



C.M.A.No.1991 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MRS. JUSTICE R.KALAIMATHI**

**C.M.A.No.1991 of 2023
and CMP.No.19309 of 2023**

R.Kumareswarai @ Evangelin

..Appellant

Vs.

S.Johnson Prabhu

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act r/w. Under Section 19 of the Family Court Act to set aside the order dated 08.06.2022 passed in I.D.O.P.No.2845 of 2021 by the learned III Additional Principal Family Court, Chennai.

For Appellant : Mr.P.Rathanavel

For Respondent : Mr.D.Veerasekaran

J U D G M E N T

(The order of the Court was made by Mrs.J.Nisha Banu,J.)

This civil miscellaneous petition has been filed by the appellant/wife against the fair and decreetal order dated 08.06.2022 in I.D.O.P.No.2845 of 2021 passed by the learned III Additional Principal



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Family Court, Chennai, wherein exparte decree of divorce has been granted.

2. The case of the appellant is that she married the respondent on 09.01.2008 at New Thirumana Mandapam, I.C.F., Chennai 600 038 according to Christian rites and customs. Out of wedlock, two sons were born to them aged about 15 years and 10 years. From the year 2017, due to some indifference between the couples, relationship was strained between them and they were separated. Thereafter, the respondent/husband has filed I.D.O.P.No.2845 of 2021, before the III Additional Principal Judge, Chennai, for dissolution of marriage on the ground of cruelty. The Trial Court vide exparte order dated 08.06.2022 had dissolved the marriage by a decree of divorce on the ground of cruelty. Challenging the decree of divorce, the appellant / wife is before this Court.

3. The learned counsel appearing for the appellant stated that the respondent/husband has made various false allegations against the appellant. Further in the I.D.O.P, on receiving summons, the appellant



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appeared before the Family Court and later she was sent for counselling centre. She requested the Family Court by representation to engage a legal aid counsel to assist her in the court proceedings. Unfortunately no legal aid was engaged. Later, the appellant had opportunity to work as a Nurse in a Home at Kuwait. Therefore, she went to Kuwait on 02.03.2022 to earn her livelihood. In the meantime, the Trial Court had set her as exparte and granted decree of divorce. Thereafter, when she come to India, it was informed by the respondent / husband over phone that he has got exparte order on 08.06.2022 and also informed his arrangements for a second marriage on 08.05.2023. Immediately, the appellant has preferred to file this Civil Miscellaneous Appeal.

4. The learned counsel appearing for the respondent/husband submitted that several efforts were taken by the relatives for their reunion, but the appellant / wife refused for the same and continuously demanding divorce from the respondent. The appellant / wife also threatening the respondent to do away with his life and his two children, which causes mental agony and cruelty to the respondent. Therefore, he filed a petition for divorce. The Trial Court, after going through the entire



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evidence, concluded that the appellant / wife has caused cruelties and rightly granted divorce as prayed for.

5. Heard both sides and perused the materials.

6. On perusal of the records, it is held by the Trial Court that inspite of making several wild allegations against the appellant/wife by the respondent/husband, the appellant / wife has neither denied or disputed the same and further no contra evidences are available to disprove the contention of the respondent/husband and it was unchallenged. Therefore, the Trial Court has concluded that the respondent has established and proved that the appellant has caused cruelties and accordingly, granted decree of divorce on the ground of cruelty and desertion.

7. Further in respect of maintenance, it is decided by the Court based on the facts presented before it by both husband and wife, on divorce. As per law, if the wife is earning more than her husband, Court may not award any alimony to wife as she is able to maintain herself. If



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she has custody of children, then she can claim for their maintenance.

However, in the present case on hand, the children are in the custody of the respondent/husband and he only maintaining their children. Since the appellant / wife was gainfully employed in abroad, maintenance should not be granted.

8. For the reasons stated above, we are of the opinion that the wife was earning sufficiently to support herself and afford the same standard of living as she did during the marriage. Further, the children are now in the custody of the respondent/husband and he is taking care of his children expenses. In such circumstances, maintenance cannot be granted.

9. In the light of the undisputed fact that the parties have been living separately for long years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty and as such we feel that the order passed by the Trial Court which is impugned in this appeal, warrants no interference.

J. NISHA BANU, J.
and



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R.KALAIMATHI,J.

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10. Accordingly, the C.M.A. is dismissed, confirming the order dated order dated 08.06.2022 passed in I.D.O.P.No.2845 of 2021 by the learned III Additional Principal Family Court, Chennai. No costs.

(J.N.B,J.) (R.K.M., J.)
20.09.2024

Index : Yes / No
Internet : Yes
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To

The III Additional Principal Family Court,
Chennai.

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