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C.M.A.No.1373 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.1373 of 2011

L.T.Chandru @ Devendran

... Appellant

Vs.

S.Poonguzhali

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, praying to set aside the order passed by the Additional District and Sessions Judge, Fast Track Court No.1, Poonamallee, made in HMOP.No.78 of 2008 dated 28.02.2011 and consequently allow this appeal for dissolution of marriage.

For Appellant : Mrs.C.S.Monica
for Mr.D.Baskar

For Respondent : Mr.P.Mohan Kumar
for Mr.A.Palaniappan



J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

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The husband is on appeal. Challenge is to the dismissal of his original petition filed in H.M.O.P.No.78 of 2008 substantially on the ground of cruelty, though a wrong provision of law has been stated as the petition is filed under Section 13(1)(i)(b) of the Hindu Marriage Act.

2. The husband sought for divorce. The parties got married on 07.06.2006. It is the claim of the husband that a separate matrimonial house was set up at 7th Cross Street, Anna Nagar, Pattabiram, Chennai – 600 072 in a rented house. In July 2006, the respondent went to her parent's house for 'AdiMaru' and did not come back claiming that the house which has been set up as a matrimonial house was unfit for human habitation.

3. The petitioner husband would state that he was visiting his wife frequently when she was staying in her father's house. According the petitioner, on 21.03.2007, when he went to the father in law's house and insisted her to come to the matrimonial home, her father and her sister kicked him out of the house and abused him in un-parliamentary words and



filthy language. Since his efforts to convince the respondent to resume the matrimonial life in his house rented at 7th Cross Street, Anna Nagar, Pattabiram, Chennai – 600 072 failed, at the insistence of the respondent the petitioner changed his residence to No.38, 1st Main Road, Rajamangalam, Villivakkam, Chennai.

4. It is claimed that whenever there was a dispute between the petitioner and the respondent one Loganathan from Korattur used to come for mediation and threaten the petitioner with dire consequences. It is further claimed that when the petitioner attended a funeral of his colleague the respondent questioned him about the quantum of death benefits that she would get, if the petitioner dies in harness and also asked him as to when he would die. According to the respondent, these questions were asked repeatedly everyday when he came back from the office. On 23.09.2007 at about 9.30 p.m., the respondent, her sister Ranjani and Loganathan badly assaulted him and attempted to hang him from the ceiling fan. Upon hearing the petitioner's cry for help, the landlord and the neighbours broke open the door and saved him. The petitioner also lodged a police complaint on 24.09.2007 regarding the incident. But no action was taken because of



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the influence exerted by Loganathan. The petitioner would claim that his life would be in danger, if he is to resume matrimonial life with the respondent and therefore he should be granted divorce.

5. The respondent wife filed a counter denying the allegations made and contended that it was the second marriage for both the spouses and the house that was fixed by the petitioner immediately after marriage was in an unliveable condition and therefore she did not live there. The allegation that her sister and her father kicked the petitioner and abused him were denied. While admitting the fact that she was gainfully employed, she claims that her monthly salary was only Rs.8,000/-. The rent claimed to have been paid by the petitioner for the house was also denied. It is claimed that Loganathan is the paternal uncle of the respondent and the incident as described by the petitioner that is said to have taken place on 23.09.2007 was denied. The respondent would state that she was ill-treated by the sisters of the petitioner and that she is always ready to resume the conjugal life with the petitioner. It is also contended that the petitioner would take capsules very often and he did not disclose the reasons.



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6. On the above pleadings the learned Family Judge framed the following issue:-

The point for consideration is whether the petition is to the allowed? (*sic*)

7. At trial the petitioner husband examined himself as PW1 and the respondent wife examined herself as RW1. Exs.P1 to P4 were marked on the side of the petitioner husband and Exs.R1 to R6 were marked on the side of the respondent wife.

8. On a consideration of the evidence on record, the learned Family Judge came to a conclusion that the husband has not established his claim of cruelty. The documents that were filed were not in proof of his claim of cruelty. The learned trial Judge found that the respondent had not even placed the complaint that was filed by him after the incident on 23.09.2007 (alleged attempt of murder) and therefore concluded that there is no proof of the allegations made in the petition. On the said finding, the learned trial Judge, dismissed the petition. Aggrieved the present appeal has been filed.



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9. We have heard Mrs.C.S.Monika, learned counsel appearing for the appellant and Mr.P.Mohan Kumar, learned counsel appearing for the respondent.

10. Mrs.C.S.Monika, learned counsel appearing for the appellant would contend that the very behaviour of the respondent wife and the allegations made by her in her proof affidavit which go beyond the allegations made by her in the counter affidavit would show that the allegation of cruelty made by the husband are true.

11. Though the counter statement filed by the respondent does not speak anything about the demand of the petitioner to get married to Ranjani the elder sister of the respondent, in the proof affidavit filed by her, it is claimed that the respondent wanted to marry her elder sister Ranjani. The proof affidavit filed by the respondent wife would show that she is only interested in the job and the pay that is received by the appellant husband. In paragraph No.5 of the proof affidavit, the respondent had stated that since the respondent is the central Government servant she is willing to live with him. She had also depicted the husband as a person of very bad character



by imputing very filthy language to him, when he disclosed his desire to get married to her sister. Pointing out the language that is used, which is in very bad taste, which demeans the very majesty of the justice delivery system, the learned counsel would submit that this by itself would amount to cruelty, entailing the appellant husband to a decree for divorce.

12. Contending contra Mr.P.Mohan Kumar, learned counsel appearing for the respondent wife would submit that there is no evidence for the claims that had been made in the petition regarding cruelty. According to him, in the absence of proof of allegations made in the petition, the respondent husband would not be entitled to divorce. He would also vehemently contend that the appellant husband has not discharged the burden of proving that the respondent wife has committed the acts of cruelty as alleged by him in the petition.

13. We have considered the rival submissions.

14. No doubt, the appellant husband has not placed enough material to prove the allegations made by him in the petition for divorce. The



allegations of cruelty that were levelled by the husband are that the refusal of the wife to come and live with him; the ill-treatment meted out to him by the father-in-law and the elder sister of the wife when he required the wife to come and live with him; the persistent questioning of the wife as to the benefits that she would get, if he is to die in harness and the incident on 23.09.2007, which according to him was an attempted murder.

15. As rightly pointed out by the learned counsel for the respondent wife, except the oral testimony of the husband there is no evidence in support of these claims. The submission of the learned counsel for the appellant is that the oral evidence is also an evidence, unless it is shown that the oral evidence is un-trustworthy, it can be relied upon. The learned counsel for the appellant has rightly argued that the very proof affidavit that has been filed by the wife would demonstrate the real nature and character of the respondent wife. The very allegations in paragraph Nos.4 and 5 of the proof affidavit by itself would demonstrate that the respondent wife is not a normal persons but, she is imminently interested in tarnishing the image of the husband before the Court.



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16. The language used in Courts should be refined, whether the proceeding is a matrimonial proceeding or a criminal proceeding. The parties to the matrimonial proceedings do not have a license to degrade the Court and de-generate the legal profession. The language in paragraph No.4 of the affidavit shocks us. We do not want to repeat it in our order. It is so vulgar that we desist from reproducing the language that has been used in the proof affidavit. As both of us are acquainted with the language in the proof affidavit viz., tamil, we have understood the implication of its usage.

17. We conclude that usage of such a language that too in a Court proceeding itself would demonstrate the character of the wife and shows that she will go to any extent to defame and to show the husband in a very poor light. Most of the allegations in paragraph No.4 are not part of the pleadings, they have been introduced only in the evidence. As already observed, we are sure that this husband will have a hell of a life if this marriage is allowed to continue.

18. We are therefore convinced that the wife by her attitude and by her conduct had shown that no reasonable person can be expected to live



with her and she will be a very cruel wife. Hence, we are satisfied that the husband is entitled to divorce on the ground of cruelty, solely based on the allegations made in paragraph Nos.4 and 5 of the proof affidavit of the wife that has been filed before the trial Court. Unfortunately, the learned Family Judge had not taken note of the intemperate and vulgar language used by the wife in the proof affidavit and had treated this petition as any other petition on the ground of cruelty.

19. Hence, the judgment of the learned trial Judge is liable to be set aside and it is accordingly set aside. This Civil Miscellaneous Appeal will stand **allowed** granting divorce on the ground of cruelty. No costs.

(R.S.M., J.) (R.S.V., J.)
12.04.2024

dsa

Index : No

Internet : Yes

Neutral Citation : No

Speaking order



To

The Additional District and Sessions Judge,
Fast Track Court No.1, Poonamallee.

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