



C.M.A.Nos.1336 and 1338 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	23.07.2024
PRONOUNCED ON	:	12.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.Nos.1336 and 1338 of 2022

R. Balachandran

... Appellant
in both appeals

Vs

G. Reena

... Respondent
in both appeals

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 19 of the Family Court Act praying to set aside the common fair and decreetal order passed in F.C.O.P.Nos.211 & 221 of 2018 dated 26.04.2022 on the file of the learned Judge, Family Court, Erode.

In both appeals:

For Appellant : Mr. Mukunth, Senior Counsel
for Mr. A. Tamilarasan

For Respondent : Mr. S. Kaithamalai Kumaran



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COMMON JUDGMENT

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

Since the issue involved in both the appeals are one and the same, they are disposed of by this common judgment.

2. Civil Miscellaneous Appeals have been preferred as against the common fair and decretal order passed in F.C.O.P. Nos.211 and 221 of 2018 on the file of Family Court, Erode dated 26.04.2022, wherein the appellant/husband has filed a petition under Section 13(1) (i-a) of the Hindu Marriage Act seeking to dissolve the marriage, whereas the respondent/wife has filed a petition under section 9 of the Hindu Marriage Act, seeking a decree of restitution of conjugal rights. Aggrieved against the dismissal of the petition filed by the appellant, and granting of the relief of conjugal rights to the respondent, the appellant has preferred the present civil miscellaneous appeals before this Court.

3. Mr. Mukunth, learned Senior Counsel, appearing for Mr.A.Tamilarasan, learned counsel for the appellant made the following



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submissions:-

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3.1. The marriage between the appellant and the respondent was solemnized on 27.05.2007 at Erode as per Hindu rites and customs. Both the appellant and the respondent started their marital life at the appellant's house at Rama Vilas, Kappala House, Aikala Post, Dakshina Kannad, Karnataka State. No child was born out of their wedlock.

3.2. According to the learned counsel for the appellant, the respondent/wife was arrogant and she did not respect the appellant and his mother. She used to get dejected when the relatives of the appellant visit their house and she refused to allow them inside the house. While so, without any valid reasons, on 17.01.2017, the respondent left from the matrimonial home and started to reside with her parents.

3.3. Even after conducting of several Panchayats in the presence of elders and well-wishers, the respondent refused to live with the appellant. Left with no other alternative, the appellant issued a legal notice dated 16.05.2018 calling upon the respondent for giving her consent for mutual divorce, but the respondent did not respond to the request and she issued a



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false reply vide notice dated 20.05.2018.

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3.4. The main grounds raised by the learned Senior Counsel is that even though the allegations leveled up by the appellant against the respondent were proved through the evidence of R.W.1 to R.W.3, the Court below failed to consider the same before passing the order. The respondent was always in the habit of abusing and ill-treating the appellant, age old mother and his relatives. The respondent disliked the appellant's mother staying with them and she has even beaten up the appellant's mother, which in turn has caused mental cruelty to the appellant.

3.5. Moreover, the respondent frequently picked up quarrels with the appellant and threatened him that she would commit suicide after creating evidence against him. Therefore, the appellant always lived a life of fear, facing the threatening of the respondent. More than a decade, there was no child born to them. Hence, both the appellant and the respondent decided to undergo medical treatment. Even when the appellant acquired appointment for several times in reputed hospitals at Mangalore, the respondent purposefully avoided the same and postponed the



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appointments, thereby not co-operating for the medical treatment.

Meanwhile, on 17.01.2017, with any valid reasons, the respondent left from the matrimonial home and started to reside with her parents.

3.6. The learned Senior Counsel further submitted that the respondent, without any material or facts, alleged that the appellant has filed the petition for divorce in order to marry another lady, thereby causing cruelty to the appellant. When the respondent left the matrimonial home on 17.01.2017, the appellant and his family members requested the respondent to return to the matrimonial home, but the respondent refused to return back to the matrimonial home. When the appellant filed a petition for divorce, the respondent has filed a petition for restitution of conjugal rights, only with an intention to harass the appellant. Therefore, the appellant has preferred the present Civil Miscellaneous Appeals, to set aside the order of the Court below granting conjugal rights to the respondent/wife and for a consequently prayer of dissolving the marriage.

4. Mr. S. Kaithamalai Kumaran, learned counsel for the respondent made the following submissions:-



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4.1. The learned counsel for the respondent admitted the marriage between her and the appellant and that no child was born to them. After marriage, they lived at the appellant's house at Karnataka for more than 10 years. The relatives and neighbors of the appellant used to speak ill about the respondent, since there was no child born out of the wedlock.

4.2. According to the learned counsel for the respondent, since there was no child born to them, the appellant, for name-sake purpose, compelled the respondent for attending medical counseling and suggested to get treatment at Erode. Thereafter, the appellant did not take any steps to take the respondent to Erode for treatment and he himself was not interested in taking medical treatment.

4.3. When the appellant issued a legal notice dated 16.05.2018 addressed to the respondent's parents house, with false allegations, the same was suitably replied by the respondent vide reply notice dated 20.05.2018. Even though the respondent is ready and willing to live with the appellant, the appellant/ husband has refused to live with her. Therefore, the respondent has filed a petition seeking for restitution of



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conjugal rights. The learned Judge, after considering the submissions and evidence adduced on either side, has rightly granted the order for restitution of conjugal rights, thereby dismissing the petition filed by the appellant seeking for dissolving of the marriage.

4.4. The learned counsel appearing for the respondent would further contend that the appellant has filed the petition seeking divorce on the ground of cruelty and there is no evidence or any specific pleadings in respect of cruelty. In support of the said contention raised by the learned counsel appearing for the respondent, he relied upon the judgment in ***Suman Singh vs. Sanjay Singh reported in Civil Appeal Nos.7114-7115 of 2014***, wherein it has been held as follows:-

“....

38) *In our considered view, as it appears to us from perusal of the evidence that it is the respondent who withdrew from the appellant's company without there being any reasonable cause to do so. Now that we have held on facts that the respondent failed to make out any case of cruelty against the appellant, it is clear to us that it was the respondent who withdrew from the company of the appellant without reasonable cause and not the vice versa.*

39) *In view of foregoing discussion, the appeals*



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succeed and are allowed. The impugned judgment is set aside. As a result, the petition filed by the respondent (husband) under [Section 13\(1\)](#) of the Act seeking dissolution of marriage is dismissed. As a consequence thereof, the marriage between the parties is held to subsist whereas the petition filed by the appellant against the respondent under [Section 9](#) of the Act seeking restitution of conjugal right is allowed. A decree for restitution of conjugal right is, accordingly, passed against the respondent. ”

4.5. In order to prove ‘cruelty’, there is no sufficient pleading or evidence adduced by the appellant and thereby, the present appeals are liable to be dismissed. Considering the same, the Trial Court has correctly dismissed the petition filed by the appellant seeking for divorce and has correctly allowed the petition filed by the respondent for restitution of conjugal rights. Therefore, the orders passed by the Court below are well-reasoned orders and the same does not warrant any interference of this Court and hence, the learned counsel prayed for dismissing the appeals.

5. Heard the learned counsel for the appellant and the learned counsel for the respondent and perused the materials placed before this



6. Before the trial Court, both the petitions were jointly tried. The respondent herein was examined as P.W.1 before the Court below and marked exhibits Ex.P.1 to Ex.P.6 on her side. On the side of appellant, three witnesses RW1 to RW3 were examined and 8 documents Ex.R1 to Ex.R.8 were marked. The Trial Court after hearing both sides, allowed the petition filed by the wife for restitution of conjugal rights in F.C.O.P. No.211 of 2018 and dismissed the petition filed by the husband for granting divorce in F.C.O.P. No.221 of 2018. Aggrieved by the said order of dismissal and the order of restitution of conjugal rights, the present appeals have been preferred on various grounds.

7. Upon considering the submissions made on either side and upon perusal of the records, it would show that the appellant's side witnesses have categorically deposed about the appellant's case and the ground of 'cruelty' has been proved through sufficient evidence, but the Trial Court has failed to consider the same. Per contra, believing the evidence of the respondent's side witnesses, it has allowed the petition filed by the



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respondent for restitution of conjugal rights. Though the respondent filed a petition for restitution of conjugal rights, it can be inferred that the respondent has no real intention for re-union with the appellant. Even though many panchayats were held for re-union, the respondent has refused to return back to the matrimonial home. Therefore, the orders passed by the Trial Court seeks the interference of this Court.

8. The points for determination in the appeals filed by the appellant are that whether the respondent is entitled to decree for restitution of conjugal rights and whether the appellant is entitled to decree for divorce on the ground of 'cruelty' as against the respondent.

9. In this case, there is no dispute with respect to the relationship between the parties and the marriage that took place between them on 27.05.2007 and also upon the fact that there was no child born to them. RW1 is the appellant and he has deposed before the Trial Court that the respondent caused 'cruelty' by insulting the appellant and his family members. Thereafter, without any valid reasons, the respondent/wife has



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left from the matrimonial home and refused to live with the appellant and thereby, caused 'cruelty' to the appellant.

10. It is also admitted that both the parties were separated from the year 2017 onwards and there is no chance for re-union. Though the respondent has filed a petition for restitution for conjugal rights and the same came to be allowed by the trial Court, it can be inferred that the respondent/wife has not taken any further steps for re-union. While so, it shows that she has no interest to live with the appellant.

11. Further on the side of the appellant, RW2 and RW3 were examined as witnesses, who supported the case of the appellant, on the ground of cruelty caused by the respondent to the appellant and his family. It can also be observed that the respondent/wife did not perform her duty as a wife and she left from the matrimonial home and refused to return back to matrimonial home, which caused mental cruelty to the appellant.

12. In this context, the learned counsel appearing for the appellant has relied upon the judgment of this Court in ***Parimala Devi vs. P. Paneerselvam reported in 2021 (2) TNCJ 1007 (Mad)***, wherein this Court has held that the act of wife disrespecting the husband and his family



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members, non-performance of her duties as a wife, attempting to commit suicide and insisting for separate residence by the wife, all amounts to 'cruelty' and therefore, the husband is entitled for 'divorce'.

13. In the present case on hand, the appellant has proved that the wife disrespected the appellant and his family members and also did not perform her duty as a dutiful wife. Therefore, the above said case law is applicable to the present facts of the case. Moreover, it is admitted by both the parties that they were separated from the year 2017 and there is no conjugal relationship between the parties. There is no chance for re-union and there is long separation between them which also comes under the purview of 'cruelty' and hence, the appellant is entitled to divorce. The Hon'ble Supreme Court has held in ***Shri Rakesh Raman vs. Smt. Kavita*** reported in ***Civil Appeal No.2012 of 2013, in para 18*** as follows:-

"18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown



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of all meaningful bonds and the existing bitterness between the two, has to be read as 'cruelty' under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock".

14. In the present case on hand, the Trial Court has failed to consider that the parties are separated from the year 2017 and failed to perform her duties as wife and thereby caused 'cruelty'. Therefore, the appellant is entitled to the relief of divorce on the ground of 'cruelty' and the respondent/wife is not entitled to the relief of restitution of conjugal rights. The points are answered accordingly.

15. The judgment, cited supra, relied upon by the learned counsel appearing for the respondent will not be applicable to the present facts of the case, since the facts of both the cases are distinguishable. This Court is of the opinion that the orders passed by the Trial Court are liable to be set aside.



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16. In the result, this Court is inclined to pass the following orders:-

(i) C.M.A.No.1336 of 2022 stands allowed and the order passed in F.C.O.P.No.211 of 2018 on the file of Famil Court, Erode granting conjugal rights to the respondent herein is hereby set aside;

(ii) C.M.A.No.1338 of 2022 stands allowed and the order passed in F.C.O.P.No.221 of 2018 is set aside and the petition stands allowed and the marriage solemnized between the appellant and the respondent on 27.05.2007 is dissolved;

(iii) However, considering the nature, facts and circumstances of the case, it is appropriate to direct the appellant to pay a sum of Rs.5 lakhs to the respondent/wife as permanent alimony and accordingly, the appellant/ husband is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the respondent/wife as permanent alimony within a period of **3 months** from the date of this judgment; and



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(iv) Consequently, the connected miscellaneous petitions are closed. No costs.

(J.N.B.J.)

(P.D.B.J)

12.08.2024

mjs/sts

Internet: Yes

Index: Yes/No

Neutral Citation: Yes/No

To:

The Family Court,

Erode.



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J.NISHA BANU, J.

and

P.DHANABAL, J.

sts

Common Judgment made in
C.M.A. Nos.1336 and 1338 of 2022

Dated:
12.08.2024