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C.M.A.No.289 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

C.M.A.No.289 of 2015

J.T.Suresh

... Appellant

vs.

S.Nirmala

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the order dated 12.08.2014 passed in H.M.O.P.No.2260 of 2010, on the file of the Principal Family Court, Chennai.

For Appellant : Mrs. A.B. Fathima Sulthana

For Respondent : No Appearance

J U D G M E N T

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

Challenging the order of dismissal of the petition filed by the



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husband/ appellant in H.M.O.P.No.2260 of 2010, on the file of the Principal Family Court, Chennai dated 12.08.2014, the appellant has preferred the present Civil Miscellaneous Appeal.

2. Mrs. A.B. Fathima Sulthana, learned counsel for the appellant/husband canvassed the following facts:-

2.1. The marriage between the appellant/husband and the respondent/wife was solemnized on 13.06.2008 in Kolathur, Chennai, as per Hindu rites and customs. According to the learned counsel, the expenses incurred for the marriage was shared by both the parties. During the marriage ceremony, the appellant provided gold thali weighing 4.5 grams and a wedding saree worth Rs.8000/- to the respondent. Additionally, the respondent's parents presented 22 sovereigns of gold jewellery and other household items as Stridhana to the respondent.

2.2. After marriage, both the appellant and the respondent resided in the appellant's parents home at Chennai and there is no issues out of the wedlock. It is the contention of the learned counsel for the appellant that,



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starting from the initial days of marriage, the respondent expressed lack of affection and care for the appellant and frequently picked up quarrel with him and his family members, by using abusive language, which at times even led to throwing of utensils on the appellant.

2.3. The learned counsel further stated that since the respondent/wife wanted to set up a separate home rather residing along with the appellant's parents, the appellant took steps to rent a separate house at Perambur. In spite of the efforts taken by the appellant, the respondent's demeanor continued to be the same. On 15.01.2009, the respondent began to quarrel with the appellant and, with the assistance of her family members, she filed a false complaint against the appellant at the Peravallore All Women Police station. After investigation, the police advised the respondent and her family to withdraw the complaint lodged against the appellant and thereafter, the said complaint was withdrawn by the respondent and thereafter, the respondent returned back to live with the appellant.

2.4. Later on 03.05.2009, without informing the appellant, the



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respondent /wife went to her mother's house. The appellant searched for the respondent at all places and when he went to the house of the respondent and enquired about his wife, there was no proper reply given by the family members of the respondent. On the same day, at about 23:00 hrs, the respondent and her family members went to the appellant's home and abused the appellant in unparliamentary words in front of the co-tenants and the respondent returned back to her mother's home. Thereafter, the appellant filed O.P.No.1359/2009 seeking for the restoration of conjugal rights. This petition came to be dismissed for default vide order dated 17.04.2011, since both the parties were not present before the Court below. Thereafter, the appellant and the respondent moved to Bangalore to restart their marital life.

2.5. According to the learned counsel for the appellant, even after moving to Bangalore, the attitude of the respondent/wife did not change. He contended that the respondent/wife went to the workplace of the appellant in Bangalore and physically assaulted him and also used offensive language against him. She also threatened him that she would accuse him falsely of having an illicit relationship with his colleagues and subsequently, the



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respondent/wife also accused the appellant with the above allegations. As a result of which, the reputation of the appellant was tarnished. Therefore, the appellant decided to relocate to Bombay and search for a new job, thereby leaving the respondent at her parental home.

2.6. It is the contention of the learned counsel for the appellant that the respondent/wife influenced the Managing Director of the appellant's company and threatened the entire family members of the appellant that with the help of the local Inspector of K.R.Puram Police Station, who is a college senior of the respondent, she would file petitions under the Domestic Violence Act, Dowry Prohibition Act, Abatement to Suicide and cruelty if the appellant does not continue his work at Bangalore and lead matrimonial life with the respondent.

2.7. Thereafter, the appellant's Managing Director also threatened the appellant and sent a flight ticket to him stating him to return to Bangalore from Bombay. Once the appellant returned to Bangalore, he was detained in a police station for over two days. When his family members



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sought the whereabouts of the appellant, they were told that an FIR would soon be filed against the appellant based on the respondent's complaint regarding cruelty caused by his brutal assault. In support of the said assault, the respondent submitted a medical certificate and some photographs which did not even reveal the face of the respondent clearly. Hence, the appellant filed a petition in H.M.O.P.No.2260 of 2010 for dissolution of marriage on the ground of cruelty. The learned Court below, without considering the above aspects, rejected the decree of divorce vide order dated 12.08.2014. Challenging the same, the appellant has preferred the present Civil Miscellaneous Appeal.

3. Heard the learned counsel for the appellant and perused the materials placed before this Court. Today, when the matter is taken up for hearing, there is no representation on behalf of the respondent.

4. Before the trial Court, on the side of the appellant/husband, the appellant himself was examined as P.W.1 and exhibits Ex.P.1 to Ex.P.10 were marked and on the side of the respondent/ wife, the respondent herself



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was examined as RW1 and one exhibit was marked. The Trial Court, after considering the evidence adduced on both sides, rejected the petition filed by the petitioner/husband.

5. Admittedly, there is no dispute in respect of the relationship of the parties and the marriage that took place on 13.06.2008. It is also an admitted fact that due to wedlock no child was born to them. The husband, who is the appellant in this appeal, has filed a petition before the Trial Court for granting decree of divorce alleging that the respondent/wife made wordy quarrel with him and she did not respect the appellant and his family members and without any valid reasons, left from the matrimonial home. In order to prove the case of the appellant, the husband was examined was P.W.1 and in his deposition, he has stated about the cruelty caused to him and he further deposed that the respondent frequently quarrelled with him and left from the matrimonial home, without giving any valid reasons and also suspected the character of the appellant.

6. It can also be observed that the respondent/wife did not perform her



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duty as a wife and she left from the matrimonial home and refused to return back to matrimonial home, which caused mental cruelty to the appellant.

In ***Parimala Devi vs. P. Paneerselvam reported in 2021 (2) TNCJ 1007 (Mad)***, wherein this Court has held that the act of wife disrespecting the husband and his family members, non-performance of her duties as a wife, attempting to commit suicide and insisting for separate residence by the wife, all amounts to 'cruelty' and therefore, the husband is entitled for 'divorce'. In the present case on hand, the appellant has proved that the wife disrespected the appellant and his family members and also did not perform her duty as a dutiful wife. Therefore, the above said case law is applicable to the present facts of the case. Moreover, it is admitted by both the parties that they were separated from the year 2009 and there is no conjugal relationship between the parties.

7. Even though the respondent/wife has submitted that she is willing to reunite with her husband, she has filed frivolous complaints against the appellant and against his family members, which is still pending and ultimately caused mental cruelty to the appellant and his family. Therefore,



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there is no chance for re-union. Moreover, there is long separation between them which also comes under the purview of 'cruelty' and hence, the appellant is entitled to divorce. The Hon'ble Supreme Court has held in ***Shri Rakesh Raman vs. Smt. Kavita reported in Civil Appeal No.2012 of 2013, in para 18*** as follows:-

"18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as 'cruelty' under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock".



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8. In the present case on hand, the Trial Court has failed to consider that the parties are separated from the year 2009 and the respondent/wife failed to perform her duties as wife and thereby caused 'cruelty'. Therefore, the appellant is entitled to the relief of divorce on the ground of 'cruelty' and the respondent/wife is not entitled to the relief of restitution of conjugal rights. This Court is of the opinion that the order passed by the Trial Court is liable to be set aside.

9. In the result, this Court is inclined to set aside the order dated 12.08.2014 passed in H.M.O.P.No.2260 of 2010 on the file of the Principal Family Court, Chennai. The marriage solemnized between the appellant and the respondent on 13.06.2008 is hereby dissolved. Accordingly, the Civil Miscellaneous Appeal stands allowed. No costs.

10. However, considering the nature, facts and circumstances of the case, it is appropriate to direct the appellant to pay a sum of Rs.10 lakhs to



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the respondent/wife as permanent alimony and accordingly, the appellant/
husband is directed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs
only) to the respondent/wife as permanent alimony within a period of 3
months from the date of this judgment.

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

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Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

Neutral citation: Yes/No

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