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CMA No.2497 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and

THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

CIVIL MISCELLANEOUS APPEAL No. 2497 of 2016

Ram Venuprasad

... Appellant

-VS-

Shilpa Pillai

... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the order and decree dated 30.08.2016 in O.P.No.1606 of 2014, on the file of the III Additional Family Court, Chennai.

For Appellant : Ms.R.S.Akila

For Respondent : No appearance

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The husband whose petition for divorce on the ground of cruelty was dismissed by the learned Family Judge is on Appeal.



CMA No.2497 of 2016

2. The respondent was served through e-mail and notice was also addressed to the counsel for the respondent at London which was also delivered to the counsel. Despite such service, the respondent is not appearing either in person or through counsel duly instructed.

3. The parties were married on 10.12.2011 and they moved to United Kingdom, since the husband was employed in the Commonwealth Secretariat in United Kingdom. A female child was born of the wed-lock on 12.01.2013. Differences arose between the parties when they were living in London which led to the various Police complaints being lodged by the wife as against the husband. Once such complaint that was lodged on 21.06.2013 resulted in the arrest of the husband by the London Metropolitan Police, the Police also took the DNA swabbed as well as the other tests to establish the identity of the husband. However, he was let off after the police found that there was no substance in the complaint. The mother of the wife, who was living in Bombay, had also made complaint to the Police in India on various occasions contending that the cumulative effect of these complaints would amount to mental cruelty, the husband sought for divorce.



CMA No.2497 of 2016

4. The wife resisted the claim primarily contending that the Family

Courts in Chennai do not have jurisdiction. According to her, it is only the Court situate in Central London which have jurisdiction to entertain the petition. Apart from denying the allegations of cruelty, the wife claimed that the husband had committed cruelty and has physically abused her on various occasions. It was also the contention of the wife that she had launched proceedings for divorce in the Courts in London on the ground of irretrievable breakdown of marriage.

5. We are now informed that the Courts in London, viz. the Central Family Court in London has granted a decree for divorce on 21.12.2017 dissolving the marriage on the ground of irretrievable breakdown of marriage. However, in view of the judgment of the Hon'ble Supreme Court in *Y.Narasimha Rao and Others v. Y.Venkatalakhmi and another*, reported in *(1991) 3 SCC 451*, the said decree granted on a ground which is not available under the Hindu Marriage Act, cannot be recognized in India.

6. On the pleadings the learned Family Judge framed the following



CMA No.2497 of 2016

issues:

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1. Whether this court has got jurisdiction to try this OP; and
2. Whether a ground of cruelty is made out for the grant of divorce in favour of the petitioner.

7. On the side of the petitioner, P.Ws 1 and 2 were examined and Exhibits P1 to P18 were marked. On the side of the respondent, the respondent was examined as R.W.1 and her brother was examined as R.W.2. and Exhibits R1 to R23 were marked.

8. The learned Family Judge on the consideration of the evidence concluded that mental cruelty has not been made out. This conclusion is arrived at on the basis that the husband has not produced records to show that the complaints lodged by the wife before the London Metropolitan Police are false. Aggrieved the husband is on Appeal.

9. We have heard Ms.R.S.Akila, learned counsel appearing for the appellant.



CMA No.2497 of 2016

10. The learned counsel would contend that the Trial Court had overlooked the fact that the wife had in her counter itself admitted that she had filed a petition on the ground of irretrievable breakdown of marriage, before the Courts in London. She would also point out that the decree for divorce has also been granted by the Courts in London on the said ground. The ground viz. “irretrievable breakdown of marriage” is not available under the Hindu Marriage Act. The parties were admittedly married at Chennai. Therefore, the Courts at Chennai have jurisdiction to decide the petition for divorce.

11. A decree for divorce granted by a Foreign Court though binding on the Indian Courts, it has to be on a ground available to the parties as per the Hindu Marriage Act, (see *Y.Narasimha Rao and Others v. Y.Venkatalakhmi and another*, reported in (1991) 3 SCC 451). According to the learned counsel the very fact that the wife herself in her evidence had admitted that she had lodged complaints when the parties were staying together under one roof, coupled with the fact that the mother of the respondent had lodged complaints against the appellant and his family in India, would by itself establish mental cruelty.



CMA No.2497 of 2016

12. The learned counsel would fault the learned Family Judge for having concluded that the appellant has not proved that the complaints were false. The learned counsel would draw our attention to the various documents filed including the complaints given by the respondent to various Authorities in India including the All Woman Police Station at Adayar. The learned counsel would draw our attention to Ex.P13, a bulk mail sent by the respondent to at least 60 people known to the appellant, which contains derogatory remarks against the appellant. The learned counsel would also point out that the fact that this email was sent by the respondent is admitted by her.

13. Writing derogatory emails to relatives and friends with reference to even family matters that to have after three years of marriage, according to learned counsel, would certainly amount to mental cruelty and the learned Family Judge was completely brushed aside the documentary evidence that was placed before us. Such failure on the part of the learned Family Judge to advert to the documentary evidence vitiate

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CMA No.2497 of 2016

14. We have considered the submissions of the learned counsel for the appellant and we find force in the said submissions.

15. Ex.P13 email that has been admittedly sent by the respondent to many relatives and friends of the appellant depicts the appellant in very poor light. The fact that the email has been sent nearly three years after the marriage and after the birth of the child making allegations as to what happened at the time of marriage would show an intention on the part of the respondent to portray the appellant as a villain and a person of very bad character. We find that the several complaints have been lodged against the appellant and his family both in India and at London.

16. Though the learned Family Judge has recorded a finding that Police complaints have been lodged, she would refuse to conclude that there was mental cruelty merely on the ground that the Police complaints were lodged. The learned Family Judge had concluded that there should be some evidence to show that the complaints are false. She had faulted the appellant for not placing such evidence before the Court.



CMA No.2497 of 2016

17. As rightly pointed out by the learned counsel for the appellant, the learned Family Judge had over looked Ex.R14 which very clearly states that there was no domestic violence and it was because of the closed natural depression that the wife was suffering from and she had behaved in a unwise manner. The further reports of the Police also demonstrate that the wife herself has acknowledged that there was no domestic violence and the complaint was an impulsive one and she would be happy for the husband to return home. Finally it is seen that the complaint itself was closed by the Police subsequently.

18. In order to constitute mental cruelty that the behavior of the spouse should be in such manner that it had an impact on the mental peace of the other spouse. The Hon'ble Supreme Court had held that in ***K.Srinivas Rao vs. D.A.Deepa and others***, reported in **2013 (5) SCC 226**, has held that making false complaints, making indecent and defamatory statements would cumulatively amount to mental cruelty, warranting grant of divorce. In the case on hand, we have evidence to show that there were police complaints lodged and husband was detained by the London Metropolitan Police. There is also evidence to show that the wife had sent email to at least 60 relatives and friends of the husband,



CMA No.2497 of 2016

a reading of the said email shows that very disparaging remarks have been made about the appellant which would have add the effect of lowering the dignity of the appellant in the eyes of those recipients. Such behavior on the part of the spouse, would definitely impact the mental peace and balance of the other spouse who is at the receiving end.

19. The learned Family Judge after having referred to the judgment in *K.Srinivas Rao vs. D.A.Deepa and others*, has held that the husband has not made out a case of mental cruelty because he has not placed evidence to show that the complaint was closed. This conclusion is completely flawed and Ex.R14 demonstrate that the complaint was closed by the Police after investigation and after they having found that the complaint was mis-placed.

20. In view of the above and in view of the fact that the wife herself had obtained a divorce in the Courts at London on the ground of irretrievable breakdown of marriage, we find that the husband has made out a case for grant of divorce on the ground of cruelty under the Hindu Marriage Act.



CMA No.2497 of 2016

21. The Appeal therefore stands **allowed**, the judgment of the Family Court impugned in this Appeal is set aside, OP No.1606 of 2014 will stand allowed and there will a decree dissolving the marriage solemnized on 10.12.2011 between the appellant and the respondent. Since the respondent is not appearing, we direct the appellant to bear his costs.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)
05.04.2024

jv

Index : No

Internet : Yes

Speaking order

Neutral Citation: No

To

1. The III Additional Family Court,
Chennai.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai 104.



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