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C.M.A.No.306 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 04.06.2024

Pronounced On : 27.06.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU**

**AND**

**THE HON'BLE MR. JUSTICE P. DHANABAL**

**C.M.A.No.306 of 2024**

Preethi

... Appellant/Petitioner

*Versus*

Vinay Kumar

... Respondent/Respondent.

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984, praying to set aside the judgment and decree dated 09.01.2024 made in H.M.O.P.No.2222 of 2023 passed by the Principal Family Court Judge, Chennai.

For Appellant : Mr.K.V.Sajeevkumar

For respondent : Mr.K.Kannan

**J U D G M E N T**

**Per J. NISHA BANU, J.**

This Civil Miscellaneous Appeal is filed by the appellant/wife as against the order dated 09.01.2024 passed in O.P.No.2222 of 2023 by the Principal Judge, Family Court, Chennai.



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2. The appellant-wife filed O.P.No.2222 of 2023 before the Family Court, seeking decree of nullity of the marriage between the appellant and the respondent solemnized on 16.06.2022 under section 12(1)(a) of the Hindu Marriage Act, 1955.

3. The petitioner wife in her pleadings stated that the respondent did not allow her to talk with her parents and behaved rudely. The petitioner and the respondent stayed in Nellore only for 2 months after their marriage. Both the petitioner and the respondent left India and worked in U.K., and there, they lived together from September 12, 2022 to March 31, 2023. The petitioner further stated in her pleadings that Respondent-husband frequently quarrelled with the petitioner and asked her to go back to India. The petitioner who was not having any access to her salary, asked her parents to book flight ticket. The respondent and his parents ignored her call in India. The petitioner therefore, is living separately from 07.04.2023. Subsequently, the respondent-husband sent a legal notice asking the petitioner to come back to Nellore. According to the petitioner-appellant, the respondent refused sexual intercourse with the petitioner and did not even share his bed. When she questioned the same, respondent gave evasive reply and the petitioner is suspicious about his



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4. Before the trial court, respondent was called absent and set exparte. The petitioner filed her proof affidavit and she was examined as P.W.1 and documents Ex.P.1 to P.5 were marked. The learned Principal Judge, Family Court, dismissed the petition pointing out that the petitioner has not stated anywhere in the petition that the marriage was not consummated due to the allegations levelled against the respondent.

5. Mr.K.V.Sajeevkumar, the learned counsel for the appellant would submit that the petitioner made out all the grounds for divorce under impotency in HMOP, however, the learned Judge, Family Court dismissed the case only on the ground that the prayer did not carry the word non-consummation and that cannot be a ground for dismissal of the petition. The court below ought to have considered the pleading which is the paramount requirement along with the evidence to prove the case. The court below failed to see that the appellant presented the case that the respondent refused for consummation. The pleadings are clear that the respondent has not shared the bed with the appellant and refused sexual intercourse and the marriage was not consummated. The learned counsel further stated that the respondent inspite of receiving notice in the



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HMOP, chose to remain absent and abstained from appearing before the court.

The learned counsel would further submit that since the respondent husband is not willing to consummate the marriage which amounts to cruelty to any young spouse and the respondent did not come to court to deny the facts narrated by the appellant-wife, it is an indirect admission that the marriage was not consummated.

6. Mr.K.Kannan, learned counsel for the respondent would submit that the wife had filed HMOP for nullity of marriage on the ground of impotency, however, since the petitioner-appellant has not stated anywhere in the petition that the marriage was not consummated due to the allegations levelled against the respondent-husband, the learned Judge, Family court, rightly dismissed the petition and the said order need not be interfered with.

7. Heard both sides and perused the records.

8. A perusal of the case would go to show that the respondent-husband was set exparte before the Family Court. He deliberately did not appear before the trial court and there is no averments or evidence to deny the fact pleaded by the appellant-wife that the marriage was not consummated. The appellant was



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denied the matrimonial bliss of physical relation by the respondent because of his incompetency which itself constitute cruelty for a married woman.

9. The marriage between the appellant and the respondent was solemnized on 16.06.2022 and the relationship hardly lasted for nine months and both of them are living separately from April 2023. It is not in dispute that the marriage was never consummated on account of the fact that the respondent was incapable of performing his matrimonial obligations. On this crucial issue, the respondent-husband did not come forward to court to say as to whether the marriage was consummated or not.

10. Non-consummation of marriage even at the start of the marital life by one party clearly prove that such unwillingness on the part of the respondent to consummate the marriage which would amount to cruelty to the wife and in such circumstances, the appellant cannot be constrained into living with a dead relationship. In such circumstances, the appellant has filed a petition under Section 12(1)(a) of the Hindu Marriage Act to declare the marriage between the parties as null and void on the ground that the respondent husband is impotent. P.W.1 in her evidence stated that the respondent is impotent and not willing to consummate the marriage; to rebut the said evidence of P.W.1, no contra



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evidence adduced by the respondent. Therefore, the evidence of P.W.1 is acceptable. But the trial court failed to consider the said facts and dismissed the H.M.O.P. Hence, the said order of trial court is liable to be set aside.

11. Therefore, for the reasons stated above, the Civil Miscellaneous Appeal stands allowed. The marriage solemnized between the petitioner and the respondent dated 16.06.2022 is declared as null and void. The order of the Family Court stands set aside. There will be no order as to costs.

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

**27.06.2024**

Index : Yes /No

Speaking order : Yes /No

Neutral Citation Case : Yes /No

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Note: Issue order copy by 05.07.2024

To

The Principal Family Court Judge, Chennai.



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**J. NISHA BANU, J.  
and  
P.DHANABAL,J.**

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**Judgment in**  
C.M.A.No.306 of 2024

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