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C.M.A.Nos.2809 & 2810 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	23.07.2024
PRONOUNCED ON :	10.09.2024

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

C.M.A.Nos.2809 & 2810 of 2015
and C.M.P.Nos.9667, 9668 & 7197 of 2024
AND Crl.R.C.No.1142 of 2015

B.Senthil alias B. Pratheep Kumar

... Appellant in both C.M.A's.
/ Petitioner in Crl.R.C.

VS.

T.S.Kasthuri

... Respondent in both C.M.A's.
/ Respondent in Crl.R.C.

PRAYER in C.M.A.No.2809 of 2015: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, to set aside the common judgment and decree made in so far as H.M.O.P.No. 254 of 2010 dated 23.06.2015 on the file of the Principal Family Court, Coimbatore and to allow the Civil Miscellaneous Appeal to pass a judgment and decree dismissing the HMOP filed by the respondent.

PRAYER in C.M.A.No.2810 of 2015: Civil Miscellaneous Appeal filed



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under Section 19 of the Family Court Act, to set aside the order made in H.M.O.P.No. 434 of 2011 dated 23.06.2015 on the file of the Principal Family Court, Coimbatore and to allow the Civil Miscellaneous Appeal to pass a judgment and decree granting Divorce, by dissolving the marriage solemnised between the appellant and the respondent on 27.08.2007 at Trichy.

PRAYER in Crl.R.C.No. 1142 of 2015: Criminal Revision Case filed under section 397 of Code of Criminal Procedure Code, to set aside the common judgment and decree made in so far as M.C.No.71 of 2010 dated 23.06.2015, on the file of the Principal Family Court, Coimbatore and to allow the Criminal Revision Petition to pass an order dismissing the Maintenance case filed by the respondent herein.

In all cases:

For Appellant : Mr. R.Sankarasubbu
in both appeals

For Petitioner
in Crl.R.C.No.1142 of 2015 : Mrs. Jothilakshmi

For Respondent : Mr.B.Nedunchezhiyan
in both appeals
and in Crl.R.C.No.1142 of 2015

COMMON JUDGMENT

(Judgment of this Court made by **J. NISHA BANU, J.**)

These Civil Miscellaneous Appeals have been preferred as against



the common order passed in H.M.O.P.No.434 of 2011 and H.M.O.P.No.254 of 2010 on the file of the Principal Judge, Family Court, Coimbatore dated 23.06.2015.

2. The appellant/husband has filed the petition in H.M.O.P.No.434 of 2011 to dissolve the marriage and the respondent/wife has filed the petition in H.M.O.P.No.254 of 2010 for restitution of conjugal rights and a petition in M.C.No.71 of 2010 has been filed seeking for maintenance and the trial Court has granted Rs.12,000/- (Rupees Twelve Thousand only) as interim maintenance to the respondent/wife vide order dated 23.06.2015. Meanwhile, the appellant filed Crl.R.C.No.1142 of 2015, to set aside the common judgment and decree made in M.C.No.71 of 2010 dated 23.06.2015. Aggrieved by the above said orders, the present appeals have been preferred by the appellant/husband. C.M.A.No. 2809 of 2015 is arising out of H.M.O.P.No. 254 of 2010 and C.M.A.No. 2810 of 2015 is arising out of H.M.O.P.No. 434 of 2011.

3. The case of the appellant/husband is that the marriage between the appellant and the respondent took place on 27.08.2007 at Thirchirapalli



as per Hindu rites and customs. After marriage, they lived at Indira Nagar, Bangalore. The marital life between the appellant and the respondent was not satisfactory and very often the respondent/wife quarrelled with the appellant/husband and also with his neighbours and friends, thereby insisting him to send the respondent to her parental house situated at Coimbatore.

4. Further, the respondent/wife frequently threatened the appellant by stating that she will commit suicide if her demand was not met out. Meanwhile, the appellant/husband got transferred from Bangalore to Chennai. Even thereafter, her behaviour remained unchanged and she lodged a false complaint against the appellant, as a result of which, the police had assaulted the appellant.

5. Finally on 19.12.2009, the respondent/wife lodged a false complaint before the W-2 All Women Police Station, Madipakkam and they advised the parties for reunion. The respondent with an intention to harass, included her in-law's names by lodging false complaint against them. Therefore, the respondent caused cruelty to the appellant. As a result



of which, the appellant/husband filed a petition seeking for grant of divorce.

6. The facts stated by the appellant are not disputed by the respondent. At the time of marriage, the appellant was working at Bangalore and he never showed any love and affection towards the respondent. The appellant always demanded dowry from the parents of the respondent. Since his demand was refused, he assaulted the respondent as a result of which, she sustained severe injuries and underwent treatment at Manipal Hospital, Bangalore on 31.12.2007. Thereafter, the respondent was driven out from her matrimonial home.

7. The learned counsel for the respondent submitted that when the appellant and the respondent were residing at Chennai, the appellant/husband kicked the respondent's mother without any respect, and the respondent tolerated the attitude of the appellant with a fond hope that he would mend his ways one day or the other. But the same ended in vain. The appellant was suffering from depression. Often he calls the father of the respondent in odd hours and asked him to take the respondent with him to his house. Unable to tolerate the harassment of the appellant, she lodged a complaint before the Adambakkam Police Station on 11.11.2008 and again



before the W-2 Madipakkam All Women Police Station on 19.12.2009.

8. Furthermore, the police officials have also enquired into the matter and advised the appellant to live together with the respondent. Since they have no issues out of the wedlock, the respondent asked the appellant to have medical treatment but he refused to do so. The main grievance of the respondent is that even when she is willing to live with the appellant/husband as a dutiful wife, the appellant has filed the petition seeking divorce. Therefore, the respondent filed a petition for restitution of conjugal rights and a maintenance case in M.C.No.71 of 2010.

9. Before the trial court, the petitions were jointly tried along with M.C.No.71 of 2010. On the side of appellant, he was examined as P.W.1 and marked Ex. P1 to P15. Whereas, the respondent R.W.1 to R.W.4 were examined and marked Ex. R1 to R34.

10. After analysing the evidences adduced on both sides, the Trial Court has dismissed the petition filed by the appellant/Husband for granting divorce and allowed the petition filed by the respondent/wife for restitution of conjugal rights. Further, the Trial Court also awarded maintenance of



Rs.12,000/- per month and the same was also challenged through Crl.R.C.No.1142 of 2015 on the file of this Court seeking revision of the maintenance Award granted by the Court below vide order dated 23.06.2015.

11. This Court, vide an interim order dated 30.10.2015, imposed a conditional order to pay 50% of the maintenance amount i.e. Rs.6,000/- per month (Rupees Six Thousand only) to the credit of M.C.No.71 of 2010 and till date, maintenance amount of Rs.12,50,000/- (Rupees Twelve Lakhs Fifty Thousand only) has been paid by the appellant to the respondent.

12. This Court heard both sides and perused the materials available on records.

13. The point for determination in C.M.A.No. 2809 of 2015 is that, 'whether the respondent/wife is entitled to decree for Restitution of Conjugal Rights as against the appellant?' and the point for determination in C.M.A.No. 2810 of 2015 is that 'whether the appellant/husband is entitled to decree for divorce on the ground of cruelty as against the respondent/wife?'



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14. In this case, there is no dispute in respect of relationship of the parties as husband and wife living without children. The appellant/husband has filed petition for granting divorce on the ground of cruelty and the respondent/wife also filed a petition for restitution of conjugal rights. Both the petitions were tried together along with the M.C.No.71 of 2010 and the Trial Court has dismissed the divorce petition and allowed the petition of restitution of conjugal rights and awarded a maintenance of Rs.12,000/- per month and same was also challenged through revision petition in Crl.R.C.No.1142 of 2015. The said revision also tagged along with these appeals and heard together.

15. On careful perusal of the evidence adduced on both sides, it is clear that there is misunderstanding between the appellant and the respondent and so she had given complaints before the Adambakkam Police station on 11.11.2008 and again before W-2 Madipakkam All Women Police Station on 19.12.2009. Within a period of one month, two complaints were given on two different dates before two police stations. Further as per the evidence of P.W.1, the respondent has threatened the appellant of committing suicide frequently. Therefore the said acts of the



respondent/wife would cause cruelty to the appellant/husband.

16. Though the respondent/wife has filed the petition for restitution of conjugal rights , the evidence of R.W.1 shows that the respondent is not ready to live with the appellant and it is admitted by both the parties that they are living separately from the year 2010 onwards. Therefore, the long separation, non co-habitation and the complete break down of all meaningful bonds and the existing bitterness between the appellant and the respondent has to be treated as cruelty under Section 31(1)(a) of 1955 Act, as per the dictum laid down by the Hon'ble Supreme Court in ***Shri Rakesh Raman Vs. Smt. Kavita Reported in 2023 SSC online SC 497***. Therefore, the long separation and non-cohabitation could not be brushed aside while considering the petition for divorce.

17. The Trial Court failed to consider the aspects of making threats to commit suicide and by giving false complaint as against the appellant/husband and also failed to consider the long separation of the parties. Therefore, the fair and decreetal order passed by the Trial Court are liable to be set aside.

18. During the course of arguments, the learned counsel appearing for



the appellant argued that the appellant/husband is willing to pay permanent alimony of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the respondent wife. The learned counsel for the respondent, after consulting with the respondent represented that, the respondent is not willing to receive the permanent alimony.

19. Perusal of the order passed in M.C.No.71 of 2010 reveals that the trial Court has granted Rs.12,000/- (Rupees Twelve Thousand only) as interim maintenance to the respondent/wife. It can be averred that a sum of Rs.12,50,000/- (Rupees Twelve Lakhs Fifty Thousand only) has been paid as interim maintenance by the appellant/husband to the respondent/wife. Considering the facts and circumstances of the case and relationship of the parties and taking into consideration the maintenance Award passed by the Principal Family Court, Coimbatore in M.C.No.71 of 2010, this Court is of the opinion that it would be appropriate to award a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) towards permanent alimony payable to the respondent/wife, which is not inclusive of the earlier maintenance amount of Rs.12,50,000/- (Rupees Twelve Lakhs Fifty Thousand only) paid by the appellant/husband to the respondent.



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20. In view of the above, the interim maintenance award of Rs.12,000/- per month granted in M.C.No.71 of 2010 is not further maintainable. Accordingly, the order passed by the Trial Court in M.C.No.71 of 2010 awarding maintenance to the respondent/wife for a sum of 12,000/- per month is hereby set aside. Therefore, Crl.R.C.No.1142 of 2015 filed by the petitioner/husband is stands disposed of, in view of granting permanent alimony of Rs.15,00,000/- payable to the respondent/wife by the appellant/husband.

21. In the result,

(i) the appeal in C.M.A.No.2809 of 2015 is allowed and the fair and decreetal order passed by the Trial Court in H.M.O.P.No.254 of 2010 dated 23.06.2015 on the file of the Principal District Judge, Family Court is set aside and the original petition is dismissed.

(ii) the appeal in C.M.A.No.2810 of 2015 is allowed. The fair and decreetal order passed by the Trial Court in H.M.O.P.No.434 of 2011 dated 23.06.2005 on the file of the



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Principal District Judge, Family Court is hereby set aside and the original petition is allowed.

(iii) The marriage solemnized between the appellant and the respondent dated 27.08.2007 at Thiruchirapalli is dissolved by granting decree of divorce.

(iv) The appellant is directed to pay the sum of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) to the respondent/wife towards permanent alimony within a period of three months from the date of receipt of copy of this judgment.

(v) The above said amount has to be deposited by the appellant before the Trial Court within the prescribed time frame and after such deposit, the Trial Court has to inform the same to the respondent/ wife, thereby enabling her to withdraw the said amount. No costs. Consequently, connected miscellaneous petitions are also closed.

(J.N.B,J.) (P.D.B., J.)

10.09.2024

Index:Yes/No



C.M.A.Nos.2809 & 2810 of

Speaking Order : Yes/No
sts

Neutral Citation Case : Yes/No

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To:
The Principal Family Judge,
Coimbatore.



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C.M.A.Nos.2809 & 2810 of

J. NISHA BANU, J.,
and
P.DHANABAL, J.,

sts

Common Judgment Order made in
C.M.A.Nos.2809 & 2810 of 2015
AND CrI.R.C.No.1142 of 2015

Dated:
10.09.2024