1.e. On 26.11.2012, the petitioner and the respondent were examined by Doctors, Venkateswaran, Mathankumar and after checkup, they were referred to Doctor, Vijayan, Psychiatrist. Though appointment was fixed on 29.11.2012, the husband had changed the psychiatrist, but the family of the wife never brought the wife to the said Doctor. However, after few days, as per the counter statement, the wife went for counselling before Doctor Shanthi Nambi of Manoshanthi Clinic and underwent treatment for ailment.

5.2.a. On 03.02.2013, the wife's father along with ten persons came to the house of the husband and took away the jewels and also stated that the wife is not willing to join the husband and also admitted that the respondent/wife is not ready to lead matrimonial home. This factum was denied by the wife.



C.M.A(MD)No.957 o

5.2.b. On 17.02.2013, in the presence of family members, the husband returned all the jewels to the respondent/wife as witnessed by Ex.P.5- acknowledgement of list of articles by the mother of wife on 17.02.2013. The parties are living separately since then.

5.2.c. After 25.11.2012, the respondent has not returned to the matrimonial home and she had deserted the petitioner/husband. This part of the allegation was not denied in the counter statement and thus, the marriage was solemnized on 18.10.2012 and the wife left the matrimonial home along with her parents and family members on 25.11.2012. After it was agreed to go for medical examination, she attended the medical examination on 26.11.2012. Thereafter, she has not joined the company of the husband.

5.2.d. The date of marriage is 18.10.2012 and the date of separation is 25.11.2012 and hence, both the parties lived together only for 37 days.

6.Before the trial Court, on behalf of the petitioner, the husband was examined as P.W.1 and marked Ex.P.1 to Ex.P.11. On behalf of the respondent/wife, the wife was examined as R.W.1. and no document was marked.



7.P.W.1, the husband, both his pleadings as well as evidence, has categorically stated that right from the date of marriage, the appellant/wife was neither having any interaction with him nor expressing any love and affection and even during the reception, she had failed to interact with him. Even at the time, when they were alone, she did not permit to switch off the room light. Even during the Shanthimuhurtham on 24.10.2012, she has not shown any interest and further deposed that the wife is alleged to have said to the husband that “we can live as friends” and she is “not interested in having any sexual feeling” as like other women and also said to have admitted that she is having some sort of aversion towards sexual activities and the attempts made by the husband to convince her for sexual relationship, have resulted in, violent behaviour of crying and screaming. On 19.11.2012, the wife is said to have behaved in an abnormal manner of spitting everywhere and walking continuously, which resulted in a joint panchayat being conducted by the family members to go for medical checkup. However, the wife has not report to the Doctor Vijayan, Psychiatrist on 29.11.2012.

7.2.Per contra, the wife in her counter statement as well as R.W.1, stated that her mother was not well. So, she could not attend the counselling on 29.11.2012. However, she would state that she went to some other Doctor by name, Shanthi Nambi and has taken treatment for her ailment. For the reasons



best known, copies of medical records pertaining to this alleged treatment were not marked in this H.M.O.P.No.5 of 2017, by the wife. As per Ex.P.11-judgment copy of earlier H.M.O.P.No.305 of 2015, which was dismissed with liberty to file fresh application to the husband, this Court finds that she has produced the blood report and the scan report in the said application. With regard to the psychological evaluation by the said Doctor Shanthi Nambi, no document has been produced. On 17.02.2013, the appellant/wife's parents has taken away the entire jewels and also issued the receipts, which is marked as Ex.P.5 before the trial Court.

8.1.After hearing the rival submissions and the pleadings and the documentary evidence, the date of marriage is 18.10.2012 and on 17.02.2013 as per Ex.P.5, all the jewels were taken by the mother of the wife and she left the matrimonial home early. The wife is a qualified person and her educational qualification is M.Com and M.Phil. With regard to the non-conception of physical relationship between the husband and wife, during the cross examination of R.W.1-wife, she has stated that she has expressed to her husband that they can have sexual relationship after attending the temple.

8.2.Though she also stated the said version, she has not deposed in the first round of litigation in H.M.O.P.No.305 of 2015 and she admitted that in her earlier counter statement, she has not stated so. Further, during the chief examination,



she has deposed that the husband was not willing to have sexual intercourse, however, during the cross examination, she had also admitted that she has taken a different stand in the earlier round of H.M.O.P.No.305 of 2015 and thus, the trial Court has found that the stand of the wife for refusal to have sexual relationship with the husband is changing from case to case. In the earlier H.M.O.P.No.305 of 2015, she has stated different reasons of her non-interest towards sex. Consequently, she had not entertained any sexual relationship with the husband. By changing her stand, regarding non-consummation of marriage, she stands exposed.

8.3.However, in the present H.M.O.P.No.05 of 2017, she has come forward with a new version that she has expressed to her husband that after visiting the temple, they can have sexual relationship and also assigned that the reason for non-cohabitation between the husband and wife is due to the unwillingness on the part of the husband is found to be self contradictory to her earlier version in the earlier H.M.O.P.No.305 of 2015 and hence, the Family Court has rightly held that the version of the wife in the present proceedings is an improved and self-serving statement to save her skin.

8.4.Further, during the cross examination of R.W.1, she has categorically stated that due to the non-cohabitation for sexual intercourse between the



husband and wife, she was not affected either mentally or physically and further stated that even after the Shanthimuhurtham (First night), she has stated that no sexual relationship had taken place on the Shanthimuhurtham day and she further stated that she conveyed the same to her mother as well as her father-in-law (husband's father) and the trial Court has made an observation that the attitude of the wife in conveying and expressing the non-consummation of marriage (after few days of the marriage and on the next day of the Shanthimuhurtham) to the mother may be a reasonable conduct, however, expressing the same to the father-in-law about the non-consummation of marriage, appears to be an abnormal behavior.

8.5.She, further, in her cross examination, stated that she lived for 25 days in Chennai and thereafter, they are living separately. During the 25 days of stay along with the husband, there was no physical relationship between the parties and the reasons assigned for non-consummation of marriage were disbelieved for the reasons stated *supra*. In her evidence, she stated that she was driven out of the matrimonial home, however, admitted that the panchayat has been conducted for the abnormal behavior of the wife, which has resulted in medical examination, for which, she has not co-operated and hence, the Family Court has rightly disbelieved the version of the wife that she was driven out of the matrimonial home and rather came to the conclusion that she had deserted the matrimonial home.



9. On a combined analysis of the factors narrated *supra*, the Family Court has rightly come to the conclusion that for undisclosed reasons, the wife refused to have sexual relationship with the husband and thereby, the husband was denied sexual relationship. The reasons assigned by the wife in the present case are also disbelieved as she has taken a different stand in the earlier judicial proceedings and also taking note of the fact that she has refused to submit herself to the psychological evaluation as suggested by the family members and panchayat members.

10. 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 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.



WEB COPY



(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, discommode 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 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*



WEB COPY



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 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.”

11.In the case on hand, the above mentioned illustration (xii) squarely covers the facts and circumstances of the present case that the wife had treated her husband with mental cruelty. On the materials placed before this Court, the trial Court has rightly come to the conclusion that denial of sexual intercourse by the wife for 37 days without sufficient reason amounts to mental cruelty and on the ground of non-consummation of marriage for the period lived with her husband, no plausible explanation much less any explanation is offered by the



wife. Admittedly, within 37 days, the wife left the matrimonial home along with the parents. Immediately, thereafter, the parents also collected the entire articles and srithana properties as could be seen from Ex.P.5.

12.Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. Keeping all these in mind, this Court is unable to see any ground warranting interference with the order of the Family Court.

13.Hence, the order of dissolution of marriage passed by the Family Court does not suffer from any irregularity or illegality warranting any interference and hence, decree of dissolution of marriage granted in H.M.O.P.No.5 of 2017, dated 28.02.2017, filed by the husband, is hereby confirmed.

14.Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs.

[T.K.R., J.] [P.B.B., J.]
20.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sjj



WEB COPY



C.M.A(MD)No.957 of 2017

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

sjj

To

- 1.The Family Court, Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A(MD)No.957 of 2017

20.12.2023