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CMA NO.1636 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 31 / 07 / 2024

JUDGMENT PRONOUNCED ON : 29 / 08 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.1636 OF 2022

AND

CMP NO.12174 OF 2022

V.Ravikumar

... Appellant / Respondent /
Petitioner

Versus

Amutha

... Respondent / Petitioner /
Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of the Civil Procedure Code, 1908, praying to set aside the fair and decretal order passed in C.M.A.No.1 of 2015 dated 11.11.2021 by the learned District Judge, Nagapattinam reversing the fair and decretal order passed in H.M.O.P.No.71 of 2020 dated 26.11.2014 by the learned Sub Judge, Nagapattinam and allow the above Civil Miscellaneous Appeal.

For Appellant : Mr.S.Parthasarathy

For Respondent : Mr.K.M.S.Muthukumaran

J U D G M E N T



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Feeling aggrieved with the judgment dated November 11, 2021 passed in C.M.A.No.1 of 2015 by the 'learned District Judge, Nagapattinam' [henceforth 'First Appellate Court' for brevity] reversing the fair and decretal order dated November 26, 2014 passed in H.M.O.P.No.71 of 2020 by the 'learned Sub Judge, Nagapattinam' [henceforth 'Trial Court' for brevity] the appellant – husband filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties herein will be referred to as per their rank before the Trial Court.

Petitioner's case

3.The petitioner is the husband, and the respondent herein is the wife. According to the petitioner, the marriage between the petitioner and the respondent took place on August 31, 2007 as per Hindu Rites and Customs, as arranged marriage. Out of the wed-lock, a male child was born to them in the year 2008. Shortly after their marriage, the respondent began behaving in a rude manner towards the petitioner and often quarreled with the parents and relatives of the petitioner. Further, the respondent often left her matrimonial house and went to her parents' house and threatened the petitioner through



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rowdy elements. The respondent was forcing the petitioner to come and live with the respondent at her parents' house. Further, the respondent often shouted in the streets in a godly frenzy state, which is indicative of her potential mental issues. The respondent is in a relationship outside of marriage. The respondent's family is doing some illegal arrack manufacturing business. The issue escalated when the respondent along with his sister's husband Shanumugavel came to the petitioner's house and caused threat to the petitioner's sister, brother and brother-in-law. Hence, the petitioner's sister filed a complaint on the file of Kariyapattinam Police Station against the respondent and the petitioner's brother filed a complaint on the file of Chief Minister's Special Cell. The act of the respondent amounts to cruelty. Accordingly, the petitioner filed a petition seeking divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the file of Sub Court, Nagapattinam.

Respondent's case

4.The respondent filed a counter wherein she denied the averments of the original petition and has averred that the petitioner demanded dowry and subjected her to cruelty. Further that the petitioner sold



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her jewelry and used the money for himself; that the petitioner treated her like a housemaid, refusing to provide her with basic necessities such as food, clothing, and security; that the petitioner's family also inflicted cruelty upon her and defamed the respondent as if the respondent has relationship outside of marriage; that during her pregnancy, the petitioner physically assaulted her and forced her out of the house, after which he left for a foreign country. Further that, despite her numerous attempts to reconcile and live with the petitioner, he refused to accept her; that left with no other option, the respondent filed a police complaint against the petitioner; that during the police enquiry, the petitioner agreed to live with her but later did not honor his commitment; that considering the well-being of their son, the respondent is ready and willing to live with the petitioner. Accordingly, the respondent prayed to dismiss the original petition.

5.At trial, on the side of the petitioner, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.3 were marked. Further, one Ramukannu was examined as P.W.2. On the side of the respondent, the respondent was examined as R.W.1 and one Amsavalli, Special Sub Inspector of Police, Vedaranyam Police Station was examined as R.W.2 and no



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documents were marked. Police complaint given by the respondent against the petitioner on the file of Vedaranyam All Women Police Station on September 24, 2008 was marked as Ex-X.1 and the police complaint given by the respondent on the file of Vedaranyam All Women Police Station on April 5, 2013 was marked as Ex-X.2.

6.After hearing both sides, the Trial Court granted decree of divorce by allowing the petition in H.M.O.P.No.71 of 2010 on November 26, 2014.

7.Feeing aggrieved with the said order, the respondent preferred C.M.A.No.1 of 2015 on the file of the First Appellate Court. The First Appellate Court, on considering the evidence and materials available on record, remanded the case back to the Trial Court vide its judgment dated November 11, 2021 observing that the Trial Court had not given any specific finding regarding the alleged cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, instead, the Trial Court granted a decree of divorce based on the fact that the petitioner and respondent had been estranged for more than six years with no possibility of reconciliation. In other words, since the Trial Court granted decree on the ground of 'irretrievable break down of



marriage', which is not a ground enumerated under Section 13 of the Hindu Marriage Act, 1955, the First Appellate Court remanded the matter to the Trial Court.

8. Feeling aggrieved with the said Judgment, the petitioner/husband preferred this Civil Miscellaneous Appeal.

9. The learned counsel for the appellant / husband would argue that the First Appellate Court miserably failed to consider the evidence available on record; that the Trial Court discussed the evidence and only after considering the evidence and materials, granted decree. The evidence discussed by the Trial Court is sufficient to decide the matter. The First Appellate Court without appreciating the evidence available on record, mechanically remanded the matter to the Trial Court. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.

10. Per contra, learned counsel for the respondent / wife would argue that the Trial Court did not record any specific finding about the alleged cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955; that 'irretrievable break down of marriage' is not a ground enumerated under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and hence, the First



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Appellate Court remanded the matter to the Trial Court for fresh consideration; that under such circumstances, there is no warrant to interfere with the Judgment of the First Appellate Court. Accordingly, he prayed to dismiss the Civil Miscellaneous Appeal.

11.This Court has considered the rival submissions and perused the materials available on record.

12.The petitioner – husband examined himself as P.W.1 and deposed that the respondent – wife committed some cruelty against him. Further the petitioner examined one Ramukannu to establish his case. On the side of the petitioner, Ex-P.1 to Ex-P.3 were marked. Ex-P.2 is the police complaint dated August 29, 2008 given by the sister of the petitioner on the file of Kariyapattinam Police Station. Ex-P.3 is the complaint by the petitioner's brother to the Chief Minister's Special Cell. Notably, there is no evidence available on record pertaining to the outcome of Ex-P.2 and Ex-P.3 complaints. Further, P.W.2-Ramukannu in his evidence deposed that the respondent often behaved in an uncontrolled/ erratic manner in the streets raising her voice as if she is in a state of divine fervor.

13.On the other hand, the respondent – wife examined herself as



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R.W.1. She denied the evidence of the petitioner. Ex-X.1 and Ex-X.2 complaints were marked through R.W.2. From Ex-X.1 and Ex-X.2 complaints, it is seen that a strained relationship was prevailing between the petitioner and the respondent after few days from their date of marriage.

14. In these circumstances, the First Appellate Court is of the view that though the Trial Court discussed the evidence of P.W.1 and R.W.1, the Trial Court did not record any specific finding pertaining to the alleged cruelty. To be noted, the petition was filed under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty. Instead, the Trial Court granted a decree of divorce on the ground of 'irretrievable breakdown of marriage' which is not enumerated under Section 13 of the Hindu Marriage Act, 1955. Since the said ground is not a valid ground available to the parties, the relief granted by the Trial Court based on the said ground is not sustainable in law. Further, the Trial Court ought to have recorded a finding with regard to the alleged cruelty but miserably failed to do so. Under such circumstances, the First Appellate Court was right in setting aside the Trial Court's order and remanding the matter back to the Trial Court to reconsider the matter afresh. While remanding the matter, the First



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Appellate Court has rightly observed that both the parties are at liberty to adduce additional evidence, if any. This Court does not find any illegality or irregularity in the Judgment of the First Appellate Court.

15. Accordingly, this Civil Miscellaneous Appeal is dismissed.

No costs. Connected Civil Miscellaneous Petition is closed.

29 / 08 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

1. The District Judge
District Court
Nagapattinam.

2. The Sub Judge
Sub Court
Nagapattinam.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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