



C.M.A.No.1304 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

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

C.M.A.No.1304 of 2024

R.Prabakaran
S/o Rangasamy

... Appellant

Vs.

Revathi,
D/o Pandurajan

...Respondent

Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act read with Section 19 of the Family Court Act against the judgment and decree of the Court of Family Judge, Tiruppur dated 31.10.2023 made in H.M.O.P.No.375/2020, thereby dissolving the marriage solemnized on 03.09.3008 at B.Pallipatti Mandapam Pappireddypatti Village,Dharmapuri District.

For Appellant : Mr.P.M.Jayachandran

J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed as against the

judgment and decree of the Court of Family Judge, Tiruppur, dated

31.10.2023 made in H.M.O.P.No.375/2020, thereby dissolving the



C.M.A.No.1304 of 2024

marriage solemnized on 03.09.2008 at B.Pallipatti Mandapam
Pappireddypatti Village, Dharmapuri District.

2. The brief facts of the case of the appellants are as follows:

i) The respondent/wife was working as a Teacher. She left the matrimonial home suddenly and was living along with her parents. In spite of mediation and conciliations, the respondent failed to come back to matrimonial home. The respondent is the sister's daughter of the appellant, therefore, to safeguard the relationship and the family customs and principles, the appellant filed HMOP.No.58 of 2018 before the Subordinate Court, Harur, for restitution of conjugal rights and the same was granted by the Subordinate Judge at Harur on 11.08.2022.

ii) The appellant came to know that the respondent is living with another man either by marrying him or by following live-in relationship and gave birth to two children which is a clear violation of Section 5 of the Hindu Marriage Act. The respondent also filed a divorce petition before the Family Court at Tiruppur on the ground of cruelty and desertion. The respondent made bald and wild allegations against the appellant without iota of evidence. The appellant contested the divorce proceedings and produced all the requisite documents to prove his case but unfortunately,



C.M.A.No.1304 of 2024

the trial Court granted divorce on 31.10.2023. Hence the present appeal.

3. Learned counsel for the appellant would state that the divorce was granted on the ground of cruelty and desertion but the act of cruelty was not proved on the side of the respondent/wife. Learned counsel would further state that the respondent has been living with another man and has also got two children after separation from the appellant, and thus, the respondent is responsible for separation and she cannot take advantage of his misdeeds and lapses. Learned counsel would further state that the learned Subordinate Judge, without considering the fact that the appellant had filed a petition for restitution of conjugal rights and the same was granted on 11.08.2023, has granted the decree for divorce dated 31.10.2023 in favour of the respondent/wife, i.e., within two months from the date of decree for restitution of conjugal rights, which is erroneous and liable to be set aside. Learned counsel would further state that the respondent/wife was living with another man during the pendency of her divorce proceedings and therefore, she shall not be allowed to take advantage of her own wrong doings. Hence, the learned counsel would pray to set aside the decree of divorce.

4. Heard the learned counsel for the petitioner.



C.M.A.No.1304 of 2024

WEB COPY

5. The main contention of the appellant herein is that the Family Court has granted decree for divorce on the ground of cruelty and desertion but the Family Judge failed to see that the respondent/wife has not proved the act of cruelty.

6. From the documents available on record, it is seen that the main allegation as against the appellant is that he is a drunkard, psychotic patient and also having other bad activities. Even at the time marriage, when the respondent /wife was 19 years old, on coming to know about his character, left the marriage hall without any information. Only on compromise made by her parents, the marriage took place. Subsequent to the marriage also, the appellant did not mend his character. Under the influence of alcohol, he used to beat the respondent. Since the respondent was unable to tolerate the atrocities of the appellant, she left the matrimonial home on 01.06.2009 and started living along with her parents at Bangalore and continued her studies. She studied upto M.A.M.Ed. The appellant and the respondent are living separately for more than 10 years and they have no children. The appellant did not reform himself and also did not give any monetary or physical help for education and maintenance of the respondent. Even during the visit at



C.M.A.No.1304 of 2024

WEB COPY

Bangalore, once in a year, the appellant used to come under the influence of alcohol and beat the respondent. Considering all the above aspects, the trial Court granted decree of divorce in favour of the respondent. We are not inclined to interfere with the judgment and decree dated 31.10.2023 passed by the Family Judge, Tiruppur, as we find no infirmity or illegality in the judgment and decree passed by the lower Court.

7. In the result, the Civil Miscellaneous Petition stands dismissed.

No costs.

(J.N.B,J.) (P.D.B., J.)
10.06.2024

Index : Yes / No
Internet : Yes
vsi

To

The Family Court,
Tiruppur.



WEB COPY



C.M.A.No.1304 of 2024

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

vsi

C.M.A.No.1304 of 2024

10.06.2024