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C.M.A.No.1535 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.SAKTHIVEL
C.M.A.No.1535 of 2018**

R.Arumugam,
S/o Late Raman

..Appellant

Vs.

Muthu @ Muthu Naichiar,
D/o N.Durairaj Konar

..Respondent

Civil Miscellaneous Appeal filed under Section 19 of Family
Courts Act against the fair and decretal order dated 21.05.2018 passed in
H.M.O.P.No.1171/2005 passed by the IV Additional Family Court,
Chennai.

For Appellant : Mr.S.Krishnaswamy
for Ms.P.Lalitha Priya

For Respondent : No appearance

JUDGMENT

(The Judgment of the Court was delivered by Mrs.J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed by the
appellant/husband challenging the order passed in O.P.No.1171/2005,
dismissing the petition filed by him seeking divorce.

2. The case of the appellant is that the marriage between the



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appellant and the respondent took place on 05.09.1991. Out of wedlock, a male child was born on 04.10.1996. The respondent was hailing from a poor family. After the marriage, the parents and brothers of the respondent used to extract money from the appellant through the respondent and hence, there were difference of opinion between the appellant and the respondent. The respondent also gave a false police complaint before the All Women Police Station, Adyar and the matter was compromised before the police and the respondent undertook to live with the appellant. However, the respondent went to her parents house without informing the appellant. On 19.06.2000, the respondent deserted the appellant, leaving the matrimonial home and had taken away a sum of Rs.50,000/- along with household articles. Hence, the appellant filed O.P. petition for divorce on the ground of cruelty and desertion.

3. The respondent resisted the above contention by filing counter before the Family Court denying all the allegations made against her. The respondent had stated that the appellant was working in Indian Airlines, and used to bring some ladies to home and in order to live with them, he drove the respondent out of matrimonial home. The respondent is not employed and she is not educated and hence, unable to live on her own



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legs.
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4. When the appeal was taken up for hearing on 26.09.2024, the learned counsel for the respondent filed a memo stating that he is unable to secure instructions from the respondent and that though he had sent notice to the respondent on 07.08.2024, which was acknowledged by her, she did not give any instructions to him. Therefore, the learned counsel who appeared for the respondent reported no instructions before this Court. However, as restitution of conjugal rights has been ordered by the Family Court, to give one more opportunity to the respondent, this Court directed the Registry to issue notice to the respondent returnable by 18.10.2024 and the notice through court was also served on the respondent. Today, the matter is listed under the caption 'for orders'. Even today, there is no representation for the respondent.

5. Heard the learned counsel for the appellant and perused the materials available on record.

6. The undisputed facts are that the marriage between the appellant and the respondent had taken place on 05.09.1991. A male child was born on 04.10.1996 and they lived together till 19.06.2000. The legal notice was sent by the appellant on 07.07.2000 and the respondent also sent a



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reply notice expressing her willingness to live with the appellant. Though the respondent had stated that she is willing to live with the appellant, till date, she has not come back to the matrimonial home.

7. Even though subsequently, Court notice was sent to the respondent and was served on her on 25.10.2024, there is no representation for the respondent. The allegation of the appellant is that on 19.06.2000, the respondent left the matrimonial home and did not return to matrimonial home. The respondent's counsel has also filed a memo stating that though notice was sent to her to give instructions, she did not respond. There is also no response from the respondent for the notice sent by this Court.

8. The appellant and the respondent are living separately for the past 24 years. The Family Court held that though the appellant had made allegation of cruelty and desertion as against the respondent, the same has not been established by him. However, the respondent has not filed any petition seeking restitution of conjugal rights to prove her intention to join her husband. There was no response for the notice sent through lawyer and through court. The respondent did not show any intention of joining with the appellant for the past 24 years. The above act of the



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respondent amounts to desertion. Thus, an adverse inference could be drawn as against the respondent that she had deserted the appellant. Therefore, we are of the view that the trial Court erred in coming to the conclusion that the appellant has not proved the charges of cruelty and desertion.

9. The trial Court has given a finding that the appellant has not produced any documents to prove the charges of cruelty of causing mental injury by the respondent. In physical cruelty, there can be tangible and direct evidence, but in case of mental cruelty, there may not be direct evidence. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct on the complaining spouse.

10. It is to be noted that though the respondent/wife, in her deposition, has denied all the allegations made by the appellant against her and she is always ready and willing to live with the appellant. The respondent has also not filed any petition seeking restitution of conjugal rights to prove her intention to join her husband. Therefore, we are of the opinion that there is hardly any chance of their living together even if they are reunited by a court's order.

11. Considering the circumstances of the case and that the



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respondent/wife has also not filed any petition for restitution of conjugal right and not responding for any notices sent to her, we are of the opinion that there is no chance of reunion. The long separation itself amounts to cruelty. There is no purpose in keeping the marriage alive. Therefore, we are inclined to dissolve the marriage by passing the decree of divorce.

12. In the result, the Civil Miscellaneous Appeal is allowed. The fair and decretal order dated 21.05.2018 passed by the learned IV Additional Family Judge, Chennai, are set aside. The marriage between the appellant/husband, R.Arumugam and the respondent/wife, Muthu @ Muthu Nachiar, is dissolved by a decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. No costs.

(J.N.B,J.) (R.S.V., J.)

20.11.2024

Index : Yes / No
Speaking/Non-speaking order
vsi

To
The IV Additional Family Court, Chennai.



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and
R.SAKTHIVEL,J.

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