



C.M.A.Nos.3318 of 2012 and 70 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.Nos.3318 of 2012 and 70 of 2017
and MP.No.1 of 2012

D.Bharathanambi
S/o.R.Damadharan ... Appellant in both appeals

Vs.

P.Kanakalakshmi
W/o.D.Bharathanambi ... Respondent in both appeals

Prayer in CMA.No.3318/2012: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court against the order dated 12.08.2012 made in O.P.No.1618 of 2010 passed by the II Additional Family Court, Chennai.

Prayer in CMA.No.70/2017: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court against the order dated 23rd August 2016 in O.P.No.3568 of 2012 passed by the III Additional Family Judge,



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Family Court at Madras.

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For Appellant in both appeals : Mr.D.Nellaiappan

For Respondent in both appeals: No appearance

COMMON JUDGMENT

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

Both the appeals have been filed by the appellant/husband one, challenging the judgment and decree dated 23.08.2016 passed in O.P.No.3568 of 2012 by the III Additional Family Court at Chennai, dismissing the petition filed by him for divorce and another, challenging the judgment and decree dated 12.08.2012 passed in O.P.No.1618 of 2010 by the II Additional Family Court at Chennai, allowing the petition filed by the respondent/wife for restitution of conjugal rights.

2. The case of the appellant is that the appellant and the respondent got married on 28.10.2002 in Chennai. After marriage, they lived together in Chennai. Both of them are physiotherapist. The respondent is always a suspicious person and she dictated that the appellant should not treat women patients. She appeared to be mentally disturbed for no valid reason. The appellant adjusted and lead a normal



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life with her. However, the respondent was giving trouble to the appellant while he was in office and he was not able to discharge his duties as lecturer in his college and to run the clinic. She used to shout at night and odd hours, hurt herself and threatened him that she would call the police. Even when her parents intervened and advised her, she did not listen to their advise. The respondent used to tell that she did not like the appellant and wanted to leave him once and for all and she left the matrimonial home on her own in March 2006. While leaving home, she took all her jewels and articles. The respondent got job in a hospital in Andhra Pradesh in August 2006. She did not even bother to inform the appellant or her parents before leaving to Andhra Pradesh. She sent a notice on 22.11.2020 making baseless and false allegation against the appellant, calling the appellant to pay Rs.5 lakhs towards return of dowry, marriage expenses and to pay Rs.5 lakhs towards damages, return all the jewels, silverwares and household articles and to agree to file a petition for divorce on mutual consent. The appellant sent a reply, agreeing for mutual consent. However, the respondent filed O.P. for restitution of conjugal rights contrary to her notice dated 22.01.2010. The respondent had deserted him and had caused both mental and



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physical cruelty to him. Hence, the appellant filed a petition for divorce.

3. The respondent had filed a petition in O.P.No.1618 of 2010 seeking for restitution of conjugal rights stating that she was cooperative with the respondent/appellant herein. However, the respondent/appellant did not show any interest in matrimonial life and caused mental and physical cruelty to her. On 28.12.2004, the respondent/appellant herein picked up quarrel with her without any reason. Therefore, she left the matrimonial home on 28.12.2004 and issued legal notice on 22.1.2010 for reunion. She wanted to live with the respondent/appellant. Hence, she had filed the petition for restitution of conjugal rights.

4. The Family Court dismissed the petition filed for divorce and allowed the petition filed by the respondent/wife seeking restitution of conjugal rights. Hence, the present appeals challenging both the judgments and decrees passed by the Family Court.

5. Heard the learned counsel for the appellant. Though the respondent entered appearance through counsel, there is no representation for the respondent.

6. It is seen from the records that the court notice sent to the respondent was served on 20.12.2012. Thereafter, the court notice was



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again ordered on 24.01.2017 and the same was served on the respondent on 20.02.2017. Subsequently, the private notice ordered by this Court on 08.12.2022 was served on the respondent on 21.12.2022.

6. When the matter was called on 14.03.2024, Mr.C.Krishna Karthi, learned counsel representing Mr.C.Uma Shankar stated that they have filed "No Instructions" memo dated 18.01.2024. It has been stated in the said memo that the counsel for the respondent issued notice to the respondent to contact her counsel immediately and to give instructions. The respondent had received the said notice by signing the acknowledgement card but she has neither sent any reply nor contacted the counsel for the respondent till date. Hence, they have reported 'no instructions'. It is also seen from the notice sent by the counsel for the respondent to the respondent that the counsel contacted the respondent several times through mobile and also sent whatsapp messages to her, for which, there was no response. A copy of the notice sent by the counsel and the acknowledgement for receipt of the same was also filed by the counsel for the respondent.

7. From the above, it is seen that the respondent is not interested in prosecuting the appeals. Though the petition filed by the



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respondent/wife seeking restitution of conjugal rights was allowed by the Family Court, the respondent does not show any interest in joining with the appellant. The respondent left the matrimonial home on 28.12.2004 and both the parties lived together only for two years and are living separately for the past twenty years. They have no issues. There is hardly any chance of the parties living together. Thus, an adverse inference could be drawn as against the respondent-wife that she had deserted the appellant and could have caused mental cruelty to the appellant. Though the respondent filed a petition for restitution of conjugal rights, she did not show any interest in joining with the appellant and had not instructed the counsel also inspite of receipt of the notice sent by her counsel. Therefore, we are of the view that the judgment and decree passed by the Family Court allowing the petition filed by her for restitution of conjugal rights have got to set aside.

8. Considering the circumstances of the case and that the respondent/wife has not appeared before this Court to prosecute the appeals and the parties are living separately for nearly twenty years, and according to us, long separation itself amounts to cruelty and therefore, we have no other option except to pass a decree of divorce.



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9. In the result, both the Civil Miscellaneous Appeals are allowed.

The impugned judgments and decrees passed in O.P.No.1618 of 2010 dated 12.08.2012 and O.P.No.3568 of 2012 dated 23.08.2016 are set aside. The marriage between the appellant/husband, D.Bharatha Nambi and the respondent/wife, P.Kanakalakshmi, held on 28.10.2002 at New Woodlands Hotel Private Limited, Dr.Radhakrishnan Road, Mylapore, Chennai - 600004 as per Hindu rites and customs, is dissolved by a decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B., J.) (R.S.V., J.)
02.12.2024

vsi

To

- 1.The II Additional Family Court, Chennai.
2. The III Additional Family Judge, Family Court at Madras.



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