



C.M.A.No.913 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	04.07.2024
PRONOUNCED ON	:	07.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.No.913 of 2022

P.Babu

... Appellant

Vs.

P.Saranya

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Court Act, 1994, against the fair and decreetal order dated 09.02.2022 passed in F.C.O.P.No.96 of 2020 (C.N.R.No.TNNM110000132020) on the file of the Family Court (District Judge), Namakkal.

For Appellant : M/s.P.Mahalakshmi

For Respondent : Mr.N.K.Arulmuruganandam

J U D G M E N T



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

This Civil Miscellaneous Appeal has been preferred as against the fair and decreetal order passed in F.C.O.P.No.96 of 2020 on the file of Family Court, Namakkal dated 09.02.2022 by the appellant/petitioner, who filed a petition before the Trial Court for granting divorce on the ground of cruelty as well as desertion.

2. M/s.P.Mahalakshmi, learned counsel for the appellant/husband made the following submissions:-

2.1. The marriage between the appellant and the respondent was performed on 14.09.2016 at Vallipuram Easwaran temple, Namakkal as per Hindu Rites and Customs. After marriage, both lived as husband and wife only for a period of one month. There arose some wordy quarrel between them due to misunderstanding. Thereafter, the respondent, without any valid reason, left from the matrimonial home and continued to stay with her parents.

2.2. Out of the wedlock, on 01.08.2017, a female child was born to



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them. Thereafter, the appellant called the respondent for re-union, but the respondent refused to live with the appellant. The appellant, with the help of his parents and relatives, tried to convince the respondent for three times by conducting Panchayat but the respondent was very adamant and refused to live with the appellant.

2.3. According to the learned counsel for the appellant, the respondent for a period more than two years has been staying along with her parents and refused to live with the appellant. Even the respondent/wife has filed a petition in F.C.O.P.No.467 of 2018 seeking divorce, but the same was withdrawn upon the advice given by her family members and elders. Upon the advise given by them, the respondent went to the matrimonial home on 05.03.2019, but on the same day, she returned to her parents' home. On 15.09.2019, the appellant along with his family members again went to the house of the respondent and took steps for re-union. But the respondent very stubbornly took the decision to stay away from the appellant and she even verbally abused and ill-treated the appellant and his family members and sent them back.



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2.4. Since there is no scope for re-union, the appellant/husband filed a petition seeking divorce as against his wife in F.C.O.P.No.96 of 2020 on the file of Family Court, Namakkal. The Trial Court vide order dated 09.02.2022, dismissed the petition by holding that the petition is not maintainable and it lacks evidence to prove the stand of the appellant. Aggrieved against such dismissal, the petitioner/husband has preferred the present civil miscellaneous appeal.

3. Mr.N.K.Arulmuruganandam, learned counsel for the respondent made the following submissions:

3.1. The petition which was filed by the appellant before the Court below is not maintainable either in law or on facts and therefore, the same came to be dismissed. According to the learned counsel, the marriage between the parties and a female child born to them are admitted. In fact, the appellant had only driven out the respondent and her child from the matrimonial home and neglected them. Therefore, the respondent is residing in her parents' house.

3.2. The learned counsel for the respondent denied the contentions



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made by the appellant as false. The learned counsel further contended that the appellant married one Sangeetha at Pachaperumalpatti, Thuraiyur Taluk, who is his relative and therefore, the respondent had given a complaint before All Women Police Station, Namakkal on 04.05.2018 where she has expressed her willingness to live with the appellant. In the police station, an Advocate represented on behalf of the appellant and he assured that he will file a petition for restitution of conjugal rights but the said Advocate had not filed a petition for restitution of conjugal rights per contra, he filed a petition for divorce without the knowledge of the respondent. Therefore, the respondent did not press the application in F.C.O.P.No.467 of 2018.

3.3. According to the learned counsel for the respondent, the respondent/wife is residing with her three years old daughter at her parents' home and she is also struggling for her maintenance. The Court below has passed a well-reasoned order and therefore, the same does not warrants the interference of this Court and hence, the learned counsel prayed for dismissing the appeal.

4. Heard the learned counsel for the appellant and the learned



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counsel for the respondent and perused the materials placed before this Court.

5. Before the Trial Court, on the side of the appellant, two witnesses P.W.1 and P.W.2 were examined and 5 documents were marked as Ex.P1 to Ex.P5. On the side of the respondent, R.W.1 was examined and exhibits Ex.R1 to Ex.R5 were marked. The Trial Court, after analysing the evidences adduced on both sides, dismissed the petition. Aggrieved by the fair and decreetal order, the present Civil Miscellaneous Appeal has been preferred on various ground by the appellant.

6. During the pendency of the appeal, both the parties entered into a compromise and filed a Joint Compromise Memo stating that the appellant paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the respondent towards maintenance of her child and permanent alimony and the said amount was received by the respondent through Demand Draft Bearing No.049278 dated 22.05.2024 for a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) and Demand Draft Bearing No.049309 dated 11.06.2024 for a sum of Rs.5,00,000/- (Rupees Five Lakhs Only). Thereafter, the respondent has withdrawn the petitions filed by her in F.C.O.P.No.116 of 2022 and maintenance case in M.C.No.26 of 2022 on the file of the Family Court,



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Namakkal on 23.05.2024 and she had also undertaken to withdraw the DVC.No.3 of 2024 pending on the file of Additional Mahila Court, Namakkal and the respondent had no objection to dissolve the marriage.

7. This Court carefully perused the entire joint compromise memo. On perusal of the Joint Compromise Memo, it reveals that the parties have settled the dispute out of Court and the respondent received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) from the appellant towards maintenance of her child and permanent alimony and she has also withdrawn the cases pending before the Family Court, Namakkal and Additional Mahila Court, Namakkal. Though the parties have entered into compromise between them, the divorce cannot be granted by the consent of the parties unless the grounds raised by them are proved. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Sanjeeta Das Vs Tapan Kumar Mohanty*** reported in ***(2010) 10 SCC 222*** wherein the Hon'ble Supreme Court has categorically held that no Court can assume jurisdiction to dissolve a Hindu marriage simply on the basis of the consent of the parties de hors the grounds enumerated under Section 13 of the Hindu Marriage Act, 1955 unless the consenting parties proceeded under Section 13(B) of the



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Hindu Marriage Act, 1955. Therefore, this Court, without accepting the consent of the parties for granting divorce, heard the matter on merits. The compromise in respect of the permanent alimony and the maintenance of her child paid by the appellant for a sum of Rs.10,00,000/-(Rupees Ten Lakhs Only) to the respondent and the withdrawal of cases filed by the respondent are recorded.

8. The point for determination in this appeal is whether the appellant proved the case for granting divorce on the grounds of cruelty as well as desertion?

9. In this case, there is no dispute in respect of marriage between the parties and a female child born to them, who is presently 7 years old and she is under the custody of the respondent/mother. Before the Trial Court, the appellant has filed a petition seeking for divorce on the grounds of cruelty as well as desertion. In order to prove the same, P.W.1 and P.W.2 were examined and documents were marked as Ex.P1 to Ex.P5. P.W.1 has categorically deposed about the case and he mainly stated that without any valid reasons, the respondent left from the matrimonial home along with the child and she was residing in her parents' house for more than two years.



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10. When the appellant contacted the respondent through elders for reunion, the respondent has abused the appellant and his family in obscene words, thereby she failed to reconstitute the conjugal rights with the appellant. The above said facts have been denied by the respondent and the respondent admitted the separation for more than two years from the date of filing of this application and also admitted that she had already filed a petition for divorce and the same was withdrawn. Though the learned counsel for the respondent has stated that the respondent has instructed her Advocate to file a petition for restitution of conjugal rights, but he has filed a petition for divorce without her consent, the above said version of the respondent is not acceptable and there is no evidence to substantiate her contentions. Therefore, the appellant made out his case for granting divorce on the grounds of cruelty as well as desertion. The Trial Court failed to consider the evidences adduced by the appellant and the documents marked by him and also failed to consider that P.W.1 has categorically deposed about the case thereby, he established the cruelty caused by the respondent and the desertion for more than two years. Therefore, the fair and decreetal order passed by the Trial Court by dismissing the petition filed by the appellant for granting divorce is



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unsustainable and is liable to be set aside by allowing this appeal. Thus, the point is answered.

11. In the result, the fair and decreetal order passed by the Trial Court in F.C.O.P.No.96 of 2020 on the file of the Family Court, Namakkal dated 09.02.2022 is set aside and the Civil Miscellaneous Appeal is allowed. The marriage between the appellant and the respondent dated 14.09.2016 solemnized at Vallipuram Easwaran temple, Namakkal District is dissolved by granting divorce. No cost.

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

07.08.2024

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

To:

The Family Court,
Namakkal.



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