



C.M.A.Nos.1521 & 1522 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	26.06.2024
<i>Pronounced on</i>	23.07.2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL**

C.M.A.Nos.1521 & 1522 of 2021
and C.M.P.No.7972 of 2021

S.R.Noble Lourdhuraj

.. Appellant
in both appeals

Vs.

T.Queen Rose Suseela

.. Respondent
in both appeals

COMMON PRAYER: Civil Miscellaneous Appeal is filed under Section 55 of Indian Divorce Act, 1869, to set aside the order and decretal order passed in I.D.O.P.No.329 of 2018 and I.D.O.P.No.366 of 2018 dated 11.03.2020 on the file of the Family Court, Cuddalore. dated 11.03.2020 on the file of the Family Court, Cuddalore.

For Appellant : Mr.V.M.Venkataramana
(in both appeals)

For Respondent : Mr.P.Mani
(in both appeals)



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COMMON JUDGMENT

Per P.Dhanabal, J.

The above appeals are filed by the appellant/husband, challenging the common order dated 11.03.2020 passed in I.D.O.P.No.329 of 2018 and I.D.O.P.No.366 of 2018, whereby, the trial court dismissed the petition filed by the husband for divorce and allowed the petition filed by the wife for restitution of conjugal rights.

2. The appellant is the husband and the respondent is the wife. The marriage between them was solemnized on 11.11.2016 as per Christian rites and customs. Both lived happily after the marriage. Since the respondent's sister who was not living with her husband was also staying with the appellant, problems started between the respondent and appellant's family members. The allegations raised by the wife as against the appellant's family members is that they abused and ill-treated her and found fault in every work done by her and had sent her from the matrimonial house and so she went back to her parent's house at Cuddalore.



3. After pacification between the family members, the appellant and the respondent shifted their residence and started living separately. At that time, when the appellant met with an accident and got injured, they again went back to Uthiramerur and resided along with appellant's mother and sister. The respondent again raised some issues as against appellant's mother and sister that they locked the upstairs portion and refused to give keys to her.

4. The respondent also raised some allegations against the appellant that he picked up quarrel with her and throttled her neck and she was put to great mental agony and stress and therefore, she preferred a police complaint before All Women Police Station at Cuddalore on 19.09.2017.

5. The respondent would state that she is always willing to live with the appellant but he filed a petition in D.V.O.P.No.117 of 2017 for divorce.

6. The appellant was employed as Assistant Professor in a private Engineering College at Maduranthakam. The respondent was employed as Teacher in a private school at Cuddalore. According to the appellant, at the time of marriage, it was agreed between them that she should resign her job



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after marriage. Since the respondent did not resign and disliked appellant's mother and deserted sister and insisted for a separate residence, the appellant did not agree for the said demands. According to the appellant, the respondent was adamant and refused to do any household work and harassed his mother and sister.

7. Before the trial Court, joint trial was conducted. On the side of the Appellant, RW.1 and RW.2 were examined and Ex.R.1 to R.5 were marked. On the side of respondent, P.W.1 and P.W.2 were examined and Ex.P.1 and Ex.P.2 were marked. After considering the evidence adduced by both parties, common order was passed by allowing the petition filed by the wife for restitution of conjugal rights and dismissing the petition filed by the husband for divorce.

8. Challenging the common order, the appellant-husband has preferred the present Civil Miscellaneous Appeals.

9. The learned counsel for the appellant/husband would contend that on the grounds of cruelty, the appellant filed OP for divorce. In order to prove his



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case, he himself examined as P.W.1 and he categorically deposed about the cruelty caused to the appellant and also he examined his witness to prove his case. But the trial court has not appreciated the evidence of the appellant's side, facts of the case and dismissed the petition for divorce.

10. The learned counsel appearing for the respondent would contend that the appellant only caused cruelty to the respondent and she is ready to live with the appellant. Further the appellant along with his mother and sister insisted the respondent to resign her job and the appellant harassed the respondent. The respondent was examined as P.W.1 before the trial court and she deposed about the true facts, thereby, the trial court has correctly appreciated the evidence and dismissed the divorce petition and ordered for restitution of conjugal rights of the respondent.

11. The points for determination in the appeals are as follows:-

(i) C.M.A.No.1521/2018 : *Whether the respondent is entitled to decree for restitution of conjugal rights as against the appellant ?*

(ii) C.M.A.No.1522/2018: *Whether the appellant is entitled to decree for divorce on the ground of cruelty as against the respondent ?*



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12. According to the appellant, the respondent has caused cruelty and insisted for separate house and not even taken care of her husband when he was in hospital when he met with an accident. Thereafter, the respondent left the matrimonial home without any valid reasons and she gave a complaint to the police as against the appellant and his family members and thereby she caused mental cruelty to the appellant. In order to prove the above said facts, the appellant examined himself as R.W.1 and deposed his evidence regarding the cruelty caused by the respondent / wife.

13 According to the respondent, she is ready and willing to live with the appellant and the mother and sister of the appellant harassed the respondent by scolding her and she deposed before the trial court to that effect.

14. On a careful perusal of the pleadings before the trial court and evidence of P.W.1-wife in the trial, it is crystal clear that the respondent used to blame the mother and sister of the appellant for petty issues and since she did not like them, she insisted for separate house. The evidence of appellant/R.W.1 reveals that as per the demands of the respondent, he lived



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with respondent in a separate house at Chengalpattu and lived there for some time. But, when he met with an accident, he returned back to Uthiramerur where his mother and sister resided. At that time, respondent refused to join the appellant there. The respondent admitted that due to quarrel with her in-laws, she left the matrimonial home. It is also an admitted fact that she gave a complaint to the Police as against the appellant and his family members. The available evidence shows that the respondent is not ready to live with the appellant and she caused cruelty to the appellant.

15. It is an admitted fact that both the parties are living separately from the year 2018 onwards which is nearly 6 years. Therefore, their long separation, absence of cohabitation, complete breakdown of all meaningful bonds and the existing bitterness between them has to be taken as cruelty as per the judgment of the *Hon'ble Supreme Court in Rakesh Raman Vs. Kavitha reported AIR 2023 SC 2144*. The trial Court failed to consider the same and ordered for restitution of conjugal rights and dismissed the petition for divorce.

16. Though the respondent has filed the petition for restitution of



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conjugal rights, she very often picked quarrel with the appellant and his family members and frequently left the matrimonial home without any valid reasons and also lodged a complaint against the appellant. These acts would cause cruelty to the appellant. Despite filing a petition for restitution of conjugal rights, the respondent has not even helped the appellant in his daily chores particularly when he suffered leg injury in the accident.

17. In view of the above said discussions, this Court is of the opinion that the appellant is entitled to a decree for divorce on the ground of cruelty and the respondent / wife is not entitled to a decree for restitution of conjugal rights. Therefore the fair and decreetal order passed by the trial Court are unsustainable and the same are liable to be set aside. However considering the nature and circumstances of the case, it is appropriate to award a sum of Rs.5,00,000/- [Rupees Five Lakhs only] towards permanent alimony to the respondent / wife. The points raised in the CMAs are answered accordingly.

18. In the result,

(i)C.M.A.No.1521/2021 is allowed. The fair and decreetal order passed by the Judge, Family Court, Cuddalore in I.D.O.P.No. 329/2018 awarding



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restitution of conjugal rights is set aside and the petition is dismissed.

(ii) C.M.A.No.1522/2021 is allowed. The fair and decreetal order passed by the Judge, Family Court, Cuddalore in I.D.O.P.No.366/2018 is set aside and the petition is allowed.

(iii) The marriage between the appellant and the respondent solemnised on 11.11.2016 at Velankanni Arokiya Annai Alayam Church, Uthiramerur Town, is hereby dissolved by granting a decree of divorce.

(iv) The appellant/husband is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to the respondent/wife towards permanent alimony, within a period of three months from the date of this order.

(v) No costs. Connected miscellaneous petition is closed.

(J.N.B. J.,)

(P.D.B. J.,)

23.07.2024

Index: Yes / No

Speaking order / Non speaking order

Neutral Citation : Yes / No

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To

The Judge, Family Court, Cuddalore



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

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