



C.M.A.Nos.197 & 198 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON	:	15.07.2024
PRONOUNCED ON	:	20.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.Nos.197 & 198 of 2018
and C.M.P.No.2381 of 2018

S.Kavitha

... Appellant in both CMAs'

-VS-

G.Renald Vincent

... Respondent in both CMAs'

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 19 of Family Court Act to set aside the Judgment and decree dated 20.01.2017 passed in D.O.P.No.1178 of 2009 & D.O.P.No.1085 of 2011 on the file of the Principal Family Court, Coimbatore.

In both CMA's:

For Appellant : Mr.K.S.Karthik Raja

For Respondent : No appearance



C.M.A.Nos.197 & 198 of 2018

COMMON JUDGMENT

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

These Civil Miscellaneous Appeals have been preferred as against the common order passed in D.O.P.No.1178 of 2009 & D.O.P.No.1085 of 2011 on the file of the Principal Family Court, Coimbatore dated 20.01.2017, wherein the appellant herein has filed a petition in D.O.P.No.1178 of 2009 & M.C.No.84 of 2010 before the Trial Court for restitution of conjugal rights and for maintenance, and the respondent herein has filed a petition in D.O.P.No.1085 of 2011 seeking for dissolving of marriage. The trial Court allowed the petition in D.O.P.No.1085 of 2011 filed by the respondent/husband and granted decree of divorce and dismissed the petition filed by the appellant/wife in D.O.P.No.1178 of 2009 for the relief of restitution of conjugal rights, against which the present Civil Miscellaneous Appeals have been preferred by the appellant/wife.

2. According to the learned counsel for the appellant, the marriage between the appellant and the respondent was solemnized on 05.02.2005 at St. Infant Jesus Church, Gudalur as per Christian Community rites and



C.M.A.Nos.197 & 198 of 2018

Customs. The appellant was a student of the respondent, who was running the I.T.I. at Gudalur. Both the appellant as well as the respondent loved each other and thereafter, with the consent of their parents, they got married. Out of the wedlock, a male child was born on 06.11.2005. While facts are being so, the respondent/husband started to demand money from the appellant and often scolded her in a filthy language and also assaulted her. The appellant's father paid a sum of Rs.1,00,000/- to the respondent.

3. After few months, the respondent told the appellant that she is not beautiful and he would marry another girl and asked her to go away from him. On 28.10.2009, the respondent and his mother threatened the appellant that they would stab her to death, if she herself does not run away from the matrimonial home. Scared by the actions of the respondent and his mother, the appellant went to her neighbour's house and hid herself and only when her elder brother came for her rescue, she came out of the neighbour's home, after which, the respondent has beaten the appellant severely and drove her out from his house in the presence of her brother. Followed by the same, the respondent sent a legal notice dated 10.11.2009 to the appellant with false allegations of cruelty and called upon the appellant to give her consent



C.M.A.Nos.197 & 198 of 2018

for divorce.

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4. On 17.11.2009, when the appellant's father and paternal uncle went to the respondent's house, along with the appellant, for mediation, the respondent and his mother did not allow them inside the house and also assaulted the appellant and drove her out. Therefore, the appellant gave a complaint before the All Women Police Station, Gudalur for her protection. Again on 17.11.2009, the respondent sent another legal notice to the appellant and the appellant sent her reply on 27.11.2009. On 23.11.2009, the appellant's father also gave a complaint before B5, Singanallur Police Station, Coimbatore. It is the further contention of the appellant, that since the appellant is ready and willing to live with the respondent, she has filed a petition for restitution of conjugal rights before the Court below. But the Court below, without appreciating the facts of her case, has granted the decree of divorce, against which she has preferred the present civil miscellaneous appeals.

5. There is no representation on behalf of the respondent. Perusal of the counter filed by the respondent before the Court below reveals that he



C.M.A.Nos.197 & 198 of 2018

WEB COPY

has admitted the marriage that was solemnized between the appellant and the respondent on 05.02.2005 and also has admitted that due to wedlock a male child was born to them and now the child is under the custody of the appellant.

6. Perusal of the counter further reveals that the appellant and the respondent after marriage, have shifted their house to Gudalur for leading a peaceful matrimonial life, but the appellant has left the matrimonial home without any valid reasons. Further, the appellant has left the respondent for the reason that she was suffering from the disease of tuberculosis even before her marriage and with an intention to hide it, she used to pick up frequent quarrels by showing disrespect towards the respondent and his family members.

7. It is further averred in the counter that the appellant threatened that she would attempt to commit suicide and would lodge false complaint against the respondent and his family members. The appellant without any valid reasons left the matrimonial home and stayed with her parents. The respondent sent a legal notice on 10.11.2009 and thereafter, she sent her

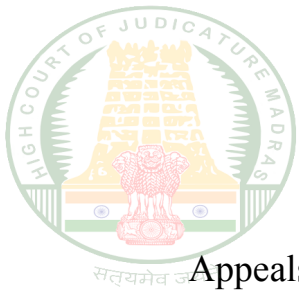


C.M.A.Nos.197 & 198 of 2018

reply with false allegations. The matrimonial life of the respondent was broken down. The appellant left the matrimonial home along with her child on 29.10.2009 for the reason that the respondent has questioned about the illicit relationship of the appellant with one Antony. The appellant also preferred false complaint against the respondent and his mother. The said acts of the appellant caused cruelty to the respondent. Therefore, he filed a petition for granting divorce on the ground of cruelty before the trial Court.

8. Before the trial Court, in D.O.P.No.1085 of 2011, the husband was examined as P.W.I and exhibits Exhibit.P.1 to P-6 were marked. This appellant was examined as R.W.1 and R.W.2 one James who had deposed about the compromise talks held for reunion of appellant and the respondent was also examined and Exhibit.R1 to R7 were marked.

9. The trial Court after hearing both sides, dismissed the petition filed by the appellant in D.O.P.No.1178 of 2009 for the relief of restitution of conjugal rights and allowed the petition filed by the respondent/husband in D.O.P.No.1085 of 2011 for seeking divorce and their marriage was dissolved. Aggrieved by the said order, the present Civil Miscellaneous



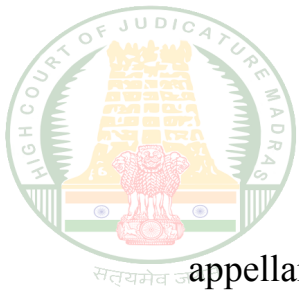
C.M.A.Nos.197 & 198 of 2018

Appeals have been filed.

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10. The learned counsel appearing for the appellant would contend that the appellant has clearly established her case by examining witnesses R.W.1 and R.W.2 and also has marked exhibits R1 to R7. The trial Court failed to consider the said evidence. Per contra, the respondent herein was examined as P.W.1 and Exhibit.P.1 to P6 were marked. The respondent herein has not proved the ground of cruelty for granting divorce. But, the trial Court without considering the appellant's side evidence, came to a conclusion and granted the decree of divorce and dismissed the petition filed by the appellant/wife for the relief of restitution of conjugal rights. Therefore, the fair and decreetal order passed by the learned trial Court is liable to be set aside.

11. Upon hearing the submission made by the learned counsel for appellant and on perusing the materials available on record, the point for determination in C.M.A.No.197 of 2018 is whether the respondent/husband is entitled to get a decree of divorce on the ground of cruelty? and in C.M.A.No.198 of 2018, the point for determination is whether the



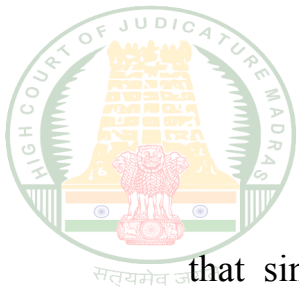
C.M.A.Nos.197 & 198 of 2018

WEB COPY

appellant/wife is entitled to get a relief of restitution of conjugal rights as against the respondent?

12. In this case, there is no dispute in respect of the relationship of the parties and the marriage that took place between them on 05.02.2005. It is also admitted fact that due to wedlock a male child was born to them and the child is under the care and custody of the appellant/wife. While so, the appellant has filed a petition before the trial Court for the relief of restitution of conjugal rights as against the respondent. However, she made some allegations that the respondent harassed her and demanded dowry and the mother of the respondent also caused cruelty.

13. Per contra, on a perusal of the counter filed by the respondent/husband before the Court below would reveal that the appellant very often picked up quarrels with the respondent and without any valid reasons, she left the matrimonial home and she refused for conjugal relationship with the respondent. The appellant also made false complaints against the respondent and his mother. The above said complaint given by the appellant/wife has not been denied by the appellant. However, she stated



C.M.A.Nos.197 & 198 of 2018

WEB COPY

that since the respondent and his mother assaulted her and she gave a complaint due to harassment made by the respondent and his mother. Therefore, she left from the matrimonial home. In this context, the appellant/wife was examined as R.W.1 in the main Original Petition and she deposed about the said facts. The respondent/husband was examined as P.W.1 in the main Original Petition and he deposed about the complaint given by the respondent and very often she picked up quarrel with the respondent and she voluntarily left the matrimonial home. Therefore, the available evidence shows that there is misunderstanding between the parties and there is no chance for reunion and the appellant is not willing to live with the respondent. The respondent/husband's side evidence would show that the appellant caused mental cruelty to the respondent.

14. Moreover, when the case is pending before the Trial Court, the appellant/wife was set exparte and the trial Court had passed an ex-parte decree and thereafter the appellant filed a petition to set aside the exparte decree. In the meantime, the respondent/husband got married with another lady and now she is residing with the respondent. Therefore, there is no chance for reunion by the appellant/wife with the respondent/husband. The



C.M.A.Nos.197 & 198 of 2018

WEB COPY

trial Court also elaborately discussed about the evidence of the Appellant and in her evidence she admitted that she was affected by Tuberculosis even prior to the marriage. She also submitted that the respondent remarried and living with her and therefore, there was no possibility of reunion. Therefore, the trial Court granted decree of divorce.

15. The trial Court also after considering the case in its entirety, allowed the petition for divorce on the ground of cruelty and dismissed the petition for restitution of conjugal rights and therefore, the common order of the Trial Court does not warrant any interference. Further, the trial Court also awarded a sum of Rs.3,000/- per month to the Appellant/wife and Rs.2,000/- per month to the male child, in total the trial Court awarded Rs.5,000/- towards maintenance from the date of petition. However, either the respondent or the Appellant did not file any appeal as against the maintenance order passed by the trial Court.

16. Therefore, the common order passed by the trial Court is no way perverse or infirmity and it does not warrant any interference. Thus, the points are answered accordingly. However, considering the nature of the



C.M.A.Nos.197 & 198 of 2018

case and facts and circumstances of the case, it is appropriate to award Rs. 10,00,000/- (Rupees Ten Lakhs only) towards permanent alimony to the appellant. Therefore, the respondent/husband is directed to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) to the Appellant towards permanent alimony within a period of three months from the date of this judgment.

17. In the result, these Civil Miscellaneous Appeals have no merits and liable to be dismissed. Accordingly, these Civil Miscellaneous Appeals are dismissed. The respondent/husband is directed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the appellant/wife towards permanent alimony with in three months from the date of this judgment. Consequently, connected Miscellaneous Petition is closed. No costs.

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

20.09.2024

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Index :Yes/No

Neutral Citation :Yes/No



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C.M.A.Nos.197 & 198 of 2018

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

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To

1. The Principal Judge, Family Court,
Coimbatore.
2. The Section Officer, V.R.Section, High Court, Madras.

Common Judgment made in
C.M.A.Nos.197 & 198 of 2018

Dated:
20.09.2024