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C.M.A.Nos.3552 and 3979 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.Nos.3552 and 3979 of 2019

and

C.M.P.Nos.14723 and 12861 of 2019

K.Sarulatha ... Appellant [in both C.M.As.,]

Versus

A.Aruldass ... Respondent [in both C.M.As.,]

COMMON PRAYER : Civil Miscellaneous Appeals have been filed against the Common Order dated 20.06.2016 made in I.D.O.P.No.1492 of 2014 and S.M.O.P.No.842 of 2013 on the file of the Additional Family Court at Coimbatore.

For Appellant : Mr.R.Thiagarajan

For Respondents : Served – No Appearance

COMMON JUDGMENT

(Judgment of the Court was made by Mrs.R.Kalaimathi, J.,)



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These Civil Miscellaneous Appeals have been filed by the appellant/wife, aggrieved by the common order dated 20.06.2016 passed in I.D.O.P.No.1492 of 2014 and S.M.O.P.No.842 of 2013.

2. I.D.O.P.No.1492 of 2014 was filed by the husband under Section 32 of Indian Divorce Act for restitution of conjugal rights was allowed. Against which, the wife has preferred C.M.A.No.3552 of 2019.

3. S.M.O.P.No.842 of 2013 was filed by the appellant/wife under Section 27(1)(x) of Special Marriage Act,1954 for annulling the marriage, was dismissed. Against which, the wife has preferred C.M.A.No.3979 of 2019.

4. The facts which led to the filing of I.D.O.P., by the respondent / husband is set out hereunder:

The petitioner and the respondent got married at Coimbatore St.Michael Church on 20.05.2009 in the presence of their relatives and friends as per the Catholic Christian rites and customs. The petitioner has completed his Master Degree in Commerce and Bachelor Degree in Education and he was doing C.A. As his father who was working as Coimbatore Customs R.C.Cemetery Security, due to his ill health, his



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mother Pushpamary was working as security in the said Cemetery. It is

not easy for his mother being woman to dig a pit and bury the dead body and therefore, he took the responsibility from his mother of burying the dead bodies by coming to the cemetery during morning, lunch and evening hours and used to help his mother. In the year 2005, when he was studying at Bishop Ambrose Arts and Science College, he had love affair with the respondent and she was also studying in the same college. Initially, they became good friends and later friendship turned into love affair. She used to come to the cemetery. The respondent converted into Christianity and on 20.05.2009, as per Christian rites, they got married. The respondent gave birth to a girl child on 02.02.2010 at Coimbatore. He got employment for his wife at Fathima Kinder Garden School. Due to the ban for recruitment, he got Teacher post only on 04.03.2013. He was taking care of his wife and the child by spending huge amount. He provided his wife costly dresses, jewels and silver ornaments worth about Rs.3,00,000/-. While so, on 16.03.2013, the respondent upon the ill advice of her parents, left the 3 1/2 years old girl child and left matrimonial home. The respondent withdrew an amount of Rs.60,000/- and closed the bank account which was opened by him for her use. Despite the fact that the respondent went to her parents place, he used to deposit a sum of Rs.5,000/- for his daughter and wife. The

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respondent with incorrect facts and allegations filed the divorce petition before the Coimbatore Family Court in S.M.O.P.No.842 of 2013. With a fond hope that the respondent would mend her ways and she would come forward to live with him, he has filed the petition for restitution of conjugal rights.

5. The details of counter filed [by the wife] stated in brief:

When both of them were studying in Coimbatore Bishop Ambrose College, they fell in love with each other. She belongs to Hindu religion and the petitioner is a Christian. On the compulsion of the petitioner, they got married at Coimbatore District Registration Office on 22.07.2008 and they were living at their respective parents home. After completion of the course upon the compulsion of the petitioner, she came out from her residence and on 20.05.2009, their marriage was held at Coimbatore, St.Michael Church in the presence of petitioner's relatives and friends. Her parents did not know about their marriage. Both of them were leading their matrimonial life by living in the cemetery. The respondent was under the impression that her husband would be affectionate to her and she will be taken care of in a niceway. But, she was shocked to observe his wrong activities. The petitioner compelled

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her to convert Christianity and without any reason, the petitioner used to beat her and scold her with filthy language. The petitioner compelled to get jewels and cash from her parents. She gave birth to girl child on 02.02.2010. The petitioner did not go for any job and did not take care of his wife and child. The petitioner was living at the cemetery and he was getting meagre amount by burrying the dead bodies. When the respondent told him to get an employment based on his educational qualification, he did not heed to her words. The respondent was working as a Teacher in Our Lady of Fathima Primary and Nursery School, Coimbatore and she was maintaining her family and child. She was withstanding the cruelties caused by the petitioner and she was taking care of her family and child in a proper way. The petitioner started to harass her sexually and he behaved like a psycho patient and because of the sexual harassments and other harassments, she lodged a complaint before the police station on 16.03.2013. Having seen the injuries found on her, the police advised her to go to her parents home and then onwards she has been living along with her parents and she had filed a petition for divorce on the ground of cruelty under Section 27(1)(x) of the Special Marriage Act.



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6. In consideration of common evidence, recorded in S.M.O.P.No.842 / 2013, common order was passed by dismissing the petition for divorce filed by the wife and petition for restitution of conjugal rights [filed by the husband] was allowed.

7. At trial, the appellant / wife has examined herself as PW1 and two documents were marked. On the respondent side, the respondent(Husband) has examined himself as RW1 and twenty documents were marked.

8. Upon consideration of both oral and documentary evidence, the learned Family Court Judge has observed that though the respondent/wife has raised allegations against her husband, she has not stated anything against him in the complaint dated 16.03.2013. From the evidence of RW1(husband), it is inferable that she herself had gone out of the matrimonial home and she has been living with her parents since 16.03.2013.

9. Though the wife left matrimonial abode on 16.03.2013, still, the petitioner wanted to live his life along with his wife, filed a petition for restitution of conjugal rights. The wife brought the girl child and left her in front of the husband's residence and went off to her parents

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residence. The order was passed by the Additional Family Court, Coimbatore on 20.06.2016.

10. In the given context, in *Samar Ghosh v. Jaya Ghosh*, reported in (2007) 4 SCC 511, the Apex Court has observed that long separation of husband and wife also would amount to cruelty. The marriage no doubt has become a dead wood. The relevant portion is extracted as follows:

"101. (xiv) ... Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like circumstances, it may lead to mental cruelty."

11. It is relevant to refer to the observations made by the Hon'ble Supreme Court in *Roopa Soni v. Kamalnarayan Soni* reported in 2023 SCC OnLine SC 1127, wherein, it has been observed that *"... the Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of*

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free decision-libre recherche scientifique i.e., "free scientific research"...

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12. Petitioner(PW1/wife) has raised the allegations against her husband has sought for grant of order of divorce. She has alleged that she was treated with cruelty by beating her to get cash and jewel from her parents and the petitioner abused her in filthy language and her husband did not go for job, he failed to maintain his wife and child. He was earning lesser amount by burrying the dead bodies that is the reason why she was forced to join in the school. Whereas, the respondent/husband has denied each and every allegation raised by his wife and has stated that he has set up a separate family in order to have a happy life with his wife and child at Kamatchi Amman Koil Street, Coimbatore and purchased all household articles including gas stove and at the instance of the petitioner, he got a job for his wife at Fathima Kinder Garden School. He was working hard as a worker of cemetery, mainly for the reason that his wife escaped from the custody of her father and they got married. It is his wife who ran away from the matrimonial home as per the ill advise of her parents.



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13. The petitioner joined as a teacher in a private school only after 03.09.2012 (Ex.R2). Whereas, he has spent money for the delivery of the baby and for the naming ceremony.

14. The petitioner has contended that as her husband insisted to hand over the custody of the child, she did so. On the contrary, during her examination, she would state that her husband demanded to hand over the custody of the child and thereby troubled her. But, contrary to the above said details, during her cross-examination, it has come on record that she left the child on her own accord in front of the cemetery and she waited there till the child went inside the cemetery and left the place. She did not hand over the child directly to her husband would lead to irresistible conclusion that she did not have any interest to take care of the child.

15. From 16.03.2013 onwards, she went out of the matrimonial home. Since then, she has been residing along with her parents. The petitioner/wife has filed criminal complaints against the petitioner. This shows that she is totally lost her interest in maintaining the marital cord.



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16. Both the petitioner and the respondent are well educated. She

has filed petition for divorce after separation. This itself shows that the marriage has broken down as regards the petitioner/wife is concerned. In these circumstances, in order to reconcile the parties, the petition for restitution filed by the husband was allowed and the divorce petition filed by the wife was dismissed. Therefore, the order passed by the learned Family Court in order to preserve the marriage has turned to be not effective.

17. In terms of socio-economic status, admittedly the husband's family is lesser in degree. In reality, though it was a love marriage, after some 5 years, she lost romance for some reasons probably because of the inter-religion marriage, thinking about her parents and her siblings, she once for all went to her parents home and she has been living separately since 11 years.

18. Therefore, the criterion we applied is not the effect, produced in the minds of others, but, their consequence, actual on the complaining spouse. The evidence of both sides has to be tested on the anvil of objective parameters, the evidence available on record preponderate in favour of the husband.

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19. We are of the considered view that based on both sides evidence, the appellant/wife has not shown any reasonable cause for withdrawing from the society of the husband. The basic importance of decree of restitution is that one spouse is entitled to the society and comfort/consortium of the other spouse. If either spouse abandoned from the society of the other without reasonable excuse or just cause, the petitioner is entitled for order for restitution of conjugal rights.

20. The parties are in separation for the past 11 years. In these circumstances, we feel that as the marriage has already broken down has become irreparable by filing these appeals by the appellant/wife. The legal tie alone subsists.

21. We are of the considered view that in the given circumstances, refusing to sever the marital tie will not serve the purpose and compelling them to reunite will not occur. In fact, the marriage tie has ceased to exist long before. We reiterate the fact that refusal to grant decree of divorce would be disastrous to them and considering several factors as mentioned supra coupled with the fact



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that she has fallen into rough weather, it is high time to bring the marital relation to an end.

22. In the result, both the Civil Miscellaneous Appeals are allowed and the judgment and decree dated 20.06.2016 made in I.D.O.P.No.1492 of 2014 and S.M.O.P.No.842 of 2013 on the file of the Additional Family Court at Coimbatore are hereby set aside. I.D.O.P.No.1492 of 2014 stands dismissed and S.M.O.P.No.842 of 2013 stands allowed. In the result, the marriage held between the appellant and the respondent at Coimbatore District Registration Office on 22.07.2008 stands dissolved. There shall be no order as to costs. Consequently, connected civil miscellaneous petitions are closed.

(J.N.B. J.,) (R.K.M.J.,)
09.08.2024

Index: Yes/No
Speaking Order/Non Speaking order
Neutral Citation Case :Yes / No
ssn

To

The Additional Family Court,
Coimbatore.

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