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C.M.S.A.No.3 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.S.A.No.3 of 2015

Arunprasath A

... Appellant

Vs.

Thenmozhi V

... Respondent

PRAYER: Civil Miscellaneous Second Appeal filed under Section 100 of the Civil Procedure Code, 1908 against the judgment and decree passed in C.M.A.No.13 of 2013 dated 18.07.2014 on the file of the Principal District Judge, Cuddalore in confirming the judgment and decree passed in H.M.O.P.No.114 of 2010 dated 14.02.2013 on the file of the Principal Subordinate Judge, Cuddalore.

For Appellant : Mr.P.K.Harinath Babu

For Respondent : Mr.N.Suresh

JUDGMENT

This appeal has been filed by the husband, aggrieved by the concurrent findings of the Courts below.



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2. The appellant filed O.P. for dissolution of marriage against the respondent, who is his wife in H.M.O.P.No.114 of 2010. The respondent also filed H.M.O.P.No.110 of 2011 before the very same Family Court, seeking for restitution of conjugal rights. The Family Court by a common judgment and decree dated 14.02.2013 passed in H.M.O.P.Nos.114 of 2010 and 110 of 2011 dismissed the petition filed by the husband, seeking for dissolution of marriage and allowed the petition filed by the wife, seeking for restitution of conjugal rights.

3. Aggrieved by the judgment and decree dated 14.02.2013 passed by the Principal Subordinate Judge, Cuddalore, the husband filed C.M.A.Nos.13 and 14 of 2013 before the first appellate Court. The first appellate Court by its common judgment and decree dated 18.07.2014 passed in C.M.A.Nos.13 and 14 of 2013 confirmed the findings of the Trial Court by dismissing the appeals filed by the husband.

4. Aggrieved by the concurrent findings of the Courts below, this C.M.S.A. has been filed as against C.M.A.No.13 of 2013.



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5. Separate C.M.S.A. was filed in C.M.S.A. No.39 of 2014 by the husband, aggrieved by the judgment and decree of the lower appellate Court in C.M.A.No.14 of 2013. C.M.S.A. No.39 of 2014 has already been dismissed for non prosecution by this Court by its judgment and decree dated 03.10.2018. Restoration applications were also filed subsequently by the appellant / husband which were also dismissed since the condition imposed by the Court on the appellant to pay the cost was not complied with.

6. This Court has also recorded as to how finally C.M.S.A. No.39 of 2014 was dismissed by this Court on 25.02.2022 in its earlier order dated 18.07.2024. This Judgment has to be read in conjunction with the earlier order of this Court dated 18.07.2024 passed in this C.M.S.A. viz., C.M.S.A. No.3 of 2015. To avoid repetition, this Court is not reiterating the same in this judgment.

7. Both the Courts below, have concurrently held, based on the evidence available on record, that the appellant's / husband's claim that the



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respondent has treated him in a cruel manner which would amount to mental cruelty satisfying Section 13 (1A) of the Hindu Marriage Act has not been proved by the appellant. As seen from the evidence available on record, in the form of deposition as well as the documents, there is no iota of evidence produced by the appellant to prove his statements with regard to cruelty made in his petition filed against the respondent.

8. This Court does not find any infirmity in the findings of the Courts below since the appellant has not proved cruelty against the respondent. The Courts below have rightly held that the respondent is entitled for restitution of conjugal rights and has rightly granted the said relief to the respondent. The conduct of the appellant as illustrated in this Court's earlier order dated 18.07.2024 also does not enable him to get any relief more so the relief of dissolution of marriage from this Court.

9. Only based on the evidence available on record, both the Courts below have rightly dismissed the petition filed by the husband / appellant, seeking for dissolution of marriage and has rightly allowed the petition filed by the wife, seeking for restitution of conjugal rights.



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10. There is no substantial question of law involved in this appeal as the grounds raised by the appellant does not deserve any merit as the same has already been considered by the Courts below and being factual findings and further there being no debatable issue or law involved, the question of entertaining this appeal does not arise.

11. In the result, there is no merit in this appeal. Accordingly, this appeal is dismissed. No Costs.

29.07.2024

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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To

1. The Principal District Judge, Cuddalore.
2. The Principal Subordinate Judge, Cuddalore.
3. The Section officer, Record Section, High Court of Madras.



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ABDUL QUDDHOSE. J.,

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