



C.M.A(MD)No.976 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2023

CORAM:

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

**C.M.A(MD)No.976 of 2017
and
C.M.P(MD)No.10203 of 2017**

Angala Eswari

...Appellant

.VS.

A.Balamurugan

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 to set aside the judgment and decree passed by the Family Court Judge, Madurai in H.M.O.P.No.542 of 2013 on 06.06.2017 and allow this Civil Miscellaneous Appeal.

For Appellant :Mr.M.Jothi Basu

For Respondent :Mr.B.Chandran



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JUDGMENT

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[Judgment of the Court was made by **RMT.TEEKAA RAMAN.,J.**]

The appellant is the wife. The respondent is the husband. The respondent / husband filed H.M.O.P.No.542 of 2013 before the Family Court, Madurai seeking dissolution of marriage solemnized between the parties on 20.02.2005 on the ground of cruelty. The said application was filed under Section 13(1) (i-a) of Hindu Marriage Act.

2. The main contention of the respondent / husband before the Family Court is that she has behaved like a insane person, she refused and also failed to take care of the petitioner as well as the children, she picked up unnecessary quarrel with him and also with neighbours, she behaved unusual which caused more mental and physical cruelty to the petitioner, in spite of repeated request, the respondent / wife refused to return back the matrimonial home.

3. The appellant / wife filed counter denying the averments made in the petition. She also denying the contention that she was driven away from the matrimonial home along with the children.



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4. During trial, petitioner / husband was examined as P.W.1 and marked Ex.P1 to Ex.P10. The respondent / wife was examined as R.W.1 and marked Ex.R1- the complaint given before the police.

5. On consideration of both oral and documentary evidence, the learned Family Judge, Madurai has rendered a categorial finding that the factum of the marriage and birth of two children of which, one is special child are not in dispute. Whether the alleged complaint given by the appellant / wife amounts to cruelty. In paragraphs 9 & 10 of the judgment, the learned Judge has considered the act of the appellant / wife and held that the said act is amounting to cruelty and has also observed that R.W.1 in her cross-examination had admitted that she left the children with the petitioner and also admitted that she left the home on her own. Hence, the learned Judge has held that the act of the wife amounts to cruelty. Accordingly, granted decree of divorce. Aggrieved against the said judgment and decree of divorce, the wife has preferred the present appeal.

6. It is seen that the joint compromise memo, entered between the parties signed by both parties and respective advocates, has been filed.



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7. When the joint compromise memo was filed, the same was posted before the then Division Bench on 11.10.2018, whereby, the Division Bench of this Court has observed as under:-

“Today, both the appellant/ wife and the respondent/husband appeared in person before this Court.

2.A joint memorandum of compromise, entered into between the parties in the matrimonial dispute, has been filed today. As per which, the respondent/husband had agreed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) cash to the appellant/wife and agreed to return all the household articles given at the time of marriage. He had also agreed to return 7 sovereigns of jewels given at the time of marriage.

3.Today, in the open Court, the said cash and the jewels were returned to the appellant/wife, which is also acknowledged.

4.It is seen that there are two minor children born out of their marriage by name Saravanakumar, aged 12 years and Loganathan, aged 10 years. The minor Saravanakumar is a special child and both the children are with the father and therefore, this Court was concerned about the welfare of the minor children and directed the respondent/husband to deposit atleast Rs.50,000/- each in the names of the minors. The respondent/wife, who is present personally, also agrees



for the same.

5.The appellant/wife had complained that she could not see her children and all her attempts were failed by the respondent/husband.

6.Today, it is agreed that the mother would be allowed to see her children on every alternate Sundays between 10.00 a.m., and 03.00 p.m., at the respondent's house and both the parties have agreed for the same.

7.Post the matter on 25.10.2018 'for compliance' as indicated above. ”

8. We find that the joint compromise memo entered between the parties has been taken on record and as per the undertaking in the joint compromise memo, the respondent / husband handed over the cash and jewels to the appellant / wife, which was also acknowledged at paragraph-3 of the said order, dated 11.10.2018. It appears that the wife had complained that she could not see her children and all her attempts were failed and hence, the Division Bench has ordered the mother would be allowed to see her children on every alternate Sundays and also the Division Bench has directed the husband (father of the minor child) to deposit Rs.50,000/- each in the name of the minor children for their welfare.



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9. For reporting compliance of the deposit of Rs.50,000/- each in the name of the minors and allowing the wife (mother of the children) to see the children, the matter was posted for compliance.

10. In view of the order passed on 11.10.2018, we find that the joint compromise memo was already taken on record and pursuant to the joint compromise memo, the husband paid the amount and returned the jewels. As per the order passed by this Court, we noticed that the wife also acknowledged the receiving of amount and jewels and hence, we find that the joint compromise memo entered between the parties filed before the Court on 11.10.2018 ends. The learned counsel for the appellant states that the respondent/husband has not deposited the amount as ordered by this Court.

11. Per contra, the learned counsel for the respondent states that the said amount has already been deposited on 23.10.2018 itself. He further stated that the wife has not come to see the children. Now the copy of the Fixed Deposit in the name of the children also filed. We record the compliance on the part of the husband. The compromise memo shall form part of the decree.



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12. We find that the matter is pending for compliance of the order dated 11.10.2018 as extrated supra. Hence, the appeal does not require any further orders. As per the order of this Court dated 11.10.2018 if the wife is willing to see the children they can do so as stated supra.

13. With these observations, this Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

[T.K.R.,J.] [P.B.B.,J.]
08.11.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
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To
The Family Court,
Madurai.



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

am

JUDGMENT MADE IN
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