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C.M.A.No.44 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

C.M.A.No.44 of 2018

R.Karthikeyan

... Appellant

Vs.

P.Priyanka

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act against the judgment and decree passed in F.C. H.M.O.P.No.114 of 2017 dated 31.10.2017, on the file of the Family Court Judge, Dharmapuri.

For Appellant : Mr.B.Sundarapandiyan

For Respondent : No appearance

J U D G M E N T

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

Challenging the dismissal of divorce petition filed by the appellant in H.M.O.P.No.114 of 2017, this Civil Miscellaneous Appeal has been filed.



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2. The facts required for consideration of this appeal are as follows:

2.1. The marriage between the appellant/husband and the respondent/wife had taken place on 12.06.2013 at Dharmapuri. Out of wedlock, a female child was born on 20.04.2015. It is the case of the appellant that after the birth of child, the respondent behaved indifferently and often left the matrimonial home and finally, eloped with one Anandakumar during May 2017 and she also made her opinion before the Panchayat that she would not reunite with the appellant and executed muchalika on 13.05.2017. Hence, the appellant/husband filed a petition for a decree of divorce on the ground of cruelty in HMOP No.114/2017. The respondent remained exparte before the Trial Court. The Trial Court vide order dated 31.10.2017, dismissed the H.M.O.P. Challenging the said dismissal order, the appellant has preferred this appeal.

3. The learned counsel appearing for the appellant submitted that the behaviour of the respondent was indifferent after the birth of child and she often left the matrimonial home and eloped with one



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Anandakumar, for which a complaint had been preferred before the Police Station and he also relied on panchayat Muchalika executed on 13.05.2017, wherein mutually the parties got divorce and based on the said Muchalika, the respondent also remarried the said Anandhakumar and left the child with the appellant. The learned counsel further submitted that the respondent is leading a happy matrimonial life with the said Anandakumar and they are also blessed with two children and hence prays for grant of divorce.

4. Though notice has been served on the respondent, continuously there is no appearance for the respondent. This Court heard the submission of the learned counsel for the appellant and is inclined to pass orders based on the available materials.

5. Though the respondent/wife remained exparte before the Trial Court, the claim of the appellant/husband for grant of divorce on the ground of cruelty was denied to him. It is stated by the learned counsel for the appellant that the respondent got remarried and begotten two children. The respondent failed to appear before this Court to contest the



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case. Though notices were served on her, she had obviously evaded to appear before this Court. If the respondent was really keen and desirous to contest the matrimonial petition, she would have made enquiries to find out the stage of the case. However, the respondent remained absent before the Lower Court and remained absent before this Court also.

6. Further, the parties have been living separately from the year 2017. The relationship was terminated otherwise except by a formal decree of divorce. Both the parties had moved away and settled in their respective lives and hence, there is no need to continue the mere marital status without being living together and no useful purpose will also be served in not granting divorce to the appellant. Therefore, this Court, taking into account, all the factual aspects of the case, is of the considered view that it will not be possible for the parties to live together and the best course is to dissolve the marriage by passing a decree of divorce.

7. Accordingly, this Civil Miscellaneous Appeal is allowed. The impugned judgment and decree passed Family Court Judge, Dharmapuri in F.C.H.M.O.P.No.114 of 2017, dated 31.10.2017, is set aside. The



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marriage between the appellant / husband, R.Karthikeyan and the respondent / wife, P.Priyanka, is dissolved by a decree of divorce, as per the provisions of the Hindu Marriage Act, 1955. No costs.

(J.N.B,J.) (P.D.B., J.)
22.07.2024

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To
The Family Court Judge, Dharmapuri.

J. NISHA BANU, J.



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and
P.DHANABAL,J.

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