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C.M.A.No.1445 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 04.09.2024

Order delivered on 06.12.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
and
THE HONOURABLE Mrs.JUSTICE.R.KALAIMATHI

C.M.A.No.1445 of 2022

Sita Mani @ Sita Laxmi Mani

....Appellant

Vs

Thenappan Chidambaram

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the order and decretal order of the learned IV Additional Judge, Family Court at Chennai dated 16.05.2022 and made in O.P.No.733 of 2018.

For Appellant : Mrs.Sheila Jayaprakash

For Respondent : Mr.T.E.Krishna
for Mr.A.Chidambaram

J U D G M E N T



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(The judgment of this Court was delivered by J.Nisha Banu,J.)

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This appeal has been filed challenging the order and decretal order of the learned IV Additional Judge, Family Court at Chennai dated 16.05.2022 made in O.P.No.733 of 2018, by which, an exparte decree of divorce was granted by the Family Court in favour of the respondent/husband.

2. The brief facts of the case of the appellant are as follows:

The appellant and the respondent were married on 04.02.2010 according to Hindu rites and customs in Sivaganga. The matrimonial home was set up at Albany USA. Out of the wedlock a son, Rishi was born on 12.09.2013. They were separated in USA on 29.05.2016. She was taken to Shelter Home by the police, when the appellant was physically abused by the respondent. The custody of the child was given to the appellant with visitation rights to the respondent and the respondent was directed to pay for child support. The respondent in his petition had wrongly stated the date of separation as 2.2.2016 to enable him to make out a case for desertion. The O.P.No.733 of 2018 was filed by the respondent for divorce on the ground of cruelty and desertion. The respondent was aware that the appellant was living in USA and he was exercising his rights of visitation but, he had chosen to file a petition for divorce with the appellant's mother's residence address and tried



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to get exparte decree. The appellant came to Chennai on 01.01.2022 and left Chennai on 29.01.2022 as she had been granted four weeks leave and would have lost her job if she did not return. Her son accompanied her to attend school. The appellant was willing to return to Chennai to do the cross examination in person in July 2022 when the schools were closed, but in the meantime, the appellant was set exparte and an exparte order was passed in favour of the respondent. Hence, the present appeal.

3. (i) Learned counsel for the appellant would state that the appellant works and lives in USA and made all efforts to come to Chennai to conduct the case. The respondent had filed a petition giving the appellant's address in Chennai when he was aware that she was in USA. Learned counsel would further state that the appellant sought to have mediation on line in March 2021 in order to settle the issues or to complete the mandatory process and start with the filing of the counter and enquiry, but the same was opposed by the respondent even though all mediations in all courts were on line because of Covid-19.

(ii) Learned counsel would further state that subsequently, the mediation between the appellant and respondent failed. The appellant filed a counter claim for divorce but the same remained unnumbered even at the time of



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disposal of O.P.No.733 of 2018. The appellant filed a petition to dispense with her presence during the cross examination but the same was dismissed on 28.09.2021. The appellant filed application in I.A.No.5 of 2021 for travel expenses which was allowed on 23.10.2021 but the respondent paid only part of the travel expenses to the appellant. The O.P was posted on 07.01.2021 for cross examination.

(iii) Learned counsel would further state that the appellant came to Chennai on 01.01.2022 and filed a joint memo with the respondent on 06.01.2022 to list the case on 07.01.2022. The Courts were again locked down suddenly for Covid. The appellant was agreeable to do the cross examination on line even though she had come to Chennai from USA but the respondent insisted that it should be done in person. The appellant was unable to do the cross examination because of the extreme bad connectivity of on line process.

(iv) Learned counsel would further state that the appellant had to leave Chennai by 29.01.2022 as she had been granted only 4 weeks leave otherwise, she would lose her job. Her son who accompanied her as he had to go to school due to lack of attendance. When the O.P.No.733/2018 was posted on 08.02.2022, an adjournment was sought for and the same was granted till 18.02.2022. On 18.02.2022, an undertaking was given by the Power Agent,



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viz., mother of the appellant that the appellant would be in Chennai on 14.03.2022. However, the appellant could not be present as she was not granted leave even without salary. The appellant was willing to return to do the cross examination in person in July 2022 when the schools were closed. However, in the meanwhile, the appellant was set exparte and the respondent's evidence was recorded and the petition for divorce was allowed on the ground of cruelty and desertion.

(v) Learned counsel would further state that the documents filed with counter claim in Document Nos.2 to 7 clearly show that it was the respondent who had abused and physically hurt the appellant and thus, she was taken to an emergency shelter by the Police. The appellant had clear and cogent proof of abuse, physical, verbal and mental torture by the respondent which would deprive him of a decree of divorce. In his petition and reply to the counter claim, the respondent tried to say that the separation was in February, 2016 and the appellant came to the house in May, 2016 and caused problem and called the police, but Document No.4 proves otherwise. The respondent bought a house in March/April 2016 and in Document Nos.1 and 8, the appellant is the person who wrote to the Agent before and after taking possession of the property. This proves that she was in the matrimonial home



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in March/April 2016. Document No.9 are chat messages between the appellant and respondent during March/April,2016 which are normal conversations between the spouses. Document No.10 is an email dated 14.04.2016 from the father of the respondent thanking the appellant for a gift of a lap-top for his birthday.

(vi) Learned counsel for the appellant would further state that the appellant had not deserted the respondent in February 2016 as stated by him. The appellant never wanted her name included in the house document as the State of New York is a Common Property State where all assets owned by one spouse is deemed to be owned by both spouses as matrimonial assets. Therefore, the prayer of desertion cannot be sustained in the light of these documents.

(vii) Learned counsel would further state that at the time of marriage, the respondent was doing Ph.D. He was on a stipend and the appellant was on a dependant visa and legally could not work. She took up a job as a nanny for a white family, looking after their 2 children and late night part time work in an ice-cream parlour. Her payment went into the respondent's bank account directly. The respondent, as a student was entitled under his visa to hold jobs. The respondent did not produce his bank account or tax receipts to disprove



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this statement. The appellant earned more than Rs.40 to 50 lakhs to maintain her family as the respondent only completed his decree in the early part of 2016. After separation, the appellant's Athai in Australia paid for her Community College Education in Information Technology and she got a degree. Till then, the appellant supplemented her income by taking Art Classes on-line. She got a status to continue to live and work in USA. However, the respondent sent an email notice through a lawyer from India threatening to take action on her and her boss as an unqualified person working illegally in the country and document Nos.12 and 13 will prove the same.

(viii) Learned counsel would further state that the respondent has spoiled the life of the appellant. He has defaulted in Child support from 2019. The appellant claims no maintenance for the child before this Court. The appellant prays to set aside the decree of divorce granted on the ground of cruelty and desertion and pass order on the counter claim petition filed by her dissolving the marriage between the parties on the ground of cruelty by the respondent. She would also pray that the order of divorce be made a condition to the respondent paying permanent alimony of Rs.60 lakhs to the appellant.

4. (i) Per contra, the learned counsel for the respondent would deny all the allegations made against the respondent and would state that from day one



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of the marriage, his family life was not at all happy because of the ill treatments and indifferent behavior of the appellant as she failed to discharge her duties as expected of a wife, showing love, care and affection, cooking food etc. The appellant used to pick up unnecessary quarrels every now and then, without any rhyme or reason and used to quarrel in unparliamentary words. The appellant often openly called the respondent as half blinded person with a view to humiliate him while admittedly, she had chosen to marry him after the disclosure of the fact that he had some vision problem in his left eye.

(ii) Learned counsel for the respondent would further state that the respondent completed his Ph.D program and got employment at IBM in USA and later with Global Foundries and drawing good salary and spent lot of money for the family by purchasing a house and a car. But the appellant became more money minded and spent lavishly without the knowledge of the respondent on her own accord by operating the credit card of Bank of America account etc. and when the respondent questioned the same she behaved very rudely. The appellant also insisted that the ownership of the house has to be transferred in her name without understanding the fact that without discharging the loan, name transfer was not possible at all. Therefore, since his



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health deteriorated due to the fact that the appellant refused to cook food, the respondent called his parents to USA to take care of him in December 2015.

(iii) Learned counsel would further state that on 02.02.2016, the appellant picked up quarrel with the respondent and left the matrimonial home with the minor son without even informing her whereabouts. She also gave a false police complaint over phone against the respondent and his parents on false accusations of domestic violence. Subsequently, she filed a case before the Family Court in USA seeking for order of protection and for maintenance and as per the orders, the appellant paid maintenance of \$1600 per month. Even in the said proceedings, she did not disclose her place of stay and kept it as a top secret and in fact, obtained "Address Confidentiality order' dated 31.05.2016. He was also deprived off the parental affection towards his son besides prevented him even to see the child. The appellant did not bother to take care of him when he underwent operation for his affected left eye on 26.05.2016 but on the other hand, in her case, summons was served on him through police on 29.05.2016 asking him to appear on 01.06.2016. When the respondent, during the hearing of the case for maintenance, asked her to come back to conjugal abode for the sake of the minor son, she put unreasonable



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conditions that the respondent should sever all his relationship with his parents once and for all and continue to pay maintenance ordered by court.

(iv) Learned counsel would state that the respondent came back to India as his health condition deteriorated very badly and there was no one to take care of him. The respondent tolerated all the misdeeds of the appellant only for the welfare of the minor son but there was no improvement in the attitude of the appellant and deserted the respondent for more than 2 years. She did not treat him properly in front of his friends and relatives and thus, the appellant was put to great mental agony.

(v) Learned counsel would further state that the respondent had filed O.P.No.733/2018 for Divorce on the ground of cruelty and desertion. In fact, the respondent paid the travel expenses as per the order dated 28.09.2021 passed in I.A.No.4/2021 and thereafter, a joint memo was filed agreeing to commence the cross of PW1 on 07.01.2022 but she did not co-operate for the trial. Thereafter, the case was adjourned on several occasions i.e., on 12.01.2022, 19.01.2022, 24.02.2022, 08.01.2022, 31.02.2022, 08.02.2022 & 18.02.2022 but it was informed later to court that she left to USA on her own accord without informing the same to Court. The appellant filed a petition



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through her mother on 18.02.2022 stating that she would appear on 14.03.2022 and on her willingness and undertaking, the case was posted on 14.03.2022 but even on that date, she did not appear and the case was further adjourned to 18.03.2022 and to 21.03.2022 and only on that date, she was set *ex parte*. Thereafter, the case was adjourned to 30.03.2022 for *ex parte* arguments and thereafter to 31.03.2022, 18.04.2022, 26.04.2022 and finally, on 02.05.2022 and after hearing the arguments of the respondent side, orders were reserved and later, the order was passed only on 16.03.2022. Hence, it is clear that inspite of several opportunities granted to the appellant, she wantonly and deliberately allowed the case to be decreed *ex-parte* and cannot now blame that the *ex-parte* order is bad in law. Since the appellant filed counter claim for divorce, she deliberately failed to prosecute the case and only after affording so many adjournments for her appearance finally, an *ex parte* decree for divorce was passed. Without filing a petition to set aside the *ex parte* decree, the above Appeal has been filed only to grab money under the guise of pendency of litigation from the respondent. There is absolutely no merits or sanctity in the above appeal and the same deserves to be dismissed *in limine*.



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(vi) Learned counsel would further state that even according to the counter as well as the written arguments filed before this Court, it is seen that she wants divorce and not willing to join with the respondent. She is merrily living in USA for the past 9 long years separately without bothering to unite and thus, the marriage had irretrievably broken and the decree of divorce granted has to be affirmed. Even in the written arguments dated 02.09.2024, filed before the Court, the appellant prays that the order of the Family Court dated 16.05.2022 made in O.P.No.733 of 2018 filed by the respondent on the ground of cruelty and desertion be set aside and a decree of divorce be passed in the counter claim filed by he appellant and the marriage dated 04.02.2010 be dissolved on the ground of cruelty by the respondent. This will abundantly make it clear that the appellant is not interested in living with the respondent and wants only divorce. The appellant is now well employed and earning and living lavishly in USA and she is not entitled for any maintenance. Admittedly, the appellant had already filed legal proceedings before US and the minor son cannot seek for any maintenance in the present proceedings and if so, she ought to have filed separate petition for maintenance, in which case, the case initiated by her before the Family Court, US, will be a bar. Hence, the



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request of Rs.60 lakhs by way of permanent alimony as a condition for divorce before this Hon'ble Court is highly untenable.

(vii) Learned counsel would further state that the C.M.P.No.17698 of 2024 filed under Order 41 Rule 27 CPC in the present appeal, is not maintainable and the documents sought to be introduced will not improve the case of the respondent in any manner, since the email correspondences by her allegedly sent to third parties, cannot be accepted and the email said to have been sent to the respondent will show that they were living separately. Hence, he would pray to dismiss the appeal.

5. Heard the learned counsel for the appellant, the learned counsel for the respondent and perused the materials available on record.

6. The Family Court has passed an exparte decree of divorce on the ground of cruelty and desertion as against the appellant/wife. It is pertinent to point out that the appellant works and resides in USA. It is seen from the records that she had made all efforts to come to Chennai to conduct the case. It is the contention of the appellant that though the respondent knew that the appellant is residing in USA, he had filed a petition for divorce giving the appellant's address in Chennai. However, it is the contention of the respondent in the reply statement filed by him that he had clearly mentioned in the petition



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for divorce that the respondent/wife was also residing in USA and since her US address and whereabouts were not known and kept secretly due to the fact that since she had obtained protection orders from the Family Court, County of Saratoga, State of New York and left the matrimonial home, her permanent address at Chennai had been given and US address had not been given in the petition. The appellant filed a counter claim with the several documents and required court fee, but the counter claim was not numbered. Thus, she filed an application in CMP.No.17698 of 2024 before this Court seeking permission to file those documents. The appellant also filed an application before the Family Court and sought permission to permit the cross examination in the presence of her Power of Attorney with an undertaking that she would be present for her evidence in person, but the same was dismissed. The appellant also sought to have mediation on line in March 2021 to settle the issue, but again it was opposed by the respondent even though all mediations in all Courts were on line because of Covid-19 at that time. The appellant also filed an application to dispense with her presence during cross examination but the same was dismissed on 28.09.2021.

7. The appellant came to Chennai on 01.01.2022 and filed a joint memo with the respondent to list the case on 07.01.2022. The Courts werenot



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functioning again due to lock down for Covid. The appellant was agreeable to do the cross examination on line even though she had come to Chennai from USA as the respondent insisted earlier that it should be in person. But the appellant was unable to do the cross examination because of extreme bad connectivity in the online process. Since the appellant had to leave Chennai by 29.01.2022 as she had been granted only four weeks leave, she returned to USA. Her son also accompanied her. When the O.P was posted on 08.02.2022, further adjournment was granted till 18.02.2022. On the said date, an undertaking was given by Power Agent of the appellant/ appellant's mother that the appellant would be in Chennai on 14.03.2022. But the appellant could not be present as she was not granted leave even without salary. The appellant was willing to do the cross examination in person in July 2022 when the schools were closed. However, the appellant was set exparte and the respondent's evidence was recorded and the O.P. was allowed in favour of the respondent on 16.05.2022.

8. From the documents filed by the appellant in CMP.No.17698 of 2024 in Document Nos. 2 to 7, it is seen that it was the respondent who abused and physically hurt the appellant who was taken to an emergency shelter by the Police in USA. Further, from Document No.4, an email written by the



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respondent to the appellant states that one incident of physical abuse took place in May 2016. Further, document No.10, email dated 14.04.2016 shows that the father of the respondent thanked the appellant for a gift of a lap top for his birthday. It is the contention of the appellant that she never wanted her name to be included in the house document of the respondent as alleged by him as in the State of New York, the property owned by one spouse is deemed to be owned by both spouses as matrimonial assets.

9. The appellant also filed an application seeking travel expenses from the respondent and the same was allowed on 23.10.2021, but the respondent paid only part of the travel expenses to the appellant i.e., Rs.88,000/-, whereas the expenses incurred by the appellant is Rs.2,10,493/- for her son and herself. Thus, from the date of initiation of the O.P. proceedings, the appellant made all efforts to co-operate with the proceedings. The counter claim filed by the appellant was not even numbered. The Court below ought to have granted time for the appellant to present her case, but had not done so.

10. It is pertinent to point out that the appellant had come from US with her 8 year old son for four weeks and if she does not return to US within the specified date, she would have lost her job and her son would have lost a year of schooling as they were granted only four weeks leave. As a single mother



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with 8 years old son and has no other support, she had no option but to go back to US. Considering the circumstances of the appellant, the Family Court ought to have granted some more time for the appellant to present her case, but had passed an ex parte decree in favour of the respondent.

11. It is seen that the appellant was taken to an emergency shelter by the Police in USA for domestic violence as per document Nos 2 to 7. Further, the respondent himself had revealed that one incident of physical abuse took place in May 2016 through email communication. Further, document No.10, email dated 14.04.2016 shows that the father of the respondent thanked the appellant for a gift of a lap top for his birthday. Though all the above documents would go to show that the appellant has not deserted the respondent as she was in touch with the family of the respondent and that there is no cruelty committed by the appellant to the respondent, those documents were not marked by letting in proper evidence.

12. Moreover, the respondent/husband did not examine any independent witness or family members to prove the allegations of cruelty. The respondent/husband has not let in any evidence to prove the desertion or cruelty. He has marked only five documents, viz., Marriage Invitation- Ex.P1, Copy of Marriage registration certificate- Ex.P2, marriage photo - Ex.P3, copy



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of Address confidentially order- Ex.P4 and copy of order passed by Family Court in State of New York (Saratogo Country)- Ex.P5. When it is not proved, the decree of divorce cannot be granted on the ground that the wife's conduct would prove that she treated the husband with cruelty. Further, the appellant's absence before the Family Court is due to the circumstances beyond her control. Therefore, the findings of the Family Court that the wife treated the husband with cruelty and the husband is entitled to divorce cannot be sustained and the same is liable to be set aside.

13. Since both the parties are seeking for dissolution of marriage on counter allegations, this Court is of the view that there is no point in remanding the matter for letting in evidence before the trial Court as to documents filed on behalf of the appellant before this Court in CMP.No.17698 of 2022. The CMP.No.17698 of 2022 filed by the appellant has to be allowed.

14. Further, the parties lived together for a period of six years and they are living separately for nearly eight years. There is hardly any chance of reunion. The appellant/wife is living in USA along with her son. They came to Chennai to prosecute the case before the Family Court but due to unavoidable circumstances, the appellant could not do so. The Family Court ought to have granted some more time to the appellant/wife to prosecute her case.



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However, without considering the prevailing circumstances of the case, the Family Court had passed an order of exparte decree of divorce, which in our opinion has got to be set aside. Since the appellant as well as the respondent are making allegation of cruelty against each other and that both of them are not inclined to live together and wanted divorce and also considering the fact that the child is with the appellant in USA and that appellant is taking care of him, this Court, without expressing any opinion on the allegation of cruelty made against each other, thought it fit and proper to grant decree of divorce and to direct the respondent/husband to pay permanent alimony of Rs.60,00,000/- to the appellant.

15. In the result, the impugned order and decreetal order dated 16.05.2022 passed by the IV Additional Judge, Family Court, Chennai, are set aside. The marriage between the appellant/wife, Sita Mani @ Sita Laxmi Mani and the respondent/husband, Thenappan Chidambaram, solemnized on 04.02.2010 is dissolved by a decree of divorce, according to the provisions of the Hindu Marriage Act, 1955. The respondent/ husband is directed to pay a sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) to the appellant/wife by way of permanent alimony within a period of three months from the date of receipt of a copy of this order. The respondent/ husband is directed to pay a



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sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) to the appellant/wife by way of permanent alimony within a period of three months from the date of receipt of a copy of this order. Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. CMP.No.17698 of 2024 is ordered.

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

06.12.2024

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Index : Yes / No

Internet : Yes / No

To

IV Additional Judge,
Family Court
at Chennai

J. NISHA BANU, J.
and



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R.KALAIMATHI,J.

vsi

Pre-delivery order in
C.M.A.No.1445 of 2022

06.12. 2024