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C.M.A.No.2652 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

and

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A.No.2652 of 2019

S.Narayanan

S/o L.M.Swaminathan

... Appellant

Vs.

Citha Aru Bakkiya Valli @ A.Priya

W/o S.Narayanan

... Respondent

Prayer: The Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984, to set aside the judgment and decretal order dated 20.09.2017 in H.M.O.P.No.1365 of 2015 passed by the learned principal Family Judge, Coimbatore.

For Appellant : Mr.S.N.Ravikumar

For Respondent : No appearance

JUDGMENT

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

This appeal has been filed by the appellant/husband challenging order



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dated 20.09.2017 in H.M.O.P.No.1365 of 2015 passed by the learned Principal

Family Judge, Coimbatore, dismissing the petition filed by him for divorce.

2 (i) The marriage between the appellant and the respondent took place on 10.07.2009 at Karaikudi District. After marriage, both lived at Ambathur along with appellant's parents. Out of wedlock, a male child, Vignesh was born on 29.04.2010. From the time of marriage, the respondent was very adamant and insisted for separate house. The appellant is the only son of his parents, who brought him up with great difficulty with their meagre income and now depending upon the appellant. Even though the appellant's mother did all the household work, the respondent scolded her mother-in-law in unparliamentary words. The respondent's father's brother-in-law, who is the well wisher of the family also advised the respondent but she did not heed to the advise. The respondent had falsely alleged connection of his mother with the appellant's father's brother who is supporting their family and thereby assassinated the character of the appellant's mother which is intolerable to the appellant. In order to sever the connection of the appellant with his mother, she used this cheap and ugly story among the appellant's relatives and friends. The respondent also blackmailed the petitioner that she would commit suicide.

(ii) The respondent went to her parents house for giving birth and after



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the birth, she did not return to the matrimonial house inspite of several requests of the appellant and his family members. The respondent went to kumbabishekam at Karaikudi and on knowing the same, the appellant met her there and on counseling by elders, the respondent agreed to return to matrimonial home only on 20.08.2010. After returning to matrimonial home, the respondent started her usual behaviour giving torture to the appellant and his family members. On 11.10.2012, she left the matrimonial home with the child by taking all her jewels and belongings. The appellant requested her not to go but she was very adamant and left the matrimonial home.

(iii) On 12.10.2010, the respondent came along with her parents and shouted against the appellant and his parents with unparliamentary words and they also indiscriminately assaulted the appellant's mother and the appellant and the appellant's mother sustained injury on her forehead and temple. Though the respondent and her parents came to the appellant's house and assaulted the appellant and his parents, they gave a police complaint at Ambattur police station as if they were assaulted by the appellant and his parents since a close relative of the respondent's family was working as sub-inspector of police at Ambattur. The appellant and his family members were threatened with dire consequences and also threatened that they will be put up with false cases of dowry harassment and domestic violence against women etc.



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(iv) The appellant condoned the act of the respondent but does not like the respondent's parents poking their nose into the life of the appellant and the respondent. Hence, he filed a petition under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in HMOP No.356 of 2010. Several counseling were conducted but all ended in failure since the respondent is very adamant. Hence, the appellant was forced to withdraw the said HMOP. The respondent filed a petition for maintenance at Coimbatore with false averments in M.C.No.142/2011 . The marriage of the appellant and the respondent was irretrievably broken. The act of the respondent had caused cruelty and mental agony to the appellant. Hence, the appellant has filed a petition for divorce on the ground of cruelty and desertion.

3. Before the trial Court, the appellant examined himself as P.W.1 and marked Exs.P1 to P3, and the respondent examined herself as R.W.1 and no document was marked.

4. The trial Court found that the appellant/husband had failed to establish the act of cruelty committed upon him by the respondent and dismissed the petition filed for divorce.



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5. Learned counsel for the appellant would state that the learned trial Judge failed to consider the petition ignoring the fact that the petitioner and the respondent have been separately living for more than 10 years. Learned counsel failed to appreciate the evidence of the appellant that the respondent was adamant that the appellant should leave his aged parents and set up a separate matrimonial home. Learned counsel would further state that the respondent had not established any just cause for staying away from the appellant and the trial Court ought to have granted divorce on the ground of desertion and cruelty.

6. Learned counsel for the appellant would state that the respondent is working in I.T. Company and earning good salary. Learned counsel would further state that the appellant is also paying the maintenance regularly as on today and for the past more than 13 years they are living separately. Hence, the learned counsel would pray to set aside the order passed by the trial Court and to grant a decree of divorce.

7. Heard the learned counsel for the appellant. Though several opportunity was given, there was no representation for the respondent. Perused the materials available on record.



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8. The undisputed facts are that the marriage between the appellant and the respondent had taken place on 10.07.2009 and they lived together till 11.10.2010. A male child, Vignesh was born to them on 29.04.2010. Now, the child is aged about 14 years. The appellant and the respondent are living separately for more than 13 years.

9. It is seen from the records that the matter was referred to mediation attached to this Court by order dated 05.09.2019 and the report of the mediation dated 03.12.2019 would reveal that both the parties appeared before mediation on 02.12.2019 and no settlement could be reached between the parties.

10. Though the matter was listed several times, giving opportunity for the respondent, for the last four occasions, there was no representation for the respondent. Even today, there is no representation for the respondent.

11. It is to be noted that before the trial court, though the respondent/wife denied all the allegations made by the appellant against her and that she is ready and willing to live with the appellant, the respondent has not filed any petition seeking restitution of conjugal rights to prove her



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intention to join her husband. Thus, adverse inference could be drawn as against the respondent that she could have caused mental cruelty to the appellant. Therefore, we are of the view that the trial Court erred in coming to the conclusion that the appellant has not proved the charges of cruelty of causing mental injury by the respondent.

12. Furthermore, it is pertinent to note that the parties lived together barely for one and a half years and they are living separately for more than thirteen years. The respondent/wife is working in I.T. Company. There is hardly any chance of their living together even if they are reunited by a court's order.

13. Considering the circumstances of the case and that the respondent/wife has also not filed any petition for restitution of conjugal right and that there was no representation for the respondent before this court either in person or through counsel though several opportunity was given to the respondent, We are of the opinion that it will not be possible for the parties to live together and therefore, there is no purpose in compelling both the parties to live together and the best course is only to dissolve the marriage by passing a decree of divorce. However, we are of the opinion that the appellant-husband



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should be directed to pay a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only)

in the name of his son, Vignesh by way of permanent alimony.

14. In the result, the Civil Miscellaneous Appeal is allowed. The impugned judgment and decree dated 20.09.2017 are set aside. The marriage between the appellant/husband, S.Narayanan and the respondent/wife, Citha Aru Bakkiya Valli @ Priya, is dissolved by a decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. The appellant/ husband is directed to deposit a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) in the name of his son, Vignesh, in a fixed deposit scheme, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondent /wife shall withdrawn the interest accrued thereon once in three months till the child attains majority. No costs.

(J.N.B., J.) (R.S.V., J.)
08.11.2024

Index:Yes/No
Speaking/Non-speaking order
vsi
The Principal Family Judge, Coimbatore.

J. NISHA BANU, J.
and



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R.SAKTHIVEL, J.

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