



C.M.A.No.1371of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2024

Pronounced on : 05 .09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.1371 of 2018

P.Sathyakumar

...Appellant/Petitioner

vs.

S. Poongothai @ K. Premela

...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside the order dated 03.01.2018 passed in O.P.No.1508 of 2004 on the file of Vth Additional Family Court, Chennai.

For Appellant : Mr.J.James

For Respondent : Mr.J.Praveen Kumar

JUDGMENT

(The order of the Court was made by Mrs.R.Kalaimathi, J.)

This Civil Miscellaneous Appeal has been preferred by the



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petitioner, aggrieved by the order passed in O.P.No.1508 of 2004 dated 03.01.2018 on the file of the Vth Additional Family Court, Chennai on the ground of cruelty and desertion.

2. The appellant P.Sathyakumar filed the above said O.P under Section 13(1) (i-a)(i-b) of Hindu Marriage Act, 1955 praying for an order of divorce by dissolving the marriage held on 21.01.1991 with the respondent S.Poongothai @ K.Premela.

3. The trial Court by an Order dated 03.01.2018 dismissed the petition. Aggrieved, the petitioner has preferred this appeal.

4. The case of the petitioner/husband is stated in brief:

The petitioner and the respondent married on 21.01.1991 as per the Hindu rites and customs at Royapuram, Chennai. Out of the wedlock, they have two children one daughter and one son. The respondent left the matrimonial home by quarreling with the petitioner with all her jewels in the year 1994. Legal notice was issued on 27.04.1994 to the respondent for restitution of conjugal rights. Despite the receipt of legal notice, the respondent did not come to the matrimonial home. At the instigation of her parents and brother, the respondent gave a police complaint before the All



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Women Police Station, Kothawal chwady alleging that her husband harassed her to bring dowry on 22.07.1996. The complaint was closed by the investigating officer as there was no truth in the complaint.

5. The respondent/wife filed a petition for restitution of conjugal rights before the Family Court, Chennai in O.P.No.1007 of 1996 and it was dismissed on 21.03.2001. She had filed a maintenance petition under Section 125 of Cr.P.C in M.C.No.238 of 1998. Wherein, an amount of Rs.1500/- for the wife and for two children Rs.500/- was ordered on 21.03.2001. The petitioner states that, he has been paying the monthly maintenance amount regularly. The respondent caused more cruelty and tortured the petitioner and his mother, therefore, O.P., for divorce was filed.

6. Counter details stated in brief:

It is the petitioner who had failed to discharge his matrimonial obligation towards the respondent and frequently quarreled with the respondent and left marital home in July 1996. She made all efforts to rejoin with the petitioner and the petitioner refused to live with her. Since then, she has been living with her parents along with two children since July 1996. The O.P., for restitution of conjugal rights in O.P.No.1007 of



1996 was filed by her. It is the petitioner and his family members committed cruelty and torture against her, and she is always willing to live with the petitioner. When the petitioner was trying to sell the ancestral properties without consulting her, she issued legal notice to the petitioner and purchaser insisted to get her signature. Thereafter only, the petitioner gave a share to her and her children in the sale amount. The respondent is willing to reunite with the petitioner. The petitioner was leading an adulterous life, and he did not return home for two days. Thereafter, he claimed that, he married one Judy melode and deserted the respondent and children.

7. The learned counsel appearing for the appellant/husband would strenuously argue that the allegations of the respondent to the effect that he is living with some woman is completely not true. Petition for restitution of conjugal rights filed by the wife was rightly dismissed by the Family Court. Despite the cruelty and harassment, the acts of respondent, his petition was dismissed. He would further strongly contend that the appellant and the respondent have been living separately for more than 14 years and there is no chance of reunion.

8. Per contra, the learned counsel appearing for the respondent



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would vehemently argue that appellant/petitioner committed cruelty and tortured the wife and children, and they are living along with the parents of the respondent since 1994 and sought for dismissal of this appeal.

9. The petitioner/husband filed petition before the Family Court under 13(1)(i-a) (i-b) of Hindu Marriage Act, 1955 for an Order of divorce on the ground of cruelty and desertion.

10. At trial, the petitioner/husband has examined himself as P.W.1 and eight documents were marked. On the respondent side, the respondent Poongothai has examined herself as R.W.1 and two documents were marked.

11. It is an admitted fact that marriage of petitioner and respondent took place in the year 1991. He has filed proof affidavit in line with the details of petition. During the cross examination of P.W.1, he would state that, as the respondent often goes out of the matrimonial home, he has filed the divorce petition. When a suggestion was posed to him that he was living with another woman, it was denied by him.

12. It has come on record through R.W.1 that since 1996, the



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petitioner/husband failed to maintain her and children. Her husband sought for her permission and begged her to get married one Judy melode, caused cruelties and chased out her and children from the home. It is pellucid that the petitioner gave an amount of Rs.2,50,000/- to the respondent to meet out the expenses for the children. She has also stated that her petition for restitution of conjugal rights filed in O.P.No.1007 of 1996 was dismissed by the Family Court, Chennai.

13. In the given circumstances and scenario, against the order of dismissal for divorce, what best could be done for the petitioner and respondent is to be seen.

14. The allegations raised by the petitioner against his wife are that the respondent was not taking care of the family in a proper manner and she was always quarreling with him and often leaves the matrimonial home very often. She left the matrimonial home in the year 1994 by quarreling with him.

15. The respondent has also thrown allegations on him to the effect that, she also alleged that the petitioner was frequently quarreled with her and left the matrimonial home in July 1996 and thereafter, she has been



living with her parents.

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16. The word cruelty has wider connotation and it has to be applied contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and each person. Even deliberate and willful intention may not matter at times. As there is so much of advancement in culture, the concept of cruelty is also bound to change from time to time. The parameters for determining the issue of cruelty in matrimonial matters are exhaustive. It is always prudent to adjudicate on case to case basis by evaluating in a given situation.

17. In matrimonial cases, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance of probabilities.

18. It is relevant to refer to the observations made in *Bertram Vs Bertram* (1944 Privy Council 59), wherein, it was observed that "*very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behavior, day in and day*



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out, night in and night out" .

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19. Useful reference may be made to the observations the Hon'ble Supreme Court in *Dr.N.G.Dastane Vs. Mrs.S.Dastane* reported in 1975 (2) SCC 326:

"...The inquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. "

20. In *Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal* reported in (2012) 7 SCC 288. The Hon'ble Supreme Court has observed that:

"... The testimony of the appellant husband established that the wife was crumpling the ironed clothes, hiding the keys of the motorcycle and locking the gate to trouble him and the said incidents were taking place for a long time. In such circumstances it is surprising to find that the courts below could record a finding that the appellant used to enjoy the childish and fanciful behaviour of the wife pertaining to the aforesaid aspect. This finding is definitely based on no evidence. Such a conclusion cannot be reached even by



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inference nor any surmises and conjectures would permit such finding to be recorded. The embarrassment and harassment that might have been felt by the husband can easily be visualised...”

21. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that “...the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherché scientifique* i.e. “free scientific research”...”.

22. The word cruelty is defined by D. Tolstoy in his book *The Law and Practice of Divorce and Matrimonial Causes* in the following words:

“Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such a 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.”

23. The concept of cruelty has undergone so much of changes, according to the advancement of social concepts and standard of living,



cruelty may be mental or physical, sometimes intentional or even unintentional. In the case of mental and unintentional category, the issue raises difficulties. In case of physical cruelty, there may not be much problem in determining the issues. What is cruelty for one person may not amount to cruelty for another person.

24. To start with on 27.04.1994, the petitioner had issued legal notice to the respondent for restitution of conjugal rights. It appears that in the year 1995, father of the petitioner died and the respondent came to the matrimonial home. The steps taken by the elders to settle the issue went in vain. Thereafter, in the year 1996, she left the matrimonial home and it appears that complaint was lodged against him for dowry harassment on 22.07.1996 at All women Police Station, Kothawal chwady against the petitioner and the case was closed. Thereafter, the respondent/wife filed O.P.No.1007 of 1996 for restitution of conjugal rights before the Family Court, Chennai and it was dismissed on 21.03.2001 and thereafter, the respondent filed Maintenance Petition in M.C.No.238 of 1998 and order of maintenance was passed. It is also an admitted fact that the petitioner sold out his property and deposited Rs.4,00,000/- in the name of the children and gave Rs.50,000/- as cash to the respondent as full and final settlement.



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25. Literally, they lived for three years without any major problems.

Both the petitioner as well as the respondent are in compatible with and they have mutual allegations of cruelty against one another.

26. The cruelty alleged by the petitioner is that mental cruelty, which is a state of mind and feeling about the spouse due to behavioral pattern by the other. Of course, it cannot be established by direct evidence and it is a matter of inference to be drawn from the facts and circumstances of the case. From the evidence of petitioner and respondent with utmost fairness, we are of the firm opinion that just within three years, as it was not compatible, the respondent has left the matrimonial home along with their two children. Home is always a pleasant place to live. But unfortunately, the wife having felt otherwise and left the matrimonial home along with her two children in the year 1996 itself. Obviously, in a broken home, peace and happiness at home are withered, and the children are the direct sufferers and its impact on them is huge. Any husband and wife who have irreconcilable differences have to understand about their basic duties to be performed in their family. But in this case, they were not in a position to reconcile the difference since 1996 and permanently for about more than two decades, they are in separation.



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27. In the matters of matrimonial disputes hyper technical approach would hinder the judicial process. As mentioned supra, the petitioner as well as the respondent have parted long before, especially, the wife fell into the rough weather since 1994.

28. We are also conscious of the fact that the marriage should never be discarded unreasonably and it should be preserved. It is so pellucid that, except the marriage tie, the relationship between the spouses was broken down long before. Therefore, the law cannot turn its face to recognise the real situation. The long period almost more than 25 years of continuous separation, may be surmised that there is no matrimonial bond as such prevalent among the parties and refusing to discard the matrimonial tie will not serve any purpose. The emotions and feelings of the parties have to be given due regard. Therefore, based on the aforestated discussions and in the given circumstances, it is better for the parties to the proceedings to discard their marital tie once for all, and in the result, the marriage took place between the petitioner and the respondent on 21.01.1991 stands dissolved by granting an Order of divorce.



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29. Accordingly, this Civil Miscellaneous Appeal stands allowed and the order dated 03.01.2018 passed in O.P.No.1508 of 2004 on the file of Vth Additional Family Court, Chennai stands set aside. There is no order as to costs.

(J.N.B.,J.)

(R.K.M.,J.)

05.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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To

The Vth Additional Family Court, Chennai.



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J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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Pre-delivery Judgment made in

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