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CMA.Nos.3189 and 3190 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**
and
THE HONOURABLE **MR.JUSTICE P.DHANAPAL**

CMA.Nos.3189 and 3190 of 2021
&
C.M.P.No.18809 of 2021

D.Sasi Kumar

...Appellant in both CMAs

Versus

Ellammal (a) Lomalatha

...Respondent in both CMAs

Prayer in CMA.No.3189 of 2021: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the judgment and decree in HMOP.No.389 of 2016 dated 08.04.2021 on the file of III Additional Family Court, Chennai.

Prayer in CMA.No.3190 of 2021: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the judgment and decree in HMOP.No.60 of 2018 dated 08.04.2021 on the file of the IIIrd Additional Family Court, Chennai.



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CMA.Nos.3189 and 3190 of 2021

For Appellant : Mr.K.Ramesh

For Respondent : Mr.C.Mahendran

COMMON JUDGMENT

(The Judgment of the Court was delivered by P.DHANAPAL,J)

The above civil miscellaneous appeals have been preferred as against the common fair orders and decretal orders passed in HMOP No.389 of 2016 and HMOP.No.60 of 2018 on the file of III Additional Family Court, Chennai dated 08.04.2021.

2. The appellant/husband has filed petition for grant of divorce in HMOP.No.389 of 2016. The respondent/wife has filed a petition before the Trial Court in OP.No.60 of 2018 for restitution of conjugal rights. The Trial Court dismissed the petition filed by the appellant/husband filed for divorce and allowed the petition filed by respondent/wife for restitution of conjugal rights. Aggrieved by the said orders, the present appeals have been preferred by the husband.



3. The case of the appellant is that, the marriage between the appellant and the respondent was solemnized on 02.07.2006 at Meenakashi Kalyanamandabam, No.7/4, Anna Nedum Pathai, Choolaimedu, Chennai as per Hindu Rites and Customs. After the marriage, the appellant and the respondent were residing at the appellant's house. Three months later, the respondent/wife started ill-treating the appellant by scolding in filthy words and without any information, she used to go to her parents house. When the same was questioned by the appellant/husband, the respondent left the matrimonial home and went to her parents house. The appellant also alleged that the respondent used to take money from the inmates and guests of the family. The above said act of the respondent caused mental agony to the appellant. While the facts being so, on 21.01.2016, the respondent without any valid reason left the matrimonial home and she was not found in her parents house also. Hence, a complaint was lodged and thereafter the respondent came to her parents' house. Out of the wed-lock, no child was born to them, the respondent also threatened to commit suicide, therefore, he filed a petition for seeking divorce.



4. The case of the respondent is that, the marriage between the parties is admitted. In the year 2017, the respondent got conceived but within three months the child was aborted, due to the acts of the appellant and thereafter in the year 2018, once again she conceived but again aborted. From 2009 onwards, the respondent was taking medicine for her illness. The respondent denied the allegations levelled against her.

5. The appellant due to his bad company changed his behaviour and started suspecting the respondent. In the year 2014, on account of medical treatment, she moved to her parent's home. During that period, the mother and friend of the appellant changed the mind of the appellant. But at no point of time, she threatened the appellant stating that she will commit suicide. The respondent was always willing to live with the appellant. The respondent has not done any cruelty to the appellant in any way and the allegations are totally false, therefore, she filed a petition for restitution of conjugal rights.

6. Before the Trial Court, joint trial was conducted. On the side of appellant husband, he was examined as PW1 and Ex.P.1 to P.6 were marked. On the side of



the respondent-wife, she was examined as RW1 and no documents were marked.

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7. The Trial Court, after hearing both sides and perusing the records, dismissed the divorce petition filed by the appellant and allowed the petition filed by the respondent wife for restitution of conjugal rights. Now the appellant challenged the orders passed by the Trial Court in the present appeals.

8. During the pendency of appeals, both the parties entered into compromise and also filed compromise memo dated 26.07.2024. It is stated in the compromise memo that that both the parties lived together initially, after 10 years, they developed difference of opinion on many issues. Therefore, they started living separately from January 2016. The relationship between them got strained and at the advice of elders and well-wishers and out of their own will and accord, they decided to separate and approached this Court for dissolution of marriage by mutual consent. Therefore, the respondent wife agreed to the petition to be allowed filed by the appellant and had no objection to grant of divorce.



9. However, this Court is not inclined to accept the compromise, based on the judgment of the Hon'ble Supreme Court, in the case of ***Sanjeeta Das Vs. Tappan Kumar Mohanty*** reported in [2010 (10) SCC 222] wherein, the Hon'ble Supreme Court held that, no Court can assume jurisdiction to dissolve the Hindu marriage, simply on the basis of consent of parties, *dehors*, the grounds enumerated under Section 13 of the Hindu Marriage Act, 1955 unless of course, the contesting parties proceed under Section 13 (b) of the Act.

10. Therefore, this Court is inclined to pass orders on merits. As already narrated above, the appellant who is the husband had filed a petition for grant of divorce on the grounds of cruelty and the respondent wife has filed a petition for restitution of conjugal rights. The Trial Court after analysing the evidence on both sides ordered the petition filed by the respondent-wife and dismissed the petition filed by the appellant herein for grant of divorce.

11. The grounds raised by the appellant husband for grant of divorce is that the respondent wife very often left the matrimonial home without any valid reasons and also threatened to commit suicide by implicating him and his family



members in a criminal case and also very often without any valid reasons quarrelled with the appellant. In order to substantiate that contention, he was examined as PW1 and he also categorically deposed about the cruelty caused by the respondent wife. In order to rebut the evidence of the appellant's side, the respondent wife was examined as RW1, she denied the averments made in the petition as well as the evidence of PW1. Though the respondent has denied the allegations levelled against her, she has not taken any steps for reunion except filing petition for restitution of conjugal rights. Mere filing petition for restitution of conjugal rights is not sufficient to show that she is ready to live with the appellant. *Per contra*, the appellant has categorically deposed about the cruelty caused by the respondent wife. Therefore, in our considered view, the appellant has established the cruelty.

12. Moreover, both the parties are residing separately from the year 2016 without any co-habitation. Therefore, long separation between both the parties without any co-habitation also constitutes the ground of cruelty. The Trial Court, failed to consider the above said aspects and this Court is of the view that there is no scope for re-union. Further, the respondent wife caused cruelty to the appellant



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husband and the cruelty is clearly made out. Therefore, the order passed by the Trial Court in favour of wife for restitution of conjugal rights and dismissal of the petition filed by the appellant for grant of divorce, is liable to be set aside and it is hereby set aside.

13. In the result, the CMA.No.3189 of 2021 is allowed. The order passed by the Trial Court in HMOP.No.389 of 2016 dated 08.04.2021 is set aside. The petition in HMOP No.389 of 2016 is allowed by dissolving the marriage solemnized between the appellant and the respondent dated 02.07.2006 at Chennai by granting divorce. The CMA.No.3190 of 2021 is allowed. The order passed by the Trial Court in HMOP.No.60 of 2018 is set aside. No costs. Connected civil miscellaneous petition is closed.

(J.N.B.J) (P.D.B.J)
29.07.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
NST/NVSRI



To

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The Judge,
IIIrd Additional Family Court, Chennai.



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J.NISHA BANU,J
and
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