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C.M.A.No.1488 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

C.M.A.No.1488 of 2023

D.Selvin

..Appellant

Vs.

G.Sasikala

..Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Divorce Act, 1869, against the order and final order dated 08.02.2023 made in I.D.O.P.No.49 of 2021 on the file of Family Court, Thiruvallur.

For Appellant : Mr.V.V.Sathya

For Respondent : Mr.A.R.Suresh

J U D G M E N T

(Judgment of the Court was delivered by J.Nisha Banu, J.)

Challenging the order of dismissal, dated 08.02.2023 made in I.D.O.P.No.49 of 2021 on the file of Family Court Court, Thiruvallur



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filed by the husband/ appellant herein seeking for dissolution of marriage on the ground of cruelty, the present civil miscellaneous appeal has been preferred by the husband/ appellant before this Court.

2. Before the Trial Court, on the side of the appellant, the appellant himself was examined as P.W.1 along with two other witnesses P.W.2 & P.W.3 and 8 documents were marked as Ex.P1 to Ex.P8 as exhibits. On the side of the respondent, the respondent/wife was examined as R.W.1 and no exhibits were marked. The Trial Court, after analysing the pleadings, counter and evidence adduced on both sides, dismissed the petition filed by the appellant/husband finding that the appellant failed to prove the respondent's acts which caused him mental agony and he is not entitled for divorce on the ground of cruelty. Aggrieved by the said order of dismissal, the appellant/ husband has preferred the present civil miscellaneous appeal.

3. (i) Learned counsel for the appellant would state that the respondent was working in Zuari Company and inspite of the request of the appellant to leave the job, she did not do so. She always quarrelled



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with him, used to leave home for office by 7.00 a.m. and return home by 7.00 p.m. She will not cook any food in the house, she used to take breakfast in the company, have lunch in her parents' house and even for dinner she will not prepare any food and insisted the appellant to get food from the hotel. When questioned the same, she will shout at high pitch and created ugly scene in the locality. The appellant was physically and mentally threatened by the respondent.

(ii) Learned counsel would further state that even for the legal notice Ex.P5 dated 21.12.2020 sent by the appellant to the respondent, the averments made therein were not denied by the respondent. He would further state that the trial Court has not properly appreciated the documents and evidence adduced by the appellant to prove the cruelty meted out at the hands of the respondent.

(iii) Learned counsel would further state that the brother of the appellant assaulted him and the same has been established by the appellant by producing the police complaint but the same was not considered by the trial Court. He would further state that the act of



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cruelty committed by the respondent has been established by not co-operating for fertility treatment. Due to the act of the respondent, the appellant was put to mental agony and could not concentrate on his work. Hence, he would pray to allow the appeal by granting divorce to the appellant on the ground of cruelty.

4. (i) Per contra, the learned counsel appearing for the respondent denied all the allegations made against the respondent and would state that from the day one of the marriage, they are living in a joint family. After the death of the appellant's mother, the appellant and the respondent are staying separately at the first floor of the house and the appellant's father and his sister are living in the ground floor of the very same house. The appellant was too good, before his mother's death. He was taking care of his mother while she was sick, but only after her death, he became addicted to alcohol and not taking care of the family. The appellant did not allow the respondent and her family members to enter the appellant's house and therefore, there was a wordy quarrel and the appellant lodged a false complaint before the police and the police warned the appellant and closed the complaint.



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(ii) Learned counsel for the respondent would further state that the appellant and the respondent regularly communicating over phone calls. Even after receiving the legal notice dated 21.12.2020, the respondent contacted the appellant and enquired about it, for which, he replied that he had sent the same only to threaten the respondent and her family members. The said legal notice was sent to the appellant's address only where the respondent is staying at matrimonial home. Only due to the habit of consuming alcohol, the appellant behaves cruelly. Further, only due to the intervention of the appellant's sisters, the appellant treating the respondent badly. The respondent has great hope that she can be able to change the attitude and habit of the appellant and that she can lead a happy matrimonial home. Hence, he would pray to dismiss the appeal.

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

6. A perusal of the documents would go to show that admittedly,



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till date, the respondent is staying in the matrimonial home in the first floor. The appellant and the respondent are living in the first floor. The appellant's father and appellant's sister are living in the ground floor. Even in the cross examination, the appellant/husband admits that a separate matrimonial home was set up without any compulsion.

7. Further, the legal notice sent by the appellant was also sent to the address of the matrimonial home of the respondent. Further, the appellant has examined P.W.2 to substantiate his contention as to the separate living of the respondent in a rented house. In the cross examination, P.W.2 admits that he is related to the appellant and also denied that he has stated that the marital life of the appellant and the respondent was not happy and further admits that he has not produced any rental agreement or receipts for the rent. Therefore, there is no dispute to the fact that the respondent is still staying in her matrimonial home.

8. The respondent has not proved the ground of cruelty for grant of divorce. He has stated in his petition that the respondent has caused



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mental agony by not resigning her job even though there is no necessity and also threatened him and created problems. But these are all bald allegations. The respondent in the original petition has stated that he accepted the marriage as the respondent's parents assured that the respondent is a calm girl, suitable for family life, working in a private company and getting good salary. Thus, the allegation made against the respondent that the respondent caused mental agony as she was adamant in going for job even though there was no necessity, cannot be countenanced.

9. On the other hand, the respondent has stated that the appellant is not maintaining the family and she spent her salary for the same and in her cross examination also she has explained that only with her earnings and her family support, she is running the family. Further, the appellant has not proved through any evidence that there is strained marital life and that he is living separately. The appellant has also not proved the alleged acts of cruelty said to have caused by the respondent/wife.

10. In view of the above discussion, we are of the view that the



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appellant has not proved his case for grant of divorce on the ground of cruelty. Therefore, we find no infirmity or illegality in the order passed by the Family Court. Hence, the Civil Miscellaneous Appeal stands dismissed. No costs.

(J.N.B,J.) (N.S., J.)
02.09.2024

Index : Yes / No
Internet : Yes
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To

The Family Court Judge,
Thiruvallur.



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and
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