



C.M.A.No.1081 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	22.07.2024
PRONOUNCED ON	:	21.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.No.1081 of 2024

Anandharaj

... Appellant

Vs.

Thenmozhi

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act r/w Section 28 of the Hindu Marriage Act, against the Judgment and Decree dated 27.11.2023 in F.C.O.P.No.322 of 2017 on the file of Family Court, Vellore.

For Appellant : Mr.C.Nelson

For Respondent : Notice Served
(No appearance)

J U D G M E N T



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

Aggrieved against the Judgment and Decree dated 27.11.2023 made in F.C.O.P.No.322 of 2017 on the file of Family Court, Vellore, the petitioner therein has preferred the present Civil Miscellaneous Appeal, challenging the dismissal of the petition seeking divorce from the respondent.

2. Mr.C.Nelson, learned counsel for the appellant made the following submissions:-

2.1. The appellant/ husband belongs to the Christian community and the respondent/wife belongs to the Hindu Scheduled Caste Community. They performed love marriage on 15.11.2007 at Katpadi and the same was registered before the Sub Registrar, Katpadi. After the marriage, both the appellant and the respondent settled at Arcot to lead the matrimonial life.

2.2. According to the learned counsel for the appellant, from the very beginning of the marriage, the respondent's behaviour towards the appellant was very strange. She never showed love and affection to the appellant and the life of the appellant was miserable due to the respondent's adamant nature, arrogance and non-cooperation in family matters. However,



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out of the wedlock, a female child was born to them on 19.06.2009 and at the time of filing of the petition, the child was eight years old.

2.3. Further, the learned counsel added that after the birth of the child, misunderstanding between the appellant and the respondent widened and there was no cohabitation between them. The respondent/wife never showed any affection towards the appellant, instead she created ruckus on several occasions without any valid reason. The appellant as a dutiful husband endured all such tortures expecting that the respondent would mend her ways but in vain. All of a sudden, the respondent/wife stopped talking to the appellant and she also stopped preparing food and performing household chores. Therefore, the appellant was eking out his livelihood tolerating the inhuman attitude of the respondent.

2.4. Due to the misunderstanding that arose between the appellant and the respondent, both of them got separated and are living separately. Considering that there is no scope for reunion between the respondent, the appellant sent a legal notice on 19.09.2017 seeking mutual consent of the respondent for divorce. But the respondent issued a reply notice dated



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07.10.2017 through her Advocate containing false allegations.

2.5. It is the further contention raised by the learned counsel for the appellant that the Court below failed to consider the major point on long separation for nearly 10 years and the fewer possibility of reunion. The respondent also raised an allegation of illicit relationship of the appellant with one Vimala to cover up the deliberate act of deserting the appellant and living with her parents.

2.6. The learned counsel for the appellant further stated that the appellant had sold his family share of the property and purchased a plot in the name of the respondent and constructed a house in the plot. He further submitted that a major part of the purchase and construction expenses were born by the appellant.

2.7. The appellant has taken steps to support the respondent in pursuing higher education to complete B.Ed. The respondent also failed to file any petition for restitution of conjugal rights, which proves that the respondent is not willing to continue her married life with the appellant.



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According to the learned counsel for the appellant, the respondent, who is presently living with her parents, leaving the appellant alone, is desertion and preventing the husband from seeing his child amounts to cruelty, which the Court below failed to consider and has erred in dismissing the petition filed by the appellant in F.C.O.P.No.322 of 2017 on the file of Family Court, Vellore vide order dated 27.11.2023. Aggrieved against the said order of dismissal, the present civil miscellaneous appeal has been filed.

3. This Court has issued notice to the respondent and the same was served upon her. Despite serving notice upon the respondent, there is no representation on the side of the respondent and no counsel represented on behalf of the respondent. Though the name of the respondent is printed in the cause list, there was no appearance on the side of the respondent.

4. Upon perusal of the counter affidavit filed by the respondent in F.C.O.P.No.322 of 2017 on the file of Family Court, Vellore, it would reveal the following:-

4.1. The facts stated by the appellant are not in dispute. After the marriage between the appellant and the respondent that took place on



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15.11.2007, the respondent lived at the house of the appellant only for a period of two months. Thereafter, due to the rift that was created between the appellant and his brother, they shifted their residence to Arcot.

4.2. As per the counter, it can be averred that the respondent was a dutiful wife and it was the appellant, who frequently picked up quarrels with the respondent and verbally abused her. He also picked up quarrels with the people residing in the neighbourhood and as a result of the same, the respondent decided to change the residence to Arcot Devi Nagar.

4.3. In the year 2016, the appellant and the respondent jointly purchased a plot and with the help of the parents of the respondent, built a house and started to live in the same. But the appellant continued to abuse the respondent verbally and physically. Taking into consideration of the future of her girl child, the respondent was patient towards the arrogant behaviour of the appellant. The appellant was not kind even to his daughter. When the respondent enquired about the behaviour of the appellant at his office, she came to know about the illicit relationship of her husband with another lady. When the respondent enquired about the same, the appellant fought with her



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and left the home stating that he is not willing to live with the respondent.

4.4. Even though the respondent tried to call and pacify the appellant, he refused to talk with the appellant. Left with no other option, the respondent went to her parent's home along with her daughter. Thereafter, the appellant sent a legal notice on 19.09.2017 seeking for mutual consent of the respondent for divorce. But the respondent issued a reply notice dated 07.10.2017 through her Advocate stating that she is willing to live with the appellant. The Court below, after considering the submissions made on either side, had dismissed the petition filed by the appellant / husband, against which the present appeal came to be filed.

5. Heard the learned counsel for the appellant and perused the counter affidavit and other materials placed before this Court.

6. Before the Trial Court, on the side of the appellant, two witnesses were examined as P.W.1 and P.W.2 and 4 documents were marked as Ex.P1 to Ex.P4. On the side of the respondent, the respondent herself was examined as R.W.1 and exhibit Ex.R1 was marked. The Trial Court, after



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analysing the evidences adduced on both sides, dismissed the petition. Aggrieved by the said dismissal order, the present appeal has been filed by the appellant on various grounds.

7. The point for determination in this appeal is that whether the appellant is entitled to decree for divorce on the ground of cruelty as well as desertion. It can be seen that both the appellant and the respondent are living separately for more than ten years. Further, long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the parties also would cause mental cruelty as per the Judgment of the Hon'ble Supreme Court in ***Shri Rakesh Raman vs. Smt.Kavitha*** reported in **2023 Live Law (SC) 353**.

8. The Trial Court has observed that the parties are separated for more than 10 years. However, the irretrievable breakdown of marriage is not a ground and mere separation is not sufficient to grant divorce. But the trial Court failed to consider that the respondent left from the matrimonial home and refused for conjugal relationship and also levelled allegations that the appellant has illicit relationship with another lady, thereby causing cruelty



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and desertion. The term 'cruelty' is well explained by the Hon'ble Apex Court in the judgment reported in ***A. Jayachandra Vs. Aneel Kaur*** reported in **(2005) 2 SCC** page 22, and the relevant paragraphs are extracted as follows:-

10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal



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cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the



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other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

9. In view of the above said observation, this Court is of the opinion that the order passed by the Trial Court in F.C.O.P.No.322 of 2017 is unsustainable and the same is liable to be set aside, thereby allowing this appeal. However, the appellant/husband has not paid any maintenance amount to the child and the respondent/wife. Therefore, it would be appropriate to direct the appellant/husband to pay a sum of Rs.2,00,000/- (Rupees two lakhs only) to his daughter towards maintenance and to pay a sum of Rs.3,00,000/- (Rupees Three lakhs only) to the respondent/wife towards permanent alimony in total a sum of Rs.5,00,000/- (Rupees Five lakhs only) to the respondent/wife within a period of 3 months from the date of receipt of copy of this judgment.

10. In the result, the Civil Miscellaneous Appeal stands Allowed. The fair and decreetal order passed by the Trial Court in F.C.O.P.No.322 of 2017 is hereby set aside and the Original Petition is allowed. The marriage solemnized between the appellant and the respondent, dated 15.11.2007 is hereby dissolved on the ground of cruelty as well as desertion. However the



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appellant/husband is directed to pay a sum of Rs.5,00,000/-[Rupees Five Lakhs only] to the respondent/wife within period of 3 months from the a date of this Judgment towards permanent alimony. There shall be no order as to costs.

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

21.08.2024

Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No

ssi/sts

To:

The Family Court,
Vellore.



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J.NISHA BANU.,J.

and

P.DHANABAL., J.

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Judgment made in
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Dated:
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